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# H.R. 5005, THE HOMELAND SECURITY ACT OF 2002, DAY 3

## HEARING

BEFORE THE

## SELECT COMMITTEE ON HOMELAND SECURITY
## HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 5005, THE HOMELAND SECURITY ACT OF 2002, DAY 3

July 17, 2002

**Serial No. 107–3**

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# H.R. 5005, THE HOMELAND SECURITY ACT OF 2002, DAY 3

**WEDNESDAY, JULY 17, 2002**

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON HOMELAND SECURITY,
*Washington, DC.*

The committee met, pursuant to call, at 10:47 a.m., in Room 345, Cannon House Office Building, Hon. Richard K. Armey [chairman of the committee] presiding.

Present: Representatives Armey, DeLay, Watts, Pryce, Portman, Pelosi, Frost, Menendez, and DeLauro.

Chairman ARMEY. The select committee will come to order. The Chair is advised that Chairman Young is on the way, and the Chair believes we can begin proceedings and have him join us in time for him to give his statement.

Mr. Obey, we welcome you here this morning. It is the practice of this committee to have two opening statements, one on each side, and to have those remaining members on the committee place any opening statements they have in the record. So, without objection, we will place all the opening statements in the record, and the Chair will recognize the gentleman from Ohio, Mr. Portman, for a brief opening statement.

Mr. PORTMAN. Thank you, Mr. Chairman. Mr. Chairman, the shock of the September 11 attacks in New York and Pennsylvania and here at the Pentagon is still very much with us. In a single morning, 19 men bent on terror and destruction killed more innocent United States civilians than did all our previous foreign enemies combined. The grief of that sudden loss was overwhelming, and part of what prevents that national grief from healing is the reality that that threat is still very much with us.

We are here today to do whatever we possibly can to counter that threat and to avoid more loss of innocent life. Our Federal Government and we as Members of Congress have no greater responsibility. The major problem I see with our current system of homeland security is that it is uncoordinated and spread too thin. Everyone is in charge, and no one is in charge. There is no accountability in such a system.

The dangerous threat we all must now acknowledge requires new thinking and a new approach. That is laid out clearly in the National Strategy on Homeland Security we saw yesterday unveiled by the President. The strategy is the culmination of lots of work, years of thoughtful study, tracing back well before September 11. The Hart-Rudman Commission and other studies have helped us think about how government can best deploy assets to secure us

here at home. The President's strategy also reflects the good work of many Members of Congress.

Yesterday we heard from Representatives Mac Thornberry, Jane Harman, Ellen Tauscher, and Jim Gibbons, who introduced their own legislation to create a new agency. Senator Joe Lieberman has taken the lead in the Senate. Two members of our own select committee, Mr. Chairman, J.C. Watts and Bob Menendez, have both worked hard in this area, mindful of unspeakable tragedies that occurred so close to their own homes and so deeply affecting so many of their own constituents.

Building on this good work, the President's National Strategy lays out three strategic objectives: prevention of attacks, reducing our vulnerabilities, and minimizing damage. This strategy provides us with a clear framework to align our resources, people, and capital and to align responsibility and accountability to the task of homeland security. Of course, Mr. Chairman, central to that new alignment is the creation of a new department. Putting the responsibility for homeland security within a single unified structure will make us more efficient and more effective against attacks. It won't make us immune from terrorism, but it will make us safer.

Over the past several weeks this Congress has acted quickly, but thoughtfully, to pass legislation needed to create this new department. The standing committees of Congress have moved with dispatch on a bipartisan basis to mark up provisions of this legislation under their jurisdiction, and we will hear from them today. The select committee has heard thoughtful testimony from nine Cabinet Secretaries, the director of the Office of Personnel Management, and several of our colleagues.

I have been struck by the emphasis in this testimony on the importance of creating a lean, agile 21st century agency with budget, organizational, and human resource flexibility to meet the challenge. We have done this before, including in 1998 when I worked with Senator Bob Kerry on reorganizing the Internal Revenue Service, a troubled Agency with over 100,000 employees. We gave the IRS needed flexibility on personnel and management, and they have used it fully to begin to change the culture and to improve service and morale.

This new Department needs to have flexibility, too, for the challenge of consolidation and creating a new culture of urgency is great and the stakes couldn't be higher. Of course, Congress must retain oversight and can and should use it aggressively. What we are setting out to do is to create a new Agency, not for this administration but for our country, into the foreseeable future. And Congress will be absolutely key to its successful implementation.

Today's witnesses bring with them a special expertise in the specific affected agencies. They have been the ones responsible for their oversight. We need their input and ongoing expertise.

Finally, Mr. Chairman, I want to commend you, Minority Whip Pelosi, and my select committee colleagues for the extraordinary spirit of nonpartisanship that you have brought to these deliberations. We share a passion for fulfilling our fundamental responsibility to protect our country, our citizens, our families, from this new threat. We must not lose sight of that single goal as we work to bring this critical legislation forward to our colleagues.

I look forward to today's testimony and I thank you for the time.

PREPARED STATEMENT OF THE HONORABLE ROB PORTMAN, 2ND DISTIRCT, OHIO

The shock of the September 11th attacks in New York, Pennsylvania, and here at the Pentagon is still very much with us. In a single morning, nineteen men bent on terror and destruction killed more innocent United States civilians than did all our previous foreign enemies combined. The grief of that sudden loss was overwhelming; and part of what prevents that national grief from healing is the reality that the threat is still very much there. We are here today to do whatever we possibly can to counter that threat and avoid more loss of innocent lives. Our Federal Government—and we as Members of Congress—have no greater responsibility.

The major problem I see with our current system of homeland security is that it is uncoordinated and spread too thin—everyone is in charge and no one is in charge. There is no accountability in such a system. The dangerous threat we all now must acknowledge requires new thinking and a new approach.

That is laid out clearly in the national strategy on homeland security unveiled recently by the President. The strategy is not new: it is the culmination of years of thoughtful study, tracing back well before September 11th. The Hart–Rudman Commission and other studies have helped us think about how government can best deploy assets to secure us at home from this new insidious threat.

The President's strategy also reflects the good work of many of our colleagues: yesterday we heard from Representatives Mac Thornberry, Jane Harmon, Jim Gibbons, and Ellen Tauscher who had introduced their own legislation to create a new agency. Senator Joe Lieberman has taken the lead in the Senate.

Two Members of our own Select Committee, J.C. Watts and Robert Menendez, have both worked long and hard in this area, mindful of unspeakable tragedies that occurred so close to their own homes and that so deeply affected so many of their own constituents.

Building on this good work, the President's National Strategy for Homeland Security lays out three clear strategic objectives:

- Prevention of attacks;
- Reducing our vulnerabilities; and
- Minimizing the damage and maximizing the recovery should attacks occur.

This strategy provides us with a clear framework to align our resources—people and capital, and align responsibility and accountability to the task of homeland security.

Of course, Mr. Chairman, central to that new alignment is the creation of a new Department of Homeland Security. Putting the responsibility for our homeland security within a single, unified structure will make us more efficient and more effective against attacks. It won't make us immune from terrorism, but it will make us safer.

Over the past several weeks, this Congress has acted quickly but thoughtfully to pass the legislation needed to create this new department. The standing committees of Congress have moved with dispatch on a bipartisan basis to mark up the provisions of this legislation under their jurisdiction, and we'll hear from them today.

This Select Committee has heard thoughtful testimony from nine Cabinet Secretaries, and several of our colleagues. I have been struck by the emphasis in the testimony on the importance of creating a lean, agile 21 century agency with both organizational and human resource flexibility.

We have done this before. In 1997 and 1998, I worked with former Senator Bob Kerrey on reorganizing the Internal Revenue Service—an agency with over 100,000 employees. We gave the I needed flexibility on personnel and management—and they have used it fully to improve service and morale. This new Department needs to have flexibility too, for the challenge of consolidation and creating a new culture of urgency is great and the stakes could not be higher.

Of course, Congress must retain oversight, and can and should use it. What we are setting out to do is to create a new agency not for the current Administration but for our country into the foreseeable future, and Congress will be key to its successful implementation.

Today's witnesses bring with them a special expertise in the specific affected agencies. They have been the ones responsible for their oversight, and we need their input and ongoing expertise.

Finally, Mr. Chairman, I commend you, Minority Whip Pelosi, and my Select Committee colleagues for the extraordinary nonpartisan spirit you have all brought to these deliberations. We share a passion for fulfilling our fundamental responsibility to protect our country, our citizens, our families from this new threat. We

must not lose sight of that single goal as we work to bring this critical legislation forward to our colleagues.

I look forward to today's testimony and thank you for allowing me this time.

Chairman ARMEY. Thank the gentleman from Ohio. The Chair is now pleased to recognize the gentlewoman, Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman. Mr. Chairman, since the attacks on September 11, Congress and the President have come together to ensure our Nation's security, reflecting the Nation's renewed unity. Together we have committed to do—.

Chairman ARMEY. I wonder if the gentlelady will suspend for just a moment and we can invite the Chairman, who has arrived, to join Ranking Member Obey at the desk. Mr. Young, you have had illness in the family, and we appreciate your effort to be here and we want to welcome you to the desk. Ms. DeLauro is giving her opening statement, and we will be ready to proceed on conclusion of that statement.

Mr. YOUNG of Florida. Mr. Chairman, thank you very much. And I think there are several members of my family here. I don't know where they are.

Chairman ARMEY. The gentlewoman from Connecticut is giving an opening statement and then we will cut to you. Thank you again.

Ms. DELAURO. First of all, it is a pleasure to welcome the chairman and the ranking member, Mr. Young and Mr. Obey, here this morning.

Since the attacks on September 11, Congress and the President have come together to ensure our Nation's security. Reflecting the Nation's renewed unity, together we have committed to do what is necessary to win the war on terrorism, and now we are prepared to do what is necessary for our homeland defense. We have no more solemn responsibility under this Constitution.

I want to sincerely thank all of the chairmen and ranking members who will testify before us today for their hard work in the past few weeks. You have truly accomplished a Herculean task. You are asked to take on the most important issue facing our Nation today, protecting our homeland, and to come back in just a few weeks with your recommendations on how we should address that challenge.

The committees responded to an historic calling with historic bipartisanship, working together to iron out the details and make a good idea better. I believe the select committee must give the committees' recommendations serious consideration as we officially begin to draft this legislation. These recommendations carry with them the expertise, the in-depth knowledge of each of their chairs and ranking members who understand perhaps better than anyone how to ensure that we successfully marshal our efforts to protect the homeland without harming nonsecurity-related duties, responsibilities that are equally important.

As fellow Members, we know how hard you work all year round. We know that each of you has an unparalleled level of knowledge regarding the agencies in your jurisdictions, and we need to take that expertise and knowledge under advisement as we prepare to mark up this legislation on Friday.

As I have said before, I support the creation of the new Department to coordinate our homeland security efforts to safeguard American citizens. However, I have a number of questions and concerns that I hope can be addressed and I believe that many of the committees have done so with their recommendations.

I continue to be concerned that transferring the public health functions of the Centers for Disease Control and biomedical research efforts underway at the National Institutes of Health would adversely affect our world-class research centers. From a public health standpoint, there is no difference between the response to a naturally occurring outbreak and one that is deliberately caused. The same labs, the same investigators, the same scientific methods, are used in either case. Furthermore, the research underway at the NIH is the envy of the world, and scientists at the National Institutes of Allergy and Infectious Diseases have already implemented a strategic plan to guide their bioterrorism research. I see no reason to transfer budget control oversight or the power to set priorities regarding these responsibilities to the new Department. I strongly support the Commerce Committee's recommendation to keep those responsibilities where they are, while ensuring coordination with the new Department.

I also have a number of concerns regarding the good government provisions in this legislation. We all understand the need to safeguard sensitive information relating to our national security, but I continue to be concerned about the new FOIA exemption which comes despite statements by Ronald L. Dick, director of the FBI's National Infrastructure Protection Center, that—and I quote—"We believe there are sufficient provisions in the FOIA now to protect information that is provided to us," end quote. If it works for the FBI, the CIA, and the Defense Department, why do we need a broader exemption for the new Department? Unfortunately, this exemption was broadened by the Government Reform Committee, and I hope we are given the opportunity to address that problem at a later time.

The proposal also includes an unnecessary check on the Inspector General to investigate and report to Congress on issues that might arise. The Defense Department, Justice Department, and other agencies already handling sensitive information require the Inspector General to report to Congress if his or her access to information is impeded. In this proposal, the Secretary reports if he or she impedes an investigation, a clear conflict of interest. Both the Judiciary Committee and the Government Reform Committee have addressed this issue, and I am optimistic that we can bring this language in line with current Defense Department regulations.

I pose these questions precisely because we stand firmly with the President and the administration on ensuring security. We face enemies who leave us no room for error, and we owe the American people nothing less. We have a responsibility to get this right the first time without compromising the ideals that make this country strong.

I thank the chairman and I thank ranking member Pelosi for this opportunity, and I look forward to hearing from our colleagues. Thank you, Mr. Chairman.

Chairman ARMEY. Thank you.

PREPARED STATEMENT OF THE HONORABLE ROSA L. DELAURO

Thank you, Mr. Chairman. Since the attacks on September 11th, Congress and the President have come together to ensure our nation's security. Reflecting the nation's renewed unity, together we have committed to do what is necessary to win the war on terrorism. And now we are prepared to do what is necessary for our homeland defense. We have no more solemn responsibility under this Constitution.

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I pose these questions precisely because we stand firmly with the President and the Administration on ensuring security. We face enemies who leave us no room for error, and we owe the American people nothing less. We have a responsibility to get this right the first time, without compromising the ideals that make this country strong. I thank the Chairman and Ranking Member Pelosi for this opportunity, and I look forward to hearing from our colleagues.

STATEMENT FOR THE RECORD OF THE HONORABLE DICK ARMEY

Today we continue our effort to consider how we can best transform our government to address the threats we face in the 21st Century. When people wonder how Congress can possibly complete such a large task in a short amount of time, they forget the strength that can be found in our committee system.

Each of the committees that we welcome here today-as well as the Judiciary Committee from whom we heard yesterday-has met the challenge and provided us with their legislative recommendations. They each considered portions of the President's proposal that matched their jurisdictions and areas of expertise, assuring that the job would be done thoroughly.

That they could also complete this task so swiftly is evidence that the Select Committee will likewise be able to finish its work on time.

Later today we will also extend our welcome David Walker, Comptroller General of the United States. As head of the General Accounting Office, he will add his experience with the workings of the federal government to the detailed presentations we will hear today.

With so many able speakers, it's obvious that this will be a long, but productive, hearing. It is an essential part of our effort to provide an open and deliberative process. Every committee of jurisdiction will have the opportunity to argue their case and help the committee frame its judgments on the key issues at hand.

This is a common effort against a common enemy—those who hate the freedoms and personal liberty that America embodies. As we discuss many different points of view on key elements of this proposal, we should continue to proceed in the same spirit of cooperation and bipartisanship that has made the past several hearings a success.

STATEMENT FOR THE RECORD OF THE HONORABLE DEBORAH PRYCE

Thank you Mr. Chairman.

Today, the Select Committee begins its final day of hearings in anticipation of our Friday mark-up of this historic legislation.

Today's hearing is arguably the most important we have undertaken with regard to our ability to produce an effective and mutually satisfactory bill for consideration on the House floor. The twelve standing committees that reviewed the homeland security legislation have given us the benefit of their expertise and long experience with the issues under their jurisdictions, and they have done so in a bipartisan and collaborative fashion. Today, we will hear directly from the committee chairmen and ranking members.

I am pleased that this select committee has also proceeded in a cooperative manner. As Members on both the majority and minority on this committee have noted, protecting our nation cuts across party lines, and it is a requirement of this process that we work in a bipartisan fashion and produce a bill that can gain overwhelming support on the floor. Passage of this legislation not only takes us a step closer to a vital government reorganization, it sends a message to those who would threaten us that we, as a nation, are ready and able to rise to this challenge.

I know that we have all taken great pride in the way that the American people have responded following the tragedy of September 11. Our government must continue to reflect their spirit and will as we undertake difficult tasks to make our nation safe. There are hard choices to be made in the times ahead. With regard to this reorganization, the committees have already begun tackling these tough decisions, and I look forward to learning from their experience, as well as from the Comptroller General of the GAO, so that we can perfect and create the new Department of Homeland Security.

Thank you Mr. Chairman.

Chairman ARMEY. Gentlemen, let me tell you how pleased we are to have the chairman and ranking member of Appropriations here this morning. We will, of course, put your written statements in the record and we would like to invite you in your turns to give your opening statements. We will start with you Mr. Young.

## STATEMENT OF THE HON. C.W. BILL YOUNG, CHAIRMAN, COMMITTEE ON APPROPRIATIONS

Mr. YOUNG of Florida. Mr. Chairman, thank you very much for giving us the opportunity to be here. You all have a tremendous

and awesome responsibility. Protecting the homeland and the people who live in our homeland is a major responsibility, and it is probably not going to be easy to get a legislative package together that everyone is going to agree on. As you prepare the bill, I think you will find that out, but it has to be done and I strongly support the President's effort to do this.

I will be brief, Mr. Chairman, because I know you have a lot of other witnesses to hear from today, and we also have an appropriations bill on the floor which we would like to get completed as soon as possible.

I think Mr. Chairman, this is going to be the largest restructuring of our government that most of us can recall, but certainly the largest since Pearl Harbor when we reorganized the Department of Defense and created the Joint Chiefs and the structure that we basically have now in the Executive Branch.

The Appropriations Committee reported its recommendations to the Select Committee last Thursday. We have limited our specific recommendations to matters directly affecting the jurisdiction of the Appropriations Committee and not to the progeam elements of the bill that the President has suggested to the House. Namely, we dealt with the transfer authority that the Administration is seeking to establish the Department of Homeland Security. I hope you have had a chance to review this document, because I believe it speaks directly to the constitutional authority of the Congress, and not only the authority but also the responsibility of the Congress, and the separation of powers between the executive and legislative branches.

The Appropriations Committee has been in the forefront of strengthening the Nation's capacity to fight terrorism. After the attack on September 11, the Appropriations Committee brought to the floor a $40 billion supplemental to respond to the tragedy that the country was facing. Three days after the attack, the bill was passed and it was sent to the President on the same day. We worked around the clock to put this legislation together. We recognized that there was an immediate need and, frankly, we met that need immediately.

As far as giving flexibility to the President—and I think he has done an outstanding job and continues to do so in protecting America and fighting the terrorists—I think you all recall that the Appropriations Committee recommended giving the President $20 billion with no strings attached. The second $20 billion of that $40 billion bill, did have a requirement to go through the appropriations process. I would also suggest to you that as of today, according to the budget director of OMB, 46 percent of that money hasn't been spent or obligated. Regardless, the Appropriations Committee did recognize the need and we moved quickly and provided the funding necessary to do whatever had to be done to meet this tremendous threat: the massive recovery effort in New York City, the immediate need to increase security both here and abroad, and the war that we were about to undertake against the Taliban and al Qaeda.

The Appropriations Committee is still addressing the needs of our country. We are trying to complete the second war supplemental to give money to our troops to maintain their readiness, to

the Intelligence Community, to law enforcement and to other agencies for our safety and the security of the American people, and for the victims of New York.

We have tried to provide rescources to promote U.S. Foreign policy as we form our coalitions with allies to join together in the fight against terrorism. We strongly support efforts to improve the management and efficiency of the Nation's homeland security activities. In fact, the current administrative difficulties troubling a number of key homeland security agencies would argue for even more congressional scrutiny and oversight. And I can give examples about that if you are interested.

We believe we can accomplish this without sacrificing the constitutional process that has served the Nation well for over two centuries and the pledge that we all take when we swear our oath of office.

Our recommended amendment to H.R. 5005 is a bipartisan proposal. In our view the administration's transfer proposal is overly broad and unprecedented and would undermine the appropriations that the committee and this Congress carefully deliberate every year. H.R. 5005 includes permanent transfer authority which would allow the head of the Agency to rewrite appropriations bills that were enacted by Congress.

It is important to support the President in establishing this new Department, but we believe this can be accomplished under existing law and existing practices.

Our recommendation does the following: It replaces the open-ended transfer authority with a restatement of transfer authority that exists in current law, and it provides for additional authority, as needed, in subsequent appropriations acts.

We have been told by the administration that they need the broad transfer authority to skim enough money off the agencies to set up a new departmental entity and to have the flexibility to move money around between the agencies in the event of an emergency. The committee recommendation relies on existing procedures to handle these requirements and would ensure that the constitutional prerogatives of the Congress are not degraded.

Our proposal would recommend that we allow the agencies which are moved under this new Department to bring with them the money and assets we have appropriated to them and the reprogramming authority they have been granted.

It requires the executive to propose and obtain congressional approval to increase funding levels or change the uses of appropriated funds.

If money is needed to set up a new department superstructure, we can provide transfer authority in any one of our 2003 appropriations bills to do just that. We just need to have an idea of how much they need for fiscal year 2003.

If there is an emergency, current law will allow them to move money within the agencies and Economy Act reimbursement agreements can be executed among the various agencies to cover unforeseen requirements.

This process is very similar to the process used when the Department of Energy was created in 1977 and when the Department of Education was created in 1979. In both cases, legislation estab-

lishing the new Departments provided for transfer of appropriations balances along with the functions being transferred, but only for the purposes for which the funds were originally appropriated.

Mr. Chairman, I don't think we have a major disagreement on what we need to accomplish here, but we are concerned about the constitutional responsibilities of the Congress in dealing with the public funds.

And I just would read one sentence from Article I of the Constitution that says: No money shall be drawn from the Treasury but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

I think we can work within current law to do what the President needs to do, and I certainly intend to strongly support the creation of an Agency that would have the authority, the ability, and assets to protect our people and to fight the war against terrorism wherever it might be.

And I thank you very much for the opportunity to make these comments.

Chairman ARMEY. Thank you, Chairman Young.

[The statement of Mr. Young of Florida follows:]

PREPARED STATEMENT OF HON. C.W. BILL YOUNG, CHAIRMAN, COMMITTEE ON APPROPRIATIONS

Mr. Chairman and Members of the Select Committee on Homeland Security, I am pleased to appear before you today regarding the recommendations of the Appropriations Committee on H.R. 5005, a bill to establish the Department of Homeland Security.

I will make my remarks brief because I know you have a number of witnesses to hear from and as you know our Committee has a bill on the floor today.

I would like to start by saying that I believe your Committee has a formable task ahead. The creation of the Department of Homeland Security will be the largest restructuring of government that most of us can recall, but certainly the largest reorganization since Pearl Harbor. At that time, we reorganized the Department of Defense and created the Joint Chiefs.

Our Committee reported its recommendations to the Select Committee last Thursday. We have limited our specific recommendations to matters directly affecting the jurisdiction of this Committee—namely the transfer authority the Administration is seeking to establish the Department of Homeland Security. I hope you have had a chance to review this document, because I believe it speaks directly to the constitutional authority of the Congress and the separation of powers between the Executive and Legislative Branches.

The Appropriations Committee has been in the forefront of strengthening the nation's capacity to fight terrorism. Three days after September 11, 2001, the Appropriations Committee brought to the floor a $40 billion supplemental to respond to the tragedy our country was facing. We worked around the clock to pull this legislation together, to ensure that all the concerns were addressed—the massive recovery effort in New York City, the immediate need to beef up security both at home and abroad, and the war we were about to undertake. And now, the Appropriations Committee is still at the helm of addressing the needs of this country. We are trying to complete the second War Supplemental to give money to our troops to maintain their readiness, to the intelligence community, to law enforcement and other agencies for our safety and security, to the victims of New York and to promote U.S. foreign policy. And we are in the process of working through 13 appropriations bills for FY 2003, all of which will include substantial funds for homeland security and the war.

We also strongly support efforts to improve the management and efficiency of the nation's homeland security activities. In fact, the current administrative difficulties troubling a number of key homeland security agencies would argue for even more intense Congressional scrutiny and oversight. However, we believe we can accomplish this without sacrificing the constitutional processes that have served the nation well for two centuries.

Our recommended amendment to H.R. 5005 is a bi-partisan proposal. In our view, the Administration's transfer proposal is overly broad and unprecedented. It would undermine the appropriations that our Committee and this Congress carefully deliberate each year. H.R. 5005 includes permanent transfer authority, which would allow the head of this agency to rewrite Congress' enacted appropriations laws.

It is important to support the President in establishing this new Department, but this can be accomplished under existing law and practices.

Our recommendation does the following:

• it replaces the open-ended transfer authority with a restatement of transfer authority that exists in current law; and

• it provides for additional authority as needed in subsequent appropriations acts.We have been told by the Administration that they need broad transfer authority for the following reasons:

• to skim enough money off the agencies to set up a new Departmental entity; and

• to have the flexibility to move money around between the agencies in the event of an emergency.The Committee recommendation relies on existing procedures to handle these requirements and would ensure that our constitutional prerogatives are not degraded. Our proposal would allow:

• the agencies which are moved under this new department to bring with them, the money and assets we have appropriated to them and the reprogramming authority we have granted them;

• it requires the executive to propose and obtain congressional approval to increase funding levels or change the uses of appropriated funds;

• if money is needed to set up a new Department superstructure, we can provide transfer authority in any of our FY 2003 bills to do that, we just need to have an idea how much they need for FY 2003; and

• if there is an emergency, current law will allow them to move money within the agencies and Economy Act reimbursement agreements can be executed among the various agencies to cover unforeseen requirements.

This process is very similar to the process used when the Department of Energy was created in 1977 and when the Department of Education was created in 1979. In both cases, legislation establishing the new departments provided for transfer of appropriations balances along with the functions being transferred—but only for the purposes for which the funds were originally appropriated. In both cases, further transfers were allowed only to the extent specifically authorized in appropriations legislation. And as I mentioned earlier in my testimony, when we reorganized the Defense Department after the attack on Pearl Harbor, Congress did not provide such extensive transfer and reprogramming authority. To this day, the Secretary of Defense must obtain approval of Congress to reprogram funds and he is very limited in his ability to transfer appropriations from one appropriation to another.

Our goal is a regular order appropriations process for this new Department. We expect that if legislation to set up this new Department is enacted this year, the FY 2004 President's budget will request funds for the new Department and its agencies. The Appropriations Committee will be prepared to appropriate funding for this new Department and its agencies in whatever form is enacted into law.

That concludes my testimony, and I will be happy to address any questions you may have on our recommendations.

Chairman ARMEY. Congressman Obey, we would be happy to hear from you.

## STATEMENT OF THE HON. DAVID R. OBEY, RANKING MINORITY MEMBER, COMMITTEE ON APPROPRIATIONS

Mr. OBEY. Thank you, Mr. Chairman. Mr. Chairman, let me congratulate Chairman Young for the statement he has made. I agree with virtually every word of it. Secondly, I am sure that you all understand that on an issue like this, there will be no Democrats, no Republicans, no liberals, no conservatives. We are all, I hope, just legislators trying to do our constitutionally sworn duty, and in that sense I hope we are all constitutionalists.

I have two sets of concerns: one, the financing of this Agency which Chairman Young has just referred to; and secondly, the organization itself.

Let me point out that the Magna Carta—or since the Magna Carta was signed in 1215, one of the driving principles that has been a key underpinning of Western democratic societies is the idea that the power of the purse shall remain outside of the hands of the executive and firmly in the hands of the legislative body. At the Constitutional Convention, this was not even disputed. There was virtually no debate on the issue. It was accepted by everyone. And that undiminished authority remained intact during the war of 1812 when the U.S. Capitol was burned, during two world wars, and I would hope and expect it would remain intact now. That is our principal duty in putting together alterations to the White House's proposal. And the fact is that no member of the executive branch at any time in history has ever had the authority to terminate programs, to sell assets, or to redirect resources without the prior agreement of the Congress. And I hope it will remain so.

This bill provides four sweeping abdications of the power of the purse. Chairman Young has mentioned them. It gives the Agency in effect a totally free hand to set up this new Department any way they want, without any significant congressional financial oversight. Now, if you think that is a great idea, then I would urge you to review the history of the newly created Transportation Security Administration. They created an Agency of over 70,000 people. They proposed an average salary in the headquarters office in Washington of $90,000. Now, this is not an average salary of the executives. This is counting everybody, including the clerks, the messengers, everybody, average salary $92,000.

That is higher than the average salary in the White House, it is higher than the average salary in the Supreme Court. They recommended an absurd salary structure at local airports that started by planning to have guards paid $85,000 a person. That information came out from the Agency and one day afterwards, when the press laughed it to death, they said oh, you are using old information, because by then they had changed their recommendations and they had scaled down those salaries. That does not suggest to me a quality of analysis that could survive even rudimentary scrutiny.

This is going to be a huge bureaucracy. They are going to have 16 Assistant Secretaries, if we listen to these recommendations. It is going to be incredibly bloated. It is going to have the extraordinary authority to sell assets without the approval of the Congress, and instead of putting the money from those assets into the Treasury, as is now the requirement, they would have the authority to keep those moneys themselves and use them for any purpose they wanted.

That should not be allowed to go forward. We have seen many corporations in this country in big trouble because they gutted the ability of their boards of directors to provide strong oversight over the chief executive officers of the company. We should not make that same mistake in the Federal Government. The Congress is supposed to be an active, caring, alert, and aggressive board of directors and we cannot walk away from that responsibility.

Some other points: It is a spectacular misnomer to call this a Homeland Security Agency. If you take a look at departments that are supposed to be folded into this Agency under the recommendations, they contain 133 agencies and offices. Only 22 of them are

actually transferred into this Agency, leaving 111 still outside the tent.

I would do three things. I would first of all keep the Office of Homeland Security in the White House, and make sure that the executive order that created that Agency is converted to statute so that it has the prestige and the clout needed to coordinate all of these other agencies, along with the 22 that are being dumped into this new Agency.

Secondly, I would elevate the director in prestige to the same level at least enjoyed by the drug czar, by the science advisor, by the OMB director, by making them confirmed by the Senate. That does not damage his position. That strengthens it because they are on an equal footing. They have been ratified by the entire system, and they would have the necessary clout to knock heads together and see that people cooperate.

Thirdly, I would give that officer the power to decertify budget recommendations from OMB if they do not meet the standards that were laid out by the Agency in order to assure the security of the homeland. I believe that the debate on this issue so far has been far more sterile than it should be and far less substantive, and I do not believe that is the fault of Congress in either party. I think Members of both parties have been thoughtful and expressive concerning their terms about this product.

I do believe that the position of the executive branch has been far too dominated by OMB whose world view and knowledge about security matters is certainly not commensurate with their knowledge about domestic budgets, and I think we need to face that.

There are a number of questions I think you ought to ask yourself. Whatever you recommend, will it increase the focus on antiterrorism or not? A department that has to care about earthquake recovery, about dealing with pet stores, about oil spills, about protecting wine producers from the glossy wing sharpshooter, is spread too widely to really do a decent job of focusing on antiterrorism.

I think we should focus on putting together the agencies that have the most to do with providing security at the borders and in our ports: the immigration side of INS, the Customs Service, the Transportation Security Administration—if we can ever get that baby put together right—but should we add AFIS in all of its glory with its 8,000 employees? I don't believe so.

And there is one other terrible example. That is the area of bioterrorism, and the gentlewoman from Connecticut has already mentioned it. Last fall the Nation discovered that we have a fantastic asset in the National Institute of Infectious Diseases at the National Institutes of Health. That is the Agency that does world-class research on AIDS, on agents like Ebola, West Nile virus. They are headed by a brilliant director, Dr. Tony Fauci, as you all know. Nothing would be more destructive or idiotic than to take the dollars that have been bestowed upon that Institute by the Congress and instead make it a freestanding isolated research program. We need to piggy-back on the knowledge and the synergy that exists by having that Agency within NIH. We don't need to fragment it in any way or give it conflicting lines of authority. In short, we don't need to screw it up. It is working terribly well.

Thirdly, we cannot let new administrative costs eat up frontline activities like cargo inspection and the identification of illegal entrants into this country. CBO has estimated that this is going to cost at least $3 billion in new administrative costs. I would personally be flabbergasted if it is not at least double that, based on my experience and based on the analysis of previous organizations. I would also ask you to remember, there was a good reason why the defense establishment was organized in 1947 and not 1944; because in 1944, we were in the middle of a war. We were kind of busy, and the last thing we want to do is to so overreach in the reorganization we provide that we ignore the fact it is going to take an immense amount of time to move into new offices, to get new telephone numbers, to get new desks, to get new bosses, to understand what your relationship with those new bosses and colleagues, and these administrators are going to be tempted to sit on their duffs and hold back and take a look at the lay of the land for months and months, until they know what they can do without getting their heads shot off.

So I would urge you to recognize there is a fantastic potential for disruption which we have a mortal duty not to ignore.

And then there are other problems. We have the gratuitous and, in my view, ill-advised exemption from civil service law and whistle-blowing protection and freedom of information. People will say oh, you can't release information about national security. The Freedom of Information Act already has exemptions for national security and for critical law enforcement material. There is no need to provide the kind of blanket authority provided in this legislation. If you do what this legislation says, it would be very easy for agencies and industries with whom these agencies work to simply launder a whole lot of information that the public has a right to know, through this Agency, on issues such as public health and safety, thereby shielding it from public awareness. We cannot let that happen.

In my view, there are two major problems that we have to deal with and that this proposal before us does not address. When Bill Young and I and our staffs interviewed every single intelligence agency virtually during the 5 days when we were locked out of here because of anthrax, we talked to the NSA, we talked to the CIA, we talked to the FBI, CDC, HHS, you name it. What struck me—and I was thunderstruck by this—is that there were literally thousands of pages of raw information on the floor, sitting on desks and filing cabinets, unreviewed by anybody. And for two reasons: number one, because we do not have the systemic ability to separate the wheat from the chaff in these agencies. We don't have the technology up to speed, and we don't have the organization down. And secondly, we do not have the language translation capacity that we need. We need at least five times the capacity that we have right now if we are going to do a really thorough job of reviewing these intercepts.

And then the second problem is the FBI. Now, this is no criticism of the FBI, but it is an analysis. The FBI today is structured to focus on thousands of individual acts of unrelated crime. That is their job. But by being organized that way, as the FBI director has said, you do not have a mindset in that Agency or a capacity to

analyze over the broad field, looking for patterns. And that is what you need to be doing if you are trying to uncover potential terrorist activities. So we need to focus on reshaping the FBI to be able to do that job, and that is I think far more important than any other organizational—or recommendations that we have here today.

In short, I would simply say, as Chairman Young has been saying, don't throw away the precious separation of powers arrangement just because some hotshots in this town tell you it will make it easier to catch bin Laden. It won't. It won't.

I would just urge you to recognize that corporations are in trouble because they decided to run only with the wisdom of their CEOs and their close advisers, and they didn't allow boards of directors to conduct aggressive activities to review their conduct, and I think we have to avoid that. So, in short I would ask you, don't salute the first draft that you get from downtown. Think about it and then think about it some more, because the country you will be protecting is your own and our own. Thank you.

[The statement of Mr. Obey follows:]

PREPARED STATEMENT OF THE HONORABLE DAVID R. OBEY, RANKING MINORITY MEMBER, COMMITTEE ON APPROPRIATIONS

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before you today. I know you understand that on this issue there can be no Democrats and no Republicans, no liberals and no conservatives. We are only American legislators with the sworn duty to do what is best for the country, what is consistent with the Constitution.

My thoughts on Homeland Security are expressed in the recommendations of the Appropriations Committee and in the letter that Congressman Waxman and I sent to Governor Ridge last week as well as in the testimony that I am about to deliver.

I will divide my remarks today into two segments. First, I would like to discuss proposals regarding a new Department of Homeland Security that would affect the role of the Congress in appropriating money. Secondly, I would like to talk about how the government's broad responsibilities with respect to homeland security could be better coordinated and structured and how the creation of a new Department would fit within that restructuring.

PROTECTING THE CONSTITUTION AND OUR SYSTEM OF CHECKS AND BALANCES

Since King John signed the Magna Carta in 1215, the notion that the executive should not have power of the purse has become increasingly central to the structure of Western Democracies. In the three months of passionate debate, conflict and compromise that led to crafting the U.S. Constitution, there is no evidence of any debate whatsoever over clause 7 of Section 9 of Article I, which states, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Every one of the thirteen colonies had already adopted constitutions that gave their individual legislatures "the power of the purse." Providing to the Congress the central authority over spending was simply so universally agreed to it was not even a topic of discussion.

Congress was quick to use those powers and to specify in great detail how appropriated funds could and could not be spent in connection with the establishment of a standing army to defend against a possible invasion by France in the late 1790s. Those powers were undiminished during the War of 1812 when the nation was attacked and both the Capitol and the White House were burned. The Congress' authority over spending remained intact through the Civil War and through two World Wars. It is therefore surprising and disturbing that the administration would choose to revisit a decision so central to our Constitutional heritage.

Simply put, no member of the executive branch at any time in the history of this country has ever had the authority to terminate programs, sell assets and redirect resources without consultation with the Congress that the legislation before this Committee would grant the new Secretary of the Department of Homeland Security. The proposed legislation provides four basic authorities:

First, Section 803(c ) of H.R. 5005 provides that the President may upon enactment and prior to the actual transfer of existing agencies and activities to new De-

partment, transfer 5% of the funds appropriated to those agencies and activities for use in setting up the bureaucratic superstructure envisaged in the act. What this essentially provides is a totally free hand to the Secretary and his staff in structuring the new Department without consultation or involvement of the Congress.

The record of the last six months in setting up new homeland security activities should give the Congress and the American people serious pause about providing such authority. The new Transportation Security Administration has put forth plans indicating that it plans to employ more than 70,000 people simply with respect to the airline safety portion of its mission. Many of us were deeply concerned when we learned that the agency planned to locate more than 800 of those people here in their Washington headquarters. Adding to that concern was the fact that they planned an average salary for the employees of that huge headquarters of more than $90,000 a year. That is not the average for the senior managers but for all employees including stock clerks and secretaries. That is a higher average salary than is paid by the Executive Office of the President within the White House and it is higher than the average salary paid at the Supreme Court.

Those concerns grew further when it was learned that the size of the contemplated headquarters of this operation had grown from the original 800 employees to more than 1200 even after the agency had been criticized for being top heavy. Certainly nothing spoke more clearly to the lack of administrative and fiscal discipline than the decision by the agency to spend more than $400,000 for redecorating the offices of the Director and his staff at the same time they were claiming to be critically short of funds.

The broader strategic decisions have also been replete with examples of poor judgment. Initial salary schedules would have resulted in the guards employed to protect the passenger and baggage screening operations being paid more than $85,000 a year-more than the airport managers, mayors or police chiefs in many of the communities they would be located in. Equipment for baggage screening was ordered without any attention to the facilities that would have to be constructed to house the equipment. Since facilities take longer to construct than it takes to manufacture equipment we are almost certain to have baggage-screening equipment sitting in warehouses for some extended period of time waiting for a decision to be made with respect to where it will be installed. Plans also called for, and still do call for the hiring of 3500 "shoe carriers" to collect and scan shoes that set off magnetometers. This is in spite of the fact that magnetometers that are sensitive enough to screen out the false alarms caused by shoes can be purchased for a fraction of the first year's salary of the "shoe carriers." And while decisions like this were being made, the agency failed to request funds which would allow the full strengthening of cockpit doors on schedule or permit sky marshals to communicate with their superiors on the ground.

These are only some examples of the kinds of decisions that we have already seen with respect to the organization of homeland security activities. We would be naive to expect that we have seen the last of these and we would be derelict in our duty as a Congress if we did not maintain close vigilance about how tax dollars are used in this department. This is particularly true given the grandiose nature of the hierarchy called for in the Administration's proposed Department. H.R. 5005 would create a Secretary and Deputy Secretary, 5 Under Secretaries, up to 16 Assistant Secretaries, a Director of Secret Service, a Commandant, an IG, and a CFO and on and on- making it one of the largest sub cabinet operations in Washington.

Even more disturbing is the authority requested in Section 803(e) of the bill, which states that appropriations balances shall be transferred to the Secretary of Homeland Security for appropriate allocation "notwithstanding the provisions of section 1531(a)(2) of title 31, United States Code." This in effect provides the Secretary with the authority to terminate any program or activity contained within any agency or office transferred to the new Department and to spend the funds on any activity within the very broad jurisdiction of this Department without regard to law or act of Congress. If he unilaterally concludes that headquarters staffing at the Transportation Safety Administration is a higher priority than control of boll weevils or other agriculture pests those programs could be eliminated before the Congress ever had a chance to enter the discussion. If he decided that marine safety instruction programs or maintenance of right of way programs at the Coast Guard would make a good bank for funding his own private intelligence operation, we would simply have to accept his decisions. We have never done business this way in the past and there is no reason to start now.

Another authority requested is the on going authority to transfer funds between accounts even after fiscal 2003. Section 733(b) permits up to 5% of appropriated funds to be transferred between programs within the Department. While there is precedent for providing limited transfer authority among accounts within a number

of agencies and Departments they are generally confined to transfers between activities that have relatively similar objectives and purposes. This provision would permit transfer of funds intended for international adoption programs to be used for pet store regulations or funds intended for counter narcotics operations to be used for hurricane cleanup. Because of the proposed size of this Department, the total amounts that could be made available for activities that the Congress might find low priority would be huge.

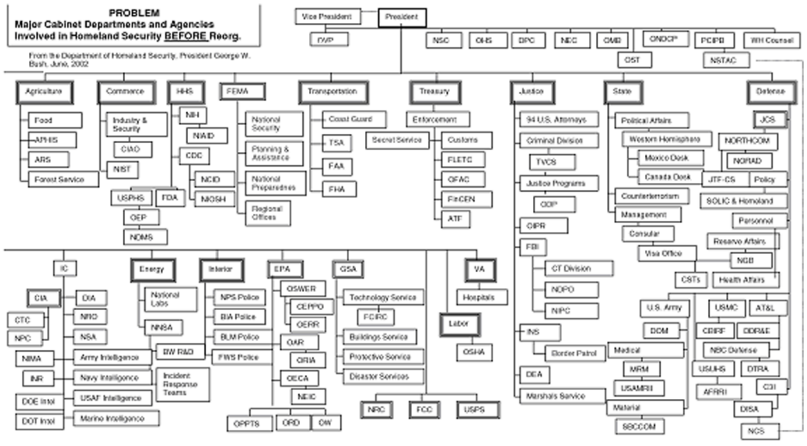
Finally, the Administration requests the extraordinary authority to sell assets without prior approval, to withhold the proceeds of those sales from the Treasury of the United States and to then spend them on priorities which they alone would identify and which would require no appropriations from Congress. This would include for instance an extensive portfolio of Coast Guard properties-some of which are quite valuable-that could be sold off and used for any acquisition or activity that the Congress for whatever reason had been reluctant to provide funding for. This again is aimed at weakening the checks and balances that have served this country well for more than two centuries. It is akin to the thinking that led corporate managers in the United States over the past several decades to seek boards of directors that would serve as little more than rubber stamps for the decisions of CEOs and their appointed minions. It was the wrong direction for American business and it is certainly the wrong direction for American government.

MAINTAINING GOVERNMENT COORDINATION AND CREATING A DEPARTMENT THAT IS LEAN, MEAN AND WELL FOCUSED

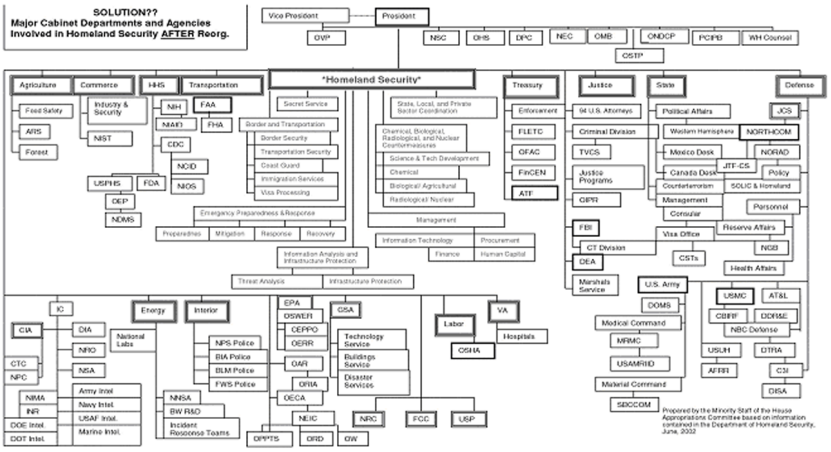
While I feel strongly about how this new Department might be financed, I feel equally strongly about how it will be composed and about how we will structure and coordinate the overall war against terrorism and protection of the homeland.

The first point I want to make-and I think it is an extremely important point for every member of this Committee to grasp-is that calling this proposed entity the "Department of Homeland Security" is a total misnomer. Even if we put every agency, office and activity that the White House has proposed for transfer into the new Department, it would represent a tiny fraction of overall government activities with respect to "homeland security."

If we look at the organization chart prepared by the White House when this proposal was originally announced we see that there are currently a total of twelve departments of the federal government involved in various aspects of protecting the homeland. The agencies and offices contained in those departments and identified on that chart total 133.




This is our best effort to represent what the government-wide Homeland Security efforts would look like if a Department along the lines proposed by the White House were created.




Of the 133 agencies and offices listed on the first chart, 22 have been moved to the new department. But 111 are still outside the department! Furthermore, the most important agencies and offices in protecting the homeland are in most instances on the outside. These include the new Northern Command, the National Guard, the Federal Bureau of Investigation, the Central Intelligence Agency, along with the National Security Agency and National Imagery and Mapping Agency, the Centers for Disease Control and key elements of the Energy Department and the Drug Enforcement Agency.

This means that no matter what we do with respect to creation of a new Department, even if we move every agency and activity that has been proposed, the bulk of the government activity directed at protecting the homeland will still be outside this Department. Therefore, we will continue to need to find way of strengthening interdepartmental coordination at the level of the White House. In my opinion, this is more important than whether or not we create a department.

I would propose three things to accomplish this. First, I would retain the Office of Homeland Security and make the executive order that President Bush signed creating that office statutory.

Secondly, I would elevate the director of that office to the same level within the White House as the Drug Czar, the Science Advisor and most importantly, the Director of OMB. That would require that he be subject to Senate confirmation.

Thirdly, I would give him the authority to decertify OMB budget submissions if they were inconsistent with the overall homeland security plan. In other words, OMB would not be able to go forward with budget submissions to the Congress without the signoff of the Director of Homeland Security. If the two directors cannot reach agreement, then the argument gets passed up to the President. That would place a check on the OMB director but it would also ensure that any decision involving a tradeoff between the security of the American people and additional spending would be decided at the highest level.

I think that the debate that we have been having in this town over how we restructure government and expand our capacity to protect ourselves has been far more sterile and far less substantive than the nation deserves. That by and large has not been the fault of the Congress. I think members of both parties have for the most part been very thoughtful and have brought good ideas to the table. But I think the position of the executive branch has been far too dominated by analysts at OMB whose overall worldview and knowledge about security issues is not commensurate with their knowledge about budgets. We need both perspectives in order to make the right choices and we need both perspectives to be considered at both ends of Pennsylvania Ave.

Having said that, I would support the creation of a new department to handle some portion of the security problems facing the country. If done properly, such a department could increase the efficiency and coordination between certain key activities needed to protect us against future terrorist attack. On the other hand, I would urge the committee to carefully weigh the fact that consolidation of disparate

agencies and activities into single huge department could create a bureaucratic morass that not only would waste large sums of taxpayer money but also would seriously impede existing efforts to protect the American people.

There are three principles that I think the Congress should look to in attempting to decide the size and shape of the new department if there is to be one.

First, does a proposed transfer of an agency or activity to the new Department increase the focus and coordination of government counter terrorism activities?

As I already pointed out, H.R. 5005 moves less than two dozen of 133 agencies and offices involved in homeland security into the new department. The overwhelming majority of such agencies and activities are outside the proposed department. The question that must be asked is whether the agencies proposed for transfer form a good cluster from a management perspective. Can the proposed department manage these various programs and maintain a strong focus or are they going to have to maintain so many unrelated programmatic objectives that no one will really understand what is going on inside the Department?

I think any Department that must deal with earthquake recovery, licensing pet stores, cleaning up oil spills, protecting our wine producers from the Glassy Winged Sharp Shooter, international adoption policies, ice breaking and collection of tariffs has got too much on its plate before it even begins to think about combating terrorists.

I think there is a need in this government to more tightly weave the activities of the various agencies involved with security at our borders and at ports of entry. There is a portion of the programs proposed for inclusion in this Department that is already largely focused on that set of issues. The immigration side of the INS, the Customs Service and the Transportation Security Administration all fit that description.

Once you get past those three activities you start dealing with agencies that are only partially involved in border security. They are agencies that have very large and important responsibilities that have little or nothing to do with counter terrorism. For instance, APHIS has some inspectors in airports, but that is only a fraction of the 8,000 employees who are attempting to control plant and animal diseases that are already here. APHIS needs to work more closely with customs and immigration on cross border issues but they also must remain close to the farm community and they will probably always spend the large majority of their time on diseases that are already in the country than those that are on the outside.

Like APHIS, most of these agencies will have a wide range of problems that will inject their own set of nightmares into the management of the new department. As a result, inclusion of such agencies will likely increase administrative requirements, increase overhead expenditures and make it difficult for the leadership of the department to maintain a clear focus on security issues.

Finally, there are a number of activities that are slated for this Department that will be much more successfully managed where they are currently located than they could possibly be within this Department.

Last fall when we started thinking about bioterrorism, we realized that we had a huge resource with respect to dealing with that threat. That resource is the National Institute for Allergy and Infectious Diseases. That is where most of the basic work on AIDS research is taking place. That is where our work on the fundamental mechanisms of diseases such as Ebola and West Nile Virus is being preformed.

We are much further along in understanding infectious disease mechanisms and how the body defends itself against them, how we can aid in that defense and what the weaknesses of these various viruses and bacteria than we were twenty years ago when we were thinking about biological warfare in the context of the Cold War. We have one of the most brilliant Institute directors in the long and distinguished history of NIH, Dr. Tony Faucci, now running that institute. We realized that we could piggyback our concerns about bioterrorism on top of this wealth of new knowledge. We have the resources there to jump-start a program and be years ahead of where we might otherwise be in identifying and combating these kinds of agents. I can't think of anything that would be more idiotic than taking the bioterrorism money that we put into NIAID last year and moving it as a free standing research program to a newly created Department.

The second test that a new department should be expected to meet is that it can be managed with a reasonable allocation of administrative resources. This committee and the Congress should ask: Can this amalgamation of programs be managed without a massive diversion of resources from front line activities such as containerized cargo inspections or the identification, apprehension and deportation of illegal entrants in order to pay for a sprawling Washington-based bureaucracy?

In the Defense community this question is referred to as the relationship between the tooth and the tail (what portion of the budget supports real on the ground war

fighters and what portion is dedicated to the bureaucracy that supports them.) It is easily possible to organize government activities in such a way that the cost of coordinating the activities becomes more expensive than the activities themselves. There is ample reason to be concerned that H.R. 5005 could seriously erode resources needed to sharpen the tooth.

This is particularly true if the administration maintains its stated intention to fund all activities of the Department within the existing budgets for those activities. If that policy is followed, it will mean that most of the resources necessary to fund the activities of the Secretary, nearly 30 proposed sub cabinet positions and the staffs for each will have to be met through cuts in border inspectors, immigration enforcement and local level first responders.

There will also be costs associated with moving and costs associated buying land and constructing new buildings. CBO estimates those costs will run at least $3 billion—I would be amazed that if in the end they are not double that and all of it will be paid out of front line efforts if we are not realistic about the price tag from the outset.

Thirdly, will the reorganization disrupt highly sensitive security functions during critical threat periods?

There is a reason that the Executive Reorganization Act of 1947 took place in 1947 and not 1944. The consolidation of the War Department and the Navy may have created more efficiency and better coordination of defense activities in the long term but it certainly had significant short-term costs with respect to both of these goals. Similar disruptions are inevitable in any reorganization.

The severity of such disruptions and time lost resulting from reorganization will vary based on the amount of administrative change envisaged for a particular program or activity. Simply changing the chain of command involves a relatively small loss of work effort. Changing network servers and phone systems and phone numbers adds to the loss in terms of short-term performance. Relocating facilities, restructuring personnel assignments and lines of authority often entail dislocations that can take months or even years to fully recover from. If there is a clear case for greater focus and long term efficiency these costs may be acceptable so long as they do not reduce performance during periods of potential threat.

Any reorganization should carefully weigh these factors with respect to both the entities to be transferred to the new department and the timing of that transfer.

OTHER CONSIDERATIONS

In addition to commenting on the structure of the department, I would also point out that this proposal contains ill-advised exemptions from good government laws, Civil Service laws, whistle-blower protection, and procurement rules, and it contains an exemption from the Freedom of Information Act. There is no reason to do that as the Freedom of Information Act already provides exemptions for national security information, for sensitive law enforcement information, and for confidential business information. Agencies and industries could deny the public needed access to basic information about health and safety by simply laundering that information through this new agency.

On another front, this bill also deals with the question of the organization of our collection and analysis of intelligence. I think we clearly have a problem in that area, but I am not convinced that setting up another parallel organization will solve that problem. I think the problem can be best resolved by taking it head on and solving it at its core. Our biggest need right now is not a new organization table. We have knitted together a group of organizations that can meet our needs relatively well if we honestly assess their failures and make the appropriate adjustments.

One adjustment that we need to make as rapidly as possible is a much greater language capability than we now possess. There are literally thousands of pages of information that we have collected that is sitting on floors, in files, and on desks throughout the government unread because we lack adequate resources to screen the raw material and adequate language skills to do the translating. There is also a great deal of intelligence which we have only partially exploited or we derive inaccurate intelligence from because the language skills we have are not good enough to get a really accurate translation.

Another adjustment is to recognize that our most important agency in terms of countering threats from within the country, the FBI, currently has three serious weaknesses. First, the FBI has been more focused on law enforcement than counterterrorism and it does not have the analytical capabilities that you need if you are going to put together the massive amounts of information that is now flowing through the system. That is not a critical need when you are dealing with thousands

of largely unrelated criminal acts. It is a critical need when combating large-scale terrorist networks. The second weakness is the totally dysfunctional information technology systems at the Bureau. The third is a general lack of skilled investigators, particularly in certain areas such as cyber-crime.

We can't create an organization to do the FBI's job. We have to fix the FBI. If we create a parallel organization that does domestic threat analysis we may be compounding the difficulty of fixing the FBI.

In closing, I would strongly urge you not to overreach. Do what is essential, get our strategy in place first for dealing with terrorism, then make whatever additional adjustments are needed down the line. Don't grab the first tomato out of the box. Reorganization will only improve our capability to protect ourselves if it is done well. It can easily damage that capability if it is done poorly.

And don't throw away our separation of powers and our system of checks and balances because some hotshot downtown says it will help catch Bin Laden. It won't. It is the same old prescription that some of these people have offered for one problem after another. Leave it all up to the executive branch and the problem will get solved. That has not happened with respect to transportation security and it won't happen elsewhere. Good agencies welcome Congressional interest and Congressional input. Good policy comes from open discussion and the fusion of different viewpoints.

Corporations got in trouble because the CEOs, the CFOs, and the accountants ran amuck without adequate restraint by corporate boards. In government, the President is the CEO, OMB and the agencies are the rough equivalent to the CFO and the management team. Congress is the board of directors. We need to do our duty.

Don't salute the first draft you get. Think about it then think about it some more. Listen to advocates then listen to devil's advocates. The country that you will be protecting is your own.

Chairman ARMEY. I want to thank both gentlemen. It is the practice of this committee to question the witnesses under the 5-minute rule. I should make it clear that the Chair interprets the 5-minute rule to apply to both the question and the answer. I expect both to be in the 5-minute rule. We are all aware of the process here. We know the drill and remind the witnesses that you can read the time clock from your side as well as ours. If we are all parsimonious in our use of time, I think we can make sure that at least every member of the panel gets one round of questions of these witnesses.

And with that, I would recognize the gentleman from Texas, Mr. DeLay.

Mr. DELAY. Thank you, Mr. Chairman. I have no questions. I just congratulate both gentlemen on their testimony, and I am very impressed with the thought that has been put in both your testimonies, and I think this select committee should take it to heart and your testimony to heart and make sure that we do this right and do it right with the thoughtful recommendations that you have made. Thank you.

Chairman ARMEY. The gentlelady from California, Ms. Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman. Another historic day. I wish to associate myself with the remarks of Mr. DeLay. Mr. DeLay?

Chairman ARMEY. Mr. DeLay, you have a rare moment here.

Ms. PELOSI. I want the record to show and I want you to acknowledge that I am associating myself with your remarks.

I do wish to congratulate both of you. It is always wonderful to see how you operate on the committee. Masters at work, Mr. Chairman, working in a very bipartisan way for our country. And it is important for our country for us to maintain our separation of powers, our checks and balances, so we don't want the terrorists to have any victories in undermining the foundation of our own de-

mocracy in that respect and in respect to privacy and other issues as well.

Your testimony spoke for itself. It was excellent. I believe, Mr. Obey, that those are your charts over there, and I wondered if you wanted to shed any light on them, because for those of us of a certain age, it looks like a lot of ants crawling on a page. And that is quite a statement about what this organization would do.

Mr. OBEY. The fact that I forgot to mention them demonstrates that I am not used to testifying before congressional committees. But what they show is simply this: The chart on the left is the administration's description of what the existing structure is within the government for all the agencies and offices that have anything whatsoever to do with homeland security responsibilities.

The chart on the right is our best efforts to explain how that organizational chart would look after the reorganization. As you can see, there are more offices, not less. The area in red represents the agencies that have been pulled from anywhere on the left graph under the new Agency named the Homeland Security Agency. But as you can see, there are still a tremendous number of agencies and offices involved, not under that rubric, not under that umbrella. So this may be a lot of things, but it is not a streamlining. It is not a simplification.

Ms. PELOSI. Thank you very much.

Chairman Young and Ranking Member Obey, you both have raised serious concerns about the administration's legislation that would undermine the role of Congress in the appropriations process, and I was pleased to associate myself with Mr. DeLay in commending you for your presentation. We will be writing a bill, and you have made suggestions.

You have an alternative. I wish you would be a little more specific in saying what you think the appropriate role is for the Appropriations Committee in funding the new Department of Homeland Security. Is there any aspect of the new Department that should not be subjected to the regular appropriations process?

Mr. YOUNG of Florida. If I could respond to the distinguished gentlelady from California, the existing law works very well. Our recommendation does not get into the issue of the structure of this new Homeland Security Agency. That was not our role or our mission when we were assigned this bill.

But I would like to ask that we submit for the record a very long list of transfer authority provisions that are in the fiscal year 2002 appropriations bills. The committee and the Congress, agreeing with those recommendations, have provided a lot of transfer authority but to the Executive Branch agencies we have maintained our oversight capability in doing so, and I think this works very well.

And we also, of course, have the reprogramming requests which we deal with quickly. There are those occasions when we immediately approve a reprogramming. There are other occasions we may have a question, and it is amazing how often the agency requesting the reprogramming will say, they, I never thought about that. We really ought to decide what is the right thing to do here.

Congress playing an oversight role does a good job. If I could submit this for the record, I think you will be impressed with how the

Congress has dealt with transfer authority in the past, and I would be happy to give you a copy of the law that created the Department of Education as an example of the transfer authority we are suggesting in our presentation. So I think this type of transfer authority will work.

If you transferred 10 agencies, 20 agencies, or 30 agencies into the new Homeland Security Agency, this transfer authority will work.

Chairman ARMEY. If I may mention to the gentlelady, the record is open for that submission and, without objection, it will be accepted.

**Department of Commerce Statutory Transfer Authorities Found in Annual Appropriations Acts**

**Departments of Commerce. Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002**

**NOAA:**

The Operations, Research and Facilities account receives transfers from the Promote and Develop Fishery Products and Research Pertaining to American Fisheries (P&D) Account and the Coastal Zone Management Fund (CZMF)

**Text:**

P&D

Provided further, That, in addition, $68,000,Q00 shall be derived by transfer from the fund entitled Promote and Develop Fisher Products and Research Pertaining to American Fisheries':

CZMF

Of amounts collected pursuant to section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a), not to exceed $3,000,000 shall be transferred to the 'Operations, Research, and Facilities' account to offset the cost. Of implementing such Act.

**NIST:**

N1ST is authorized to transfer funding to the NTST Working Capital Fund.

Text: For necessary expenses of the National Institute of Standards and Technology, $321, 111,000, to remain available until expended, of which not to exceed $282,000 may be transferred to the Working Capital Fund'.

**GENERAL PROVISIONS:**

"SEC. 204. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this *Act may be transferred between such appropriations* but no such appropriation shall be increased by more than 10 percent by any such transfers: Provided, That *any transfer* to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

"SEC. 205. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response to funding reductions included in this title or from actions taken for the care and protection of loan collateral or grant proper shall be absorbed within the total budgetary resources available to such department or agency: *Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act:* Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

**Transfer Provisions in fiscal year 2002 Department of Justice Appropriations Act**

**TITLE I GENERAL PROVISIONS**

"SEC. 107. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations but no such appropriations, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a re-

programming of funds under section 605 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

**GENERAL ADMINISTRATION**

**SALARIES AND EXPENSES**

Provided further, That the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, forfeited real or personal property of limited or marginal value, as such value is determined by guidelines established by the Attorney General, to a State or local government agency, or its designated contractor or transferee, for use to support drug abuse treatment, drug and crime prevention and education, housing, job skills, and other community-based public health and safety programs: Provided further, That any transfer under the preceding proviso shall not create or confer any private right of action in any person against the United States, and shall be treated as a section 605 of this Act.

**LEGAL ACTIVITIES**

**SALARIES AND EXPENSES. GENERAL LEGAL ACTIVITIES**

Provided further, That notwithstanding any other provision of law upon a determination by the Attorney General that emergent circumstances require additional funding for litigation activities of the Civil Division the Attorney General may transfer such amounts to "Salaries and Expenses, General Legal Activities" from available appropriations for the current fiscal year for the Department of Justice as may be necessary to respond to such circumstances: Provided further, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

**SALARIES AND EXPENSES, UNITED STATES ATTORNEYS**

Provided further, That notwithstanding any other provision of law, the Attorney General shall transfer to the Department of Justice Working Capitol Fund unobligated all unexpended funds appropriated by the first heading of chapter 2 of title II of division B of Public Law l06–246 and by section 202 of division A of appendix H.R. 5666 of Public Law l06–554: Provided further, That the fourth proviso under the heading 'Salaries and Expenses, United States Attorneys" in title I of H.R. 3421 of the 106th Congress, as enacted by section 1000(a)(1) of Public Law 106–111 shall apply to amounts made available under this heading for fiscal year 2002.

**SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE**

and, in addition, up to $1,000,000 of funds made available to the Department of Justice in this Act may be transferred by the Attorney General to this account: Provided, That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional funding for conflict prevention and resolution activities of the Community Relations Service, the Attorney General may transfer such amounts to the Community Relations Service, from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: Provided further, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligations or expenditures except in compliance with the procedures set forth in that section.

**CITIZENSHIP AND BENEFITS, IMMIGRATION SUPPORT AND PROGRAM DIRECTION**

Provided further, That the Attorney General may transfer any funds appropriated under this heading and the heading "Enforcement and Border Affairs" between said appropriations not-withstanding any percentage transfer limitations imposed under this appropriations Act and may direct such fees as are collected by the Immigrations and Naturalization Service to the activities funded under this heading and the heading "Enforcement and Border Affairs" for performance of the functions for which the feed legally may be expired.

**FEDERAL PRISON SYSTEM**

**SALARIES AND EXPENSES**

Provided, That the Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions:

**BUILDINGS AND FACILITIES**

Provided further, That not to exceed 10 percent of the funds appropriated to "Buildings and Facilities" in this or any other Act may be transferred to "Salaries and Expenses", Federal Prison System, upon notification by the Attorney General to the Committees on Appropriations of the House of Representatives and the Senate in compliance with provisions set forth in section 605 of this Act.

**STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE**

For assistance authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended ("the 1994 Act"); the Omnibus Crime Control and Sale Streets Act of 1968 as amended ("the 1968 Act"); the Victims of Child Abuse Act of 1990, as amended ("the 1990 Act"); and the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386); $2,403,354,000 (including amounts for administrative costs, which shall be transferred to and merged, with the "Justice Assistance" account), to remain available until expended as follows: . . .

**WEED AND SEED PROGRAM FUND**

For necessary expenses, including salaries and related expenses of the Executive Office for Weed and Seed, to implement "Weed and Seed" program activities, $58,925,000, to remain available until expended, for intergovernmental agreements, including grants, cooperative agreements, and contracts, with State and local law enforcement agencies, non-profit organizations and agencies of local government engaged in the investigation and prosecution of violent crimes and drug offenses in "Weed and Seed" designated communities, and for either reimbursements or transfers to appropriation accounts of the Department of Justice and other Federal agencies which shall be specified by the Attorney General to execute the "Weed and Seed" program strategy: Provided, That funds designated by Congress through language for other Department of Justice appropriation accounts for "Weed and Seed" program activities shall be managed and executed by the Attorney General through the Executive Office for Weed and Seed: Provided further; That the Attorney General may direct the use of other Department of Justice funds and personnel in support of "Weed and Seed" program activities only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

**COMMUNITY ORIENTED POLICING SERVICES**

Provided further, That all prior year balances derived from the Violent Crime Trust Fund for Community Oriented Policing Services may be transferred into this appropriation: Provided further, That the officer redeployment demonstration described in section 1701(b)(1)(C) shall not apply to equipment, technology, support system or overtime grants made pursuant to part Q of title I thereof (42 U.S.C. 3796dd et seq.)

**JUVENILE JUSTICE PROGRAMS**

For grants, contracts, cooperative agreements, and other assistance authorized by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended ("the Act"), including salaries and expenses in connection therewith to be transferred to and merged with the appropriations, for Justice Assistance, $286,403,000, to remain available until expended,. . .

**TITLE III—THE JUDICIARY**

General PROVISIONS.

"SEC. 302. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in Act may be transferred between such appropriations, but no such appropriation, except "Courts of Appeals, District Courts, and Other Judicial Services, Defender Services" and "Courts of Appeals, District Courts, and Other Judicial Services, Fees of Jurors and Commissioners", shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

**TITLE IV—DEPARTMENT OF STATE AND RELATED AGENCY DEPARTMENT OF STATE**

**ADMINISTRATION OF FOREIGN AFFAIRS DIPLOMATIC AND CONSULAR PROGRAMS**

Provided, That, of the amount made available under this heading, not to exceed $4,000,000 may be transferred to, and merged with, funds in the "Emergencies in the Diplomatic and Consular Service" appropriations account, to be available only for emergency evacuations and terrorism rewards

**EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE**

For expenses necessary to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service, $6,500,000, to remain available until expended as authorized, of which not to exceed $1,000,000 may be transferred to and merged with the Repatriation Loans Program Account, subject to the same terms and conditions

**REPATRIATION LOANS PROGRAM ACCOUNT**

For the cost of direct loans, $612,000, as authorized: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the

Congressional Budget Act of 1974 In addition, for administrative expenses necessary to carry out the direct loan program,$607,000, which may be transferred to and merged with the Diplomatic and Consular Programs account under Administration of Foreign Affairs.

**GENERAL PROVISIONS–DEPARTMENT OF STATE AND RELATED AGENCY**

"SEC. 402. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of State in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers Provided, That not to exceed 5 percent of any appropriation made available for the current fiscal year for the Broadcasting Board of Governors in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers Provided further, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

**TRANSFER LANGUAGE INCLUDED IN THE DEFENSE APPROPRIATIONS ACT**

Since at least 1986, the bills appropriating funds for the Department of Defense have carried a provision that allows for general transfer authority. The provision establishes a total amount that may be transferred and sets certain guidelines for these transfers. The general transfer authority applies to the transfer of funds for the fiscal year in which the provision was enacted. For example, the general transfer authority provision included in the Department of Defense Appropriations, 2002, is used for transfers only between fiscal year 2002 appropriations.

In addition to the provision on general transfer authority, the Defense Appropriations bills contain specific transfer authorities for specific purposes. The most common specific transfer authorities are: environmental restoration, contingency operations, foreign currency fluctuations, and drug interdiction. When specific transfer authority is provided, it is provided in addition to other transfer authorities, including the general transfer authority, contained in the Act.

The underlying statute for this transfer authority is contained in title 10 U.S.C. Section 2214. In addition, Section 2215 of title 10 prohibits the transfer of Department of Defense funds to any other department or agency without a certification from the Secretary of Defense that transferring such funds is in the national security interest of the United States.

Section 8005 of the fiscal year 2003 Department of Defense Appropriations Act includes the following transfer of funds language:

"Sec. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $2,500,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: Provided, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: Provided further, That the Secretary shall notify the Congress promptly of all transfers made pursuant to this authority or any authority in this Act: Provided further, That no part of the funds in this Act shall be available to prepare or present a report to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress: Provided further, That a request for multiple reprogrammings of funds using authority in this section must be made prior to May 1, 2003."

**TRANSFER LANGUAGE INCLUDED IN THE FOREIGN OPERATIONS APPROPRIATIONS ACT**

The annual appropriations Act for Foreign Operations includes a provision, section 509, which reads:

"None of the funds made available by this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act, unless the President, prior to the exercise of any authority contained in the Foreign Assistance Act of 1961 to transfer funds, consults

with and provides a written policy justification to the Committees on Appropriations of the House of Representatives and the Senate."

## TRANSFER AUTHORITIES IN THE INTERIOR BILL

Appropriations Accounts

Department of the Interior:

Bureau of Land Management, Central Hazardous Materials Fund - allows transfers to other accounts to pay for clean-ups.

Bureau of Land Management, Wildland Fire Management - allows transfers to repay wildfire suppression transfers from other accounts.

National Park Service Historic Preservation Fund - allows transfer of Save America's Treasures funds to accounts of Federal grant recipients.

National Park Service, Construction - allows transfers to the Army Corps of Engineers (related to Everglades water projects).

Bureau of Indian Affairs, Operation of Indian Programs - allows transfer of forestry funds to tribal trust accounts.

Bureau of Indian Affairs, Construction - allows transfer of Navajo Indian Irrigation Project funds to the Bureau of Reclamation.

Office of Special Trustee for American Indians, Federal Trust Programs - allows transfer of trust management improvement funds to the Bureau of Indian Affairs and Departmental Management.

Office of Special Trustee for American Indians, Indian Land Consolidation—allows transfer of trust management improvement funds to the Bureau of Indian Affairs and Departmental Management.

Departmental Offices, Natural Resource Damage Assessment and Restoration—allows transfers to other accounts to carry out activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Department of Agriculture:

Forest Service, Wildland Fire Management—allows transfers to repay wildfire suppression transfers from other accounts and for State and volunteer fire assistance and for forest health management, etc., and for reimbursement for Endangered Species Act consultation.

Administrative Provisions, Forest Service—allows transfers from other accounts for to wildland fire management and transfers to other agencies for Forest Service activities (work performed by others).

**General Provisions**

Section 101—allows transfers to repair facilities damaged by fires, floods, storms, etc.

Section 102—allows transfers from no-year accounts to respond to wildland fires and various other specifically enumerated emergencies.

Section 113—allows transfer of Bureau of Indian Affairs and Office of Special Trustee appropriations for trust management activities pursuant to the High Level Implementation Plan.

Section 116—allows transfers within Tribal Priority Allocation funds (Bureau of Indian Affairs) to address funding inequities.

## TRANSFER AUTHORITIES LABOR, HHS AND EDUCATION SUBCOMMITTEE

**DEPARTMENT OF LABOR**

**Appropriation Act Transfer Authorities - Discretionary**

Section 102 of the fiscal year 02 Labor, HHS, Education Appropriations Act allows the Secretary to transfer up to 1 percent of funds between appropriations so long as no account is increased by more than 3 percent as the result of the transfer.

Section 501 of the fiscal year 02 Labor, HHS, Education Appropriations Act allows the Secretary to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations in the LHE bill for the same purposes and periods of time for which they were originally appropriated.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Appropriation Act Transfer Authorities—Discretionary Funds**

**Secretary's One (1) Percent Transfer Authority HHS agencies**

General Provisions Title II Section 207: Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Health and Human Services in this or any other Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: Provided, That an appropriation may be increased

by up to an additional 2 percent subject to approval of the House and Senate Committees on Appropriations: Provided further, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

**DEPARTMENT OF EDUCATION**

**Appropriation Act Transfer Authorities**

Section 304 of the fiscal year 02 Labor, HHS, Education Appropriations Act allows the Secretary to transfer up to 1 percent of funds between appropriations so long as no account is increased by more than 3 percent as the result of the transfer.

Section 501 of the fiscal year 02 Labor, HHS, Education Appropriations Act allows the Secretary to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations in the LHE bill for the same purposes and periods of time for which they were originally appropriated.

**Authorizing Statute Transfer Authorities**

Section 411 of the Department of Education Organization Act allows the Secretary or any officer or employee of the Department to exercise any legislative authority (including appropriations Acts) to carry out any function transferred from a predecessor agency through the Organization Act.

Section 424 of the Department of Education Organization Act allows the Secretary, when authorized in an appropriation Act, to transfer funds from one appropriation to another within the Department so long as no account is either increased or decreased by more than 5 percent or beyond its authorization level as a result of the transfer.

Section 501 of the Department of Education Organization Act provides that all contracts, unexpended balances, allocations and other funds connected to programs transferred by the Organization Act shall be transferred to the Secretary. It further requires that unexpended funds transferred must be used only for the purposes for which they were originally authorized and appropriated.

**United States Department of Agriculture Statutory Transfer Authority in Appropriations Acts**

| STATUTORY CITATION/DESCRIPTION | BRIEF TEXT |
|---|---|
| **General Miscellaneous Provisions** | |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title VII, Sec. 704). Transfer of discretionary unobligated balances of the Department of Agriculture to the WCF. | Permits the Secretary to transfer discretionary funds made available by this Act, as well as other available unobligated discretionary balances of the Department, to the WCF for the acquisition of plant and capital equipment, with prior approval from the agency administrator. |
| Treasury and General Government Appropriations Act, 2002 (P.L. 107–67, Title VI, Sec. 629). Authorizes the transfer of funds made available for fiscal year 2002 to the GSA, including rebates from charge cards and other contracts. | Authorizes the head of each Executive department and agency to transfer to the Policy and Operations account, GSA, with 0MB approval, funds made available for fiscal year 2002, including rebates from charge cards and other contracts for use to support Governmentwide financial, information technology, procurement, and other management innovations, initiatives and activities, as approved by 0MB. Transfers only to be made 15 days following notification of the House and Senate Committees on Appropriations by the Director of 0MB. Total funds transferred shall not exceed $17,000,000. |
| **Farm Service Agency—Farm Loans and Other Programs** | |

| STATUTORY CITATION/DESCRIPTION | BRIEF TEXT |
|---|---|
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title I, Farm Service Agency, Salaries and Expenses). Merging of other funds into this account. | "Provided further, That other funds made available to the Agency for authorized activities may be advanced to and merged with this account:" |
| Ag. Appropriations Act, 2001 (P.L. 106–387, Title I, Farm Service Agency, Dairy Indemnity Program). Transfer to the Commodity Credit Corporation. | "Provided further, That this amount shall be transferred to the Commodity Credit Corporation: Provided further, That the Secretary is authorized to utilize the services, facilities, and authorities of the Commodity Credit Corporation for the purpose of making dairy indemnity disbursements." |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title I, Agricultural Credit Insurance Fund). Transfer of funds for administrative costs. | Provides that, "for administrative expenses necessary to carry out the direct and guaranteed loan programs, $280,595,000, of which $272,595,000 shall be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".' |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title I, Agricultural Credit Insurance Fund). Transfer of funds among operating and direct loans. | Provides that, "Funds appropriated by this Act to the Agricultural Credit Insurance Program Account for farm ownership and operating direct loans and guaranteed loans may be transferred among these programs: Provided, That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer." |
| **P.L. 480** | |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title V, P1. 480 Title I Program Account). Transfer of funds for administrative costs. | "In addition, for administrative expenses to carry out the credit program of title I, Public Law 83–480, and the Food for Progress Act of 1985, to the extent funds appropriated for Public Law 83–480 are utilized, $2,005,000, of which $1,033,000 may be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expense", and of which $972,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses." ' |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title V, P.L 480 Title I Ocean Freight Differential Grants). Interchange of funds within Title I. | ".. Provided, That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with prior notice to the Committees of Appropriations of both Houses of Congress." |
| **Commodity Credit Corporation** | |

| STATUTORY CITATION/DESCRIPTION | BRIEF TEXT |
|---|---|
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title V, Commodity Credit Corporation Export Loans Program Account). Transfer of funds for administrative costs. | Provides that, '.. $3,224,000 may be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which $790,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".' |
| **Rural Development** | |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Community Advancement Program** [RCAP], 115 STAT. 719). Provides for three transfers. | Provides that oif funds made available for rural utilities programs under RCAP, "not to exceed $24,000,000 shall be for water and waster disposal systems for rural and native villages in Alaska pursuant to section 306D of such Act, with up to 1 percent available to administer the program and up to 1 percent available to improve interagency coordination may be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses;" '<br>Provides that any prior year balances for high cost energy grants authorized by section 19 of the Rural Electrification Act of 1936 shall be transferred to and merged with the "Rural Utilities Service, High Energy Costs Grants" account.<br>Provides that of the funds appropriated by this Act to RCAP for guaranteed business and industry loans, funds may be transferred to direct business and industry loans as deemed necessary by the Secretary and with prior approval of the Committees on Appropriations of both Houses of Congress. |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Development Salaries and Expenses**, 115 STAT. 721). Provides for prior year balances to be transferred. | Provides that any balances available from prior years for the Rural Utilities Service, Rural Housing Service, and the Rural Business–Cooperative Service salaries and expenses accounts shall be transferred to and merged with this appropriation. |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Housing Service**, Rural Housing Insurance Fund Program Account, 115 STAT. 721). Provides for transfer of administrative expenses. | Provides for administrative expenses necessary to carry out the direct and guaranteed housing loan programs to be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses." |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Housing Service,** Farm Labor Program Account, 115 STAT. 723). Provides funds for loans and grants. | A combined amount is appropriated for these loans and grants and the Appropriations Act states the funds are "for direct farm labor housing loans and domestic farm labor housing grants and contracts." Use of funds is explained at 42 U.S.C. 1806 and it states that loans can be forgiven under certain circumstances; thus, loan funds would become grant funds. |

| STATUTORY CITATION/DESCRIPTION | BRIEF TEXT |
|---|---|
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Business–Cooperative Service**, Rural Development Loan Fund Program Account, 115 STAT. 723). Provides for transfer of administrative expenses. | Provides for administrative expenses necessary to carry out the direct Rural Business—Cooperative Service loan programs to be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses." |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Utilities Service**, Rural Electrification and Telecommunications Loan Program Account, 115 STAT. 724). Provides for transfer of administrative expenses. | Provides for administrative expenses necessary to carry out the direct and guaranteed electric and telecommunications loan programs to be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses." |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Utilities Service**, Rural Telephone Bank Program Account, 115 STAT. 725). Provides for transfer of administrative expenses. | Provides for administrative expenses, including audits, necessary to carry out the loan programs to be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses." |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title III, **Rural Utilities Service**, Local Television Loan Guarantee Program Account, 115 STAT. 725). Provides for transfer of administrative expenses. | Provides for administrative expenses necessary to carry out the guaranteed loan programs to be transferred to and merged with the appropriation for "Rural Development, Salaries and Expenses." |
| **Animal and Plant Health Inspection Service** | |
| Ag. Appropriations Act, 2002 (P.L. 107—76, Title VII, Sec. 704). Transfer of funds from agencies or corporations of the Department for use in plant and animal disease emergencies | Provides that, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary, to be available only in such emergencies for the arrest and eradication of contagious or infectious diseases or pests of animals, poultry, or plants, and for expenses in accordance with the Act of February 28, 1947, and section 102 of the Act of September 21, 1944, and any unexpended balances of funds transferred for such emergency purposes in the preceding fiscal year shall be merged with such transferred amounts. |
| Agriculture. Appropriations Act, 2002 (P.L. 107–76, Title I). Makes Agricultural Quarantine Inspection user fees available by appropriation. | Of the total amount available under this heading in fiscal year 2002, $84,813,000 shall be derived from user fees deposited in the Agricultural Quarantine Inspection User Fee Account. |
| **Departmental Administration** | |

| STATUTORY CITATION/DESCRIPTION | BRIEF TEXT |
|---|---|
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title I) Transfer of unexpended balances for Hazardous Materials Management. | Allows the funds appropriated to the Department for hazardous materials management to be transferred to agencies of the Department as required. |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title I) Transfer of unexpended balances for Agriculture Buildings and Facilities and Rental Payments. | Permits transfers to or from the rental payments account based on changing space requirements. |
| **Office of the Secretary** | |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title I) Transfer of unexpended balances for the Office of the Assistant Secretary for Congressional Relations. | Allows a portion of the funds appropriated to the Office of the Assistant Secretary to be transferred to agencies. |
| **Food and Nutrition Service** | |
| Ag. Appropriations Act, 2002 (P.L. 107–76, Title IV, Child Nutrition Program) Authorizes the transfer of Section 32 Funds to Child Nutrition for Use in School Lunch Programs. | "For necessary expenses to carry out the National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21;" $10.1 billion ", to remain available through September 30, 2003, of which" $4.9 billion "is hereby appropriated and" $5.2 billion "shall be derived by transfer from funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c):" |

Ms. PELOSI. I thank the gentleman.

Mr. OBEY. Basically what we are recommending is four things: to strike from the bill the provision that overrides existing law to allow funds transferred to the new Department to be spent for any purpose; to strike the provision that allows the President to deduct up to 5 percent of appropriations made for agencies scheduled to be moved to that Department; to strike the provision that allows the Secretary of Homeland Security to sell off real estate and other assets without congressional supervision; and to strike the provision that grants the Secretary permanent authority to transfer funds among accounts within his Department. And instead, as the chairman said, we substitute existing procedures, those which are very similar to those that were provided when the Department of Energy and the Department of Education were created.

Ms. PELOSI. I thank the distinguished chairman, and I thank you.

Chairman ARMEY. The gentleman from Oklahoma, Mr. Watts.

Mr. WATTS. Mr. Chairman, I am going to be brief. And I want to start by echoing what the gentlelady from California said. I think you all have put a lot of thought into this and, Mr. Obey, based on your charts—and I hope we all would consider the massive, massive undertaking that we are taking on in this effort, and I think when you talk about the appropriations process, you two

are probably as knowledgeable about the appropriations process as any people in this House.

And then the transfer authority, I had some questions about the transfer authority that you have actually answered based on what Ms. Pelosi has asked.

So I appreciate your being here today, but I will ask one question. Chairman Young, you mentioned some other areas that the transfer authority applied to. Can you just kind of name some of those and give us some background, some reference on what you have actually submitted for the record, some things that the transfer authority has applied to in the past to kind of put the President's request in context?

Mr. YOUNG of Florida. Let me start on the first page and I think it is a very good question.

The first page has to do with transfer provisions in the Fiscal Year 2002 Department of Justice Appropriations Act. Under General Administration, salaries, and expenses, we provided that the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, forfeited real or personal property of limited or marginal value at such value as determined by guidelines established by the Attorney General.

The idea here is that we give the heads of the agencies the authority they need, but only after Congress has reviewed the requests and determined that they really should have that authority.

Also on the first page, under legal activities, salaries and expenses, ther is basically the same provision, but again only after Congress reviewed the request and played its oversight role.

There are three other items on that first page. On the second page, we provide a similar transfer authority for the Federal Prison System buildings and facilities account, also for State and local law enforcement assistance, the Weed and Seed program, community-oriented policing services, and juvenile justice programs. These are all requests that were made, the committee recommended favorably on what the agency requested, and they became part of the law.

Mr. WATTS. Mr. Chairman, you have adequately answered my question, but again I appreciate the thought that you all have put into this, and I hope that Congress will continue to understand its role in this new Agency, in the oversight role.

And, Mr. Chairman, I yield back the balance of my time.

Chairman ARMEY. Thank you. The gentleman from Texas, Mr. Frost.

Mr. FROST. I thank the gentleman. The testimony by these two witnesses is very, very important. And Mr. Young, I would like to ask you a question, if I may. Despite the sympathetic statements that we heard from Mr. DeLay, if this committee ignores your recommendations and does not incorporate them in the bill that we report out on Friday, and if the Committee on Rules were to deny you a vote on your recommendations on the floor when this bill is considered, what would be your posture at that point?

Mr. YOUNG of Florida. Well, sir, that is a hypothetical question and I usually prefer not to respond to hypothetical questions. However, I can just say to you that I understand the awesome responsibility that this select committee has. That is why such very distinguished members such as yourselves are on this committee and

have this responsibility. I am satisfied that you are going to recommend a workable bill, one that does what you have been charged with doing, and that will provide security for our homeland. And I think you would also report a bill that would be consistent with our constitutional responsibilities.

The oath of office that we all take, basically is about supporting and defending the Constitution of the United States. Now, hypothetically, it is my strong desire and my strong hope that I am going to be just as excited about your proposal as you are going to be. That is my general attitude. Now, when you report that bill, I may come back and ask that you consider something different.

My role is to be supportive of what this very select committee is going to recommend, but I think that I do not fulfill my responsibility, if you are suggesting something that I think is very inappropriate, and I don't remind you and give you what little advice I might have for you to consider. I think that is part of my responsibility, is to review what you are doing and suggest, if there is a reason to suggest, that maybe you should change something.

So I will play that role, but think all of you know that I will play it in a very cooperative way. You and I have met on so many occasions at the Rules Committee, and I have always tried to be very direct and honest in answering your questions, and I would do the same thing on whatever bill you report.

Mr. FROST. I would ask Mr. Obey the same question.

Mr. OBEY. Well, we can have reasonable disagreements about a lot of these pieces. But if in my view this package guts the principal protection that we have against tyranny and fundamental mistakes by government, namely the power of the purse, I would oppose it.

Mr. FROST. And I would say to both gentlemen that it is the strong preference on our side of the aisle, that there be an open procedure, an open amendment procedure on the floor, and we hope that will be permitted by the Majority when our bill is sent to the Rules Committee.

Mr. OBEY. I will simply say that, like Mr. Young, I cannot believe that the top elected leadership of the greatest deliberative body in the Western world would in fact abdicate our historically long constitutional responsibilities on maintaining the control of the power of the purse.

Mr. FROST. Thank you. One other question. Later today, probably much later today, we will hear from the Comptroller General of the United States, David Walker. We have a copy of his testimony already, and he points out the $3 billion issue raised by CBO. And let me just read you his recommendation:

"administration has urged that CBO estimates are inflated. More important than a precise cost estimate of the transition, however, is a recognition that there will be short-term transition costs and that these costs need to be made transparent. To fully recognize the transition costs, in fact, Congress should consider appropriating for them separately." .

Do you agree with his recommendation?

Mr. OBEY. Well, it seems to me we ought to learn from what is happening with corporations these days. The market is in turmoil because people have lost trust. I think that they ought to be able

to trust whatever Congress recommends to be honest in its accounting. And I am concerned that the reason we have these unprecedented and phenomenally dangerous grants of spending authority to the agencies is as a substitute for facing up to and as a method of hiding the true cost of these reorganization efforts.

I don't think the American people will begrudge the President or any of us whatever funds are necessary to accomplish an intelligent reorganization of these functions, but I think they would be unforgiving if we sandbagged our constitutional processes or were not up front and honest with them about the actual costs about to be incurred.

Mr. FROST. Thank you, gentlemen.

Chairman ARMEY. The gentlelady from Ohio.

Ms. PRYCE. Thank you, Mr. Chairman.

Gentlemen, welcome. Thank you for the hard work you have put into this. It is extremely important. Your committee is very busy this time of year, so we appreciate the efforts you put into this and your members as well.

Mr. OBEY. We welcome the relief from the floor activities.

Ms. PRYCE. Let me go in this direction. Your committee, by virtue of the process that we use here in the House of Representatives, works with every authorizing committee that we have. Do you believe that there is any reason that the normal authorization and appropriations process that we have used through the eons will not work if we put forth this bill? Do you think that it will, that it won't, that there are ways that we can streamline the process that would make it more efficient and come forward with a better product?

Mr. YOUNG of Florida. Government was intended to be inefficient. That is why there is a separation of powers; that is why there is a bicameral legislature. While we try for efficiency in expediting our business, it does not always work because of the way that our government was created.

I would suggest to the gentlelady, that as a member of the Rules Committee she knows that usually the Appropriations or the respective subcommittees and the authorizing committees have a very good working relationship. We tend to be cooperative with each other.

Now, you are dealing with something here that none of us have dealt with before. I was a young kid when Pearl Harbor was attacked, but I had no idea what ramifications the government went through in order to respond to Pearl Harbor and to fight and win one of our contruy's major wars. But I believe that the system that we have created does work.

You have a different responsibility than most of our committees have been faced with. You are plowing new ground. I suggest that you have probably heard from a number of authorizing committee chairmen and ranking members, and if you haven't, I suspect that you will. You will probably find a lot of different opinions and a lot of different ideas, but that is why the brain trust that sits at your table is there, in order to filter through these ideas. And hopefully when you develop your product, you are going to have the support of the authorizing committees as well as the Appropriations Committee.

Ms. PRYCE. But the reason for the transfer authority and I think that the reason the administration wants to have it so badly is because of the inefficiencies that are built into our system that in most instances do protect us. But this is emergency-related. It is a fast response and a jolt is very important in this instance, so I am just wondering if—Mr. Obey, I can see you are eager to comment.

Mr. OBEY. Yes. I would like to comment. We have had a serious, serious problem develop in this country because of September 11. It is a very serious problem. But in my view, it is no more serious than the War of 1812 or World War I or World War II when we were in mortal combat to save the valleys of Western civilization, especially in World War II, and we did not use those dangers as an excuse to give away the main power that the Congress has to assure a sensible use of taxpayers' money and to protect freedom at the same time.

When we come to this place the first time, all we have is a political license as politicians to become skilled, knowledgeable legislators over time. It is our service primarily on committees that turns us from politicians into politicians and legislators. And if this House does not take advantage of the knowledge and experience that the authorizers and the appropriators develop in their fields, then this House is not using its principal asset, and then we are making judgments that turn out to be almost solely political rather than substantive.

So there is a reason that these processes have been developed over time. It is because virtually everything has been tried and these have been found to work. They are not perfect, but the Republic has gotten along pretty well for over 200 years, and I don't think we have to do anything as drastic as gut the ability of Congress to fulfill its principal function of this country.

Mr. YOUNG of Florida. I would like to add that your responsibility and the threat that our country is dealing with, is different than the War of 1812, different than World War II and World War I, because for the first time we are not just dealing with an army on a battlefield or soldiers in trenches or in tunnels or in jungles, and our military organized as a military establishment. That is not what we are dealing with today. We are dealing with people who are hiding, cowards who come from behind the bush and do not attack a military institution or military production facility, but attack women and children. And we have watched this happen in Israel for many years, and that is the threat that America is facing today.

So you have a challenge that is different than a committee like our armed services committees, that was preparing to fight a war. Instead you are preparing to fight an enemy, that you don't know where he is, but you have to provide the strength. This President has shown a strong leadership and we need to be as supportive as we can, but we can't do away with the Constitution in the process.

And one other point I'd like to make that doesn't have to do with appropriations—you can't create a system that denies American people the freedoms that we are fighting to protect. If we legislate something that takes away these freedoms, we are almost as bad as the guy that takes them away by violent acts of terrorism.

You have a tremendous responsibility, and I want to be there in a supporting role, but I still believe that the constitutional system works very well when dealing with the purse.

Ms. PRYCE. Thank you very much.

Chairman ARMEY. I thank the gentleman for your comments, and the Chair recognizes the gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to thank Mr. Young and Mr. Obey for their insights. First, the committee voted out your recommendations on a bipartisan basis.

Mr. OBEY. Without objection.

Mr. MENENDEZ. Without objection. And from my perspective, I agree with that bipartisan decision.

We have heard a lot from administration witnesses here speaking about flexibility, and that flexibility has been described in a variety of ways: budgetarily, personnel, and other ways.

First of all, would you describe the provisions of the President's proposal on transfer authority and budgetary powers as extraordinary?

Mr. OBEY. Yes, and unprecedented.

Mr. MENENDEZ. Extraordinary and unprecedented. In that regard do you see, even though I agree with your position that you have stated, do you see anything that needs to be given in this regard to the executive branch to give them the flexibility they claim that they have, or do you believe that our process in and of itself will be able to guarantee the responses that may be unforeseen?

Mr. OBEY. The process is not going to guarantee flexibility. Maturity will guarantee flexibility. I mean, I think the record of this committee—let us take you back to day one. When we were hit, the executive branch's first request was to give them an unlimited amount of money for an unlimited amount of time. "No Year money" is what it is called. Both of us said, no way, we are not going to write a blank check. But by the end of the week, working together, we produced a $40 billion package which gave the President greater flexibility.

We are not arguing against flexibility, God knows we need it. What we are saying is don't use the argument about flexibility in order to throw out our protections and abandon our obligations. And we will give plenty of flexibility in the individual appropriation bills, flexibility that is appropriate to the specific programs. But you have different requirements for different kinds of programs. We recognize that it is a decentralized operation, but it works.

Mr. MENENDEZ. And lastly, do you believe that there should be some mechanism in this legislation that creates this new Department to ensure that nonsecurity missions that are being transferred into this Department should be preserved and enhanced; and, if so, do you have any suggestions as to how that could be accomplished?

Mr. OBEY. I personally don't think nonsecurity issues should be transferred into this Department, and I still think whatever you do on reorganization, the most important thing you can do is to upgrade the prestige and the strength and the clout of the White House Adviser on Homeland Security because as that chart demonstrates, you can have a Cabinet Secretary handling all the boxes in red. You have got to have somebody at the White House who has

got enough clout and enough authority, official authority, so that the Congress and the agencies alike will respect his judgment in dealing with that whole universe.

Mr. MENENDEZ. But if I may just pursue that question, I understand your view, Mr. Obey; but, for example, if the Coast Guard ultimately gets transferred into this Department, it will by its nature have nonsecurity missions such as search and rescue, maritime environmental enforcement, navigational issues. Do you not think there should be mechanisms to ensure that those other missions that, whether voluntary or not, get transferred in here are preserved?

Mr. OBEY. Well, I would want them to. I think that is going to be very, very hard to do. I would hope that you could. I think it would be preferable to leave the Coast Guard in a different position than this legislation suggests, but I am open on that. But I think it is going to be very hard to do what you are talking about. It ought to be done. I doubt it will be. That is my concern.

Mr. YOUNG of Florida. I would like to offer a word of caution. You mentioned the responsibilities of the United States Coast Guard, and they have a tremendous responsibility. A lot of Members really aren't aware of what the Coast Guard does and what they are called on to do. Those of us who live in areas where the Coast Guard functions every day, understand this.

I think you want to be careful. As you transfer the authority or responsibilities of an agency like the Coast Guard, you shouldn't disband it. Don't turn the Coast Guard into something that it was never intended to be. The Coast Guard is a military organization. When America goes to war, the Coast Guard goes to war. When we were in Bosnia we had Coast Guard port security units in the ports along the coastlines of the Baltic States. They are responsible for drug interdiction, search and rescue, and environmental issues in our ports. And they have been called on now to do a tremendous program of interdicting shipping coming into our ports, something we have not been able to do in the past because the Coast Guard has not had enough assets. But we don't want to divide up the Coast Guard so it can't do all of these things, and I wouldn't suggest creating a new agency either to do that, because nobody does it as well as the United States Coast Guard.

One more thought. I have always felt that the Department of Transportation is not the right home for the Coast Guard. I believe they should be in the Department of Defense because they are a military organization.

Chairman ARMEY. Mr. Chairman, I am afraid I am going to have to cut you off. Complete your thought.

Mr. YOUNG of Florida. Just don't divide up the Coast Guard.

Chairman ARMEY. I thought it was a thought well taken, and I do appreciate it but I do feel we must get on. We have other panels waiting.

The gentleman from Ohio.

Mr. PORTMAN. I thank the Chair, and I appreciate the testimony this morning from two members who put a lot of thought into this and had a lot of experience. I am tempted to get off on some of these issues about organization and structure, Mr. Obey, that you mentioned and, Chairman Yound, you mentioned with the Coast

Guard; but I think it is more important to try to stay on the issues of your committee's appropriations responsibilities. If we have time I would love to get into that.

All these boxes we see on the left and the right must be made more efficient, and therefore more effective, if this is to work. And the way the new Agency would be structured, according to what has been proposed to us, would be that there be one Border and Transportation Security Division of the Agency, which would include, as you know, Customs, Coast Guard, INS and so on. And that notion is consolidation simplification and keeping a good organization like the Coast Guard intact.

A key worry as you know of the new Department is that they are going to be different from some other departments. And Chairman Young mentioned the agility of our enemy and the immoral nature of the threat. They think that the unpredictability of their mission will be as great or greater than the other department as a percentage of their budget. And I think we acknowledge there is a tremendous amount of unpredictability because of the nature of the threat.

They are also worried that they are going to be heavy with regular full-time employees, so at the end of the year they are not going to have a lot to move around. And that is, primarily on the border side which is where most of the employees will be, they are not going to have an unobligated balance at the end of the year.

A third concern is that without some transfer authority that is fairly substantial, their unanticipated needs may be met by moving within the same account, and may have the effect that Mr. Menendez just expressed concern about; in other words, taking away from nonhomeland security functions. All of those are reasons to give them more flexibility.

I guess my question to you would be: Is there a middle ground between what the administration asked for, which was 5 percent transfer authority, and where we have come out? I look at the Department of Energy organization bill, Department of Agriculture, what we already give DOD; and the chairman has been very good about talking about what actually happens year to year, that you do provide more flexibility.

Mr. PORTMAN. Given the extraordinary nature of the threat, is there any flexibility on your part in terms of meeting them part way up front and then being—you would be responsive as needs come in?

Mr. Young. Well, first let me apologize to the gentleman for getting off on the Coast Guard. A question was asked that related to the Coast Guard, and I had the opportunity to say what I had to say.

The proposal that we have recommended allows for the normal reprogramming procedures. Now, the way a reprogramming works is, the agency with the Administration's approval, sends a request to the Congress. We take a look at it, and we may sign off on it, an it is done. Or if we have questions, we will ask the agency, and as I said earlier, oftentimes they will say, that they haven't thought about that or may want to send a revised reprogramming that changes the source of funds, for example So we have some oversight.

I have been here with the President since Richard Nixon was President, and I can say that they all want to get Congress off their back. They all want to be able to do whatever they want to do without Congress providing any oversight; and that is okay in a different form of government, but ours is a constitutional form of government.

I think with the reprogramming provisions and the transfer authority that we have already provided on a regular basis; and the fact that we responded to September 11th with a $40 billion supplemental appropriation which provided no strings attached for the first $20 billion—and I am not sure that was even a good idea—but we did it because we wanted the President to be able to move quickly anywhere that he had to move, shows.

I believe, that flexibility is already there in our system, but I think we have got to maintain the constitutional perogative of the Congress being responsible for the appropriation of funds and learning and knowing about how those funds are used. That is what I read to you from the Constitution earlier.

Congress appropriates, and Congress will make sure that there is accountability for the money that has been spent. That is the way the system is supposed to work. It is what the Constitution intended, and that is what we are recommending here, that we stay within the Constitution.

Mr. OBEY. If I could just make the point, in all of the 33 years I have been here, no Congress has ever changed any President's budget by more than 2.5 percent. That 2.5 percent is the difference between a monarchy and a democracy, and as the chairman indicated, we have immense flexibility now through the processes; and those processes are individualized so that different agencies are treated in different ways depending upon the nature of control that must remain in legislative hands in order to prevent abuse and the needs of the agencies involved. That has been worked out over time.

But if you want an example of what will happen if we don't hang on to our constitutional responsibilities, look at that Transportation Security Administration. Five months after they were created, they still had not sent a budget down to the Congress. When they did send one down, it was so outlandishly ridiculous, that it became the laughing stock of the country. We can't afford that.

Chairman ARMEY. I thank the gentleman for his cogent observation and thank the gentleman from Ohio, recognizing the gentlelady from Connecticut.

Ms. DELAURO. Thank you very much, Mr. Chairman, and let me just use a word of my kids. When I listen to your testimony, it is awesome; and I will just say to you, thank you both for being skilled and knowledgeable legislators. You do us all proud here today as Members of this great institution.

Let me—Ranking Member Obey, let me ask you a question. The issue of cost, that was raised in the letter that you coauthored with Representative Waxman, and have you seen any evidence to support the administration's contention that the cost of the new department, including its administration and the new entities that it creates, can be funded from savings achieved by, and I quote, "eliminating redundancies in the current structure"?

Mr. OBEY. I have seen absolutely no evidence. In fact, to the contrary, people in this town who are the most skilled at making those evaluations have said just the opposite, including CBO.

Look it, you have got 170,000 employees. Nobody can convince me they are all going to stay in the same buildings that they are located in now. Nobody can convince me you are not going to have new office buildings built as a result of this agency. Nobody can convince me that it isn't going to cost a lot of money to put in a whole new phone system, a whole new computer system, to move people; and I think it is pretty obvious that one of the reasons this added flexibility is being requested is simply so that the agencies can use program money to pay for those costs that are not being admitted up front.

That is a classic OMB action; I don't care what administration you are talking about. And, to me, that means that you run the risk of having fewer port inspections, less border protection, less aggressive action in getting illegal entrance under control and out of the country.

In the military, it is called "tooth to tail," the ratio of tooth to tail. How much do you have to spend on the tail in order to provide a set of teeth up front? And there are obviously, in this kind of arrangement, going to be tremendous administrative costs. We will damage a lot of the substantive activities of these agencies if we don't admit up front what the administrative costs are going to be; and the best way to keep those costs down is to admit what they are up front and appropriate what is necessary and make judgments about whether there are unnecessary activities that should be curtailed or not.

But no administrator in the history of this country has ever had the kind of authority that is being requested in this legislation to disregard existing law, spend money for purposes not provided by law. Never done it. No reason to do it now.

Ms. DELAURO. Mr. Chairman, do you share that view, Mr. Obey's view of the—.

Mr. Young. The question is, do I share that view?

Ms. DELAURO. Yes.

Mr. Young. Yes, I do. And if I might.

Mr. Young. —say one thing that neither one of us has mentioned regarding flexibility—the Economy Act provides great flexibility. I would recommend that you have your staff review the Economy Act and advise all of you on just how much flexibility there is for executive branch agencies under the Economy Act to get reimbursements for activities that they believe need to be done in an emergency situation.

We could go into a lot of detail about it today, but I think your staff could provide you with a review what the Economy Act provides for executive branch agencies.

Ms. DELAURO. Thank you.

Let me just ask, Mr. Chairman—Mr. Obey, in his comments, talked about his thoughts on the issue of CDC and NIH and moving out of the funding. I mean, there has been a tradition on the Labor-HHS subcommittee. We don't dictate to the NIH where they should spend the funds that are given to them. I think that that has been a very good practice, and both sides of the aisle have

agreed that scientists know where these funds ought to be spent better than politicians.

What is your sense—as I say, I have heard from Mr. Obey on this issue—about the proposal to allow the DHS Secretary to set priorities that affect NIH research?

Mr. OBEY. Me or—.

Ms. DELAURO. I will ask Chairman Young first, and then I will ask Mr. Obey to comment.

Mr. Young. I didn't hear part of your question.

Ms. DELAURO. The point of the question is, how do you feel about the Secretary of the new department being able to set priorities that would affect the NIH research, given what we have prided ourselves on in the Appropriations Committee on Labor-HHS of not taking on the role of the scientists?

Mr. Young. Well, let me say this. We have colleagues who believe that we should micromanage everything that every agency does, including the Department of Defense and NIH. We resist that. We resist that in our—and you are a member of our committee and you know that we do resist the attempts to micromanage. And so I believe that the Secretary of Homeland Security, if that is the title that that person is given, should be dealing with homeland security and should not be disrupting existing agencies that are going about the normal business of the Nation.

But I would also suggest that the Secretary of Homeland Security should certainly be able to call on any of the agencies, whether they are within the jurisdiction of the new agency or not, for aid and assistance in providing security for the homeland.

It is very much like the Central Command, for example, that is managing the war in Afghanistan. Central Command does not have a huge military organization under the command of Central Command, but they have the ability to reach out to other military organizations of all of the services for what they need as they go about their function.

And so I would think that the ability to reach out and get the assistance certainly should be there for the Secretary of Homeland Security, but it should not be disruptive of the existing ongoing activities of those agencies.

Mr. OBEY. Why should we take the institution that has more credibility than virtually any other in government and screw it up?

Ms. DELAURO. Thank you.

Thank you, Mr. Chairman.

Chairman ARMEY. Gentlemen, the Chair reserves the final 5 minutes for himself. I am going to use my time to give you a few reassurances, and then I will save the remainder of my time for you, each of you, to make any final statement you would like to make before the committee.

I would like to thank you for your excellent testimony. It is as I expected. But let me say, Mr. Young, I think you will see that this committee does understand, has a deep respect for our constitutional separation of powers. We are acutely aware of how important that is and how important, it be preserved.

You will also see, I think, Mr. Obey, that this committee has not just saluted the first iteration that has come along. Indeed, the next two iterations of Homeland Security that you all see will be

the chairman's mark, which will be completed sometime, I would guess, in the wee hours of tomorrow morning; and you will see, I think clearly, there that the chairman's mark reflects the respectful consideration of that which has been brought to us by all our committees of jurisdiction, as well as that which was initially introduced by the President.

The next iteration you will see of the Homeland Security Act, following that, will be the report of this committee, and I dare say, judging by the people on this committee, you may see some difference between that and the chairman's mark as well, because there is a process that I think is deeply thoughtful and committed, and yet one where there will be divergent points of view that will be, I think, in the final analysis, worked out through the process of voting in this committee. So please take confidence in that as you watch the next few days.

Finally, on the particular jurisdictional concern of your committee, the whole question of transfer authority flexibility, it is the Chair's understanding and hope that there are still ongoing discussions between your committee and the White House. If those are not going well, let the Chair offer whatever resources we have at the disposal of this committee to facilitate further discussion.

It would be most advantageous, I think, to all concerned if indeed this very important committee of jurisdiction and the White House could come to some agreement that could be seen as satisfactory with respect to the need for flexibility on the part of the White House and the clear and certain commitment that your committee has to its constitutional mandates. And we would like to see that worked out and facilitate that, if at all possible.

If not, then I am afraid both the White House and your committee will have to find a way hopefully to accept the communal judgment of this committee as we try to find out. It is far better that you work it out to your satisfaction first. We would like to help with that.

With those observations, let me just then concede the remainder of my 5 minutes to the two gentlemen from the Appropriations Committee for your final observations before this committee. And I thank you again. Mr. Young.

Mr. Young. Well, Mr. Chairman, first, thank you for again letting us be here to give you our thoughts on some of these important issues. And I want to emphasize what you just said, Mr. Chairman. It is important that the Congress and the President of the United States work together, and the Members of both political parties need to work together.

On September 11th, the Pentagon had Republicans and Democrats who lost their lives. On September 11th, nearly 3,000 people died in the World Trade Center. I would bet that there were both Republicans and Democrats in the World Trade Center, and I know some of them, because I lost some friends on that day.

The people of America do not want to live in fear of terrorism, and they insist that we, the Congress, and the administration, work together to protect the people of this great country in our homes, in our places of business where we work, where we pray, and where we have recreation. I think that is essential, and I know that that is exactly what your committee is going to do; and our

committee is going to do the same thing to work together with you and the President to do what is right for the people of America.

Chairman ARMEY. Thank you. Mr. Obey.

Mr. OBEY. Well, Mr. Chairman, I also want to thank you and the committee for the opportunity to testify here today, and I would simply have one observation.

We can all have legitimate arguments about structure, and some of those can be very important, and some of them can be minor; and we all have to make judgments about that. The one thing that is not minor and the one thing that in my view should not be compromisable is the willingness of this institution to maintain the power of the purse against the desires that are routinely expressed by every administration we have ever had in this country.

There has never been a President, there has never been an OMB Director who hasn't wanted to use whatever incidents of the moment that they could find in order to get out from under the nuisance aspects of democracy. But Congress is maintaining the integrity of the power of the purse so that we can assure that taxpayers' dollars are never spent for any purpose other than that for which they were appropriated. That is a core value that we cannot compromise away.

Mr. Young. Mr. Chairman, if I could just take 30 more seconds. I will tell you that in a lot of our conversations, when we are talking about responsibilities and authorities and the Constitution, we are not talking about the Appropriations Committee or only those of us who are appropriators. We are talking about the Congress of the United States.

The Constitution doesn't say a darn thing about the Appropriations Committee, but it does say a lot about the Congress, and that is what we are trying to do—to represent the prerogatives and the responsibilities of the United States Congress.

Chairman ARMEY. Thank you. I thank you again, gentlemen, and the witnesses are excused.

The committee is now very excited and anxious to hear from the Armed Services Committee. I see that Ranking Member Skelton is here.

Mr. Skelton—the Chair may introduce Ike Skelton. One of the wonderful pleasures we have in Congress is always introducing one another to people who already know one another, but we all do know Ike Skelton, that you are an acceptable spokesman for this committee to Republicans and Democrats alike. The collegial relationship and mutual dedication to the Nation's defense that you share with the chairman is clearly recognized throughout the House, and I believe—I daresay, on behalf of the Armed Services Committee and this committee that in the absence of Chairman Stump, that Ike Skelton, as ranking member, can speak for the entire committee; and we should receive your testimony without doubt or reservations.

So, Mr. Skelton, it is my pleasure to welcome you before the committee. Our procedure is to give you, and we would hope for, a 5-minute opening statement. Also we would encourage you that your recorded statement will be entered in the record, your formal statement; proceed to the 5-minute rule, where we will anticipate the

inclusion of both questions and answers within the individual committee member's 5 minutes.

Mr. Skelton, please proceed.

**STATEMENT OF THE HONORABLE IKE SKELTON, RANKING MINORITY MEMBER, COMMITTEE ON ARMED SERVICES**

Mr. SKELTON. Mr. Chairman, Ms. Pelosi, I do thank you for this opportunity to make recommendations to the Select Committee from the Armed Services Committee on H.R. 5005.

The members of the Armed Services Committee voted on a bipartisan basis to support the President's efforts to create a Department of Homeland Security, and I agree with my colleagues that establishing this Homeland Security Department is appropriate. Let me give this caveat, if I may. I only wish that the administration's proposal had been presented in a way that put forward a central homeland security strategy first.

Mr. Chairman, the strategy which was presented only yesterday would have been more helpful to the standing committees—not just ours, but to the others—had we been given the opportunity to review it before making recommendations.

I am glad that this committee, this Select Committee, will have the opportunity to review the strategy document that—homeland security document that has been set forth, and I urge you to review it in light of your very arduous duties. I don't envy the work that you have cut out for yourselves.

The Armed Services Committee was asked to examine those areas of this bill within its jurisdiction, mainly the functions being transferred from the Department of Defense and the national security elements of the Department of Energy, actually, two very narrow areas.

The administration's proposal requests only modest transfers, and by and large, we did support those requests. We did, however, amend the underlying legislation in places to ensure that the capabilities of this new department were enhanced while not doing harm to the critical national security activities of the Department of Defense, Department of Energy.

For example, our committee authorized the Under Secretary of Homeland Security for Chemical, Biological, Radiological and Nuclear Countermeasures to stand up an intelligence capability—I think this is very important—within the new department, focusing on those particular types of threats.

The committee strengthened the new department by recognizing the importance of a coordinated research and development program to achieving our homeland security goals. We designated these functions as a core mission for the Secretary. The committee also called for the establishment of a center to serve as the primary location for carrying out research and development, a national security laboratory.

The committee debated whether or not to put this in the statute, the location of this center of this laboratory, and although the administration has repeatedly mentioned the Lawrence Livermore Laboratories as its preferred site, we left the specifics of that selection up to the new Secretary of homeland defense.

This effort to provide a centralized location for research and development activities, I think is critical. There are superb scientific capabilities throughout our national laboratory system, and this new department must be able to access the very best of those capabilities to secure the American people. The committee recommends that a primary research and development location with secondary locations at other national laboratories is needed.

The committee believes these changes strengthen the new department while preserving the national security capabilities of the Departments of Defense and Energy. All told, the transfers from the Defense Department only amount to about 90 people. It is a good thing, given the disastrous policies the Defense Department is now considering—and hear me out on this—considering with regard to the size and strength of our military forces.

The Baltimore Sun published an article on July the 10th, indicating that the Pentagon is planning in fiscal year 2004 to drastically reduce the number of men and women in uniform, including 20,000-25,000 Army soldiers, 40,000 airmen, 20,000 sailors, and 5,000 Marines; in total, over 90,000 servicemen and women may be forced to leave the services according to the Baltimore Sun. Such a reduction, in my opinion, is totally unacceptable, particularly while our Nation is at war.

Now, I bring this to the Select Committee's attention, because these cuts, if undertaken, will do enormous damage to American national security. The administration's homeland security strategy contemplates the expanded use of military forces for homeland security missions.

This proposal raises serious questions about the existing law, including the 1878 Posse Comitatus Act, which would have to be carefully considered. But in general terms, the strategy underlines the importance of a strong U.S. military to homeland security, because what the military does at home or through the National Guard, through the civil support teams or abroad, is very, very important. If we are successful in Afghanistan and other places, then the homeland security is all the better off.

Beyond the United States, the President has publicly stated numerous times that the war on terrorism will continue for some time. And yet, while we have people searching for terrorists in Afghanistan, helping fight terrorism in the Philippines, training military forces in the Republic of Georgia, equipping and training government forces in Colombia, aiding the peace process throughout the Balkans, the Defense Secretary has contemplated reducing our troop strength. My position on this Armed Services Committee, in the work that I have done, causes me to seriously question that.

Right now, we have over 85,000 Guard and Reservists doing active duty work. You wear these young people out, and yet there is—and this will have a direct effect on the legislation that you will pass out of your committee.

Well, I could tell you, and my statement reflects the fact, that in recent days the Army Chief of Staff, the Navy Chief of Naval Operations, air force chief of staff, and the Commandant of the Marine Corps all have recommended additional soldiers, Marines, sailors, airmen; and my statement will reflect that. That was the re-

ality before September the 11th, and the place of operation for our troops has only increased and been expanded since then.

So I hope that that background will give you an idea of how a good many of us on the Armed Forces Committee feel with our relation to what you do, because all of this has to work together. You cannot isolate what you do from what many do in uniform, whether it be Guard, Reserve, active duty, aboard ship, or whenever it is. The security of the United States and the security of the young folks, senior citizens, and those that are our neighbors depends upon everybody working together.

Your work product must dovetail with those in uniform, whether they be active duty, Guard, Reserve or the like. Thank you for this opportunity.

[The statement of Mr. Skelton follows:]

PREPARED STATEMENT OF HON. IKE SKELTON, RANKING MINORITY MEMBER, COMMITTEE ON ARMED SERVICES

Thank you, Mr. Chairman and Ms. Pelosi. I appreciate the opportunity to explain the recommendations made by the Armed Services Committee in its amendments to H.R. 5005.

The members of the Armed Services Committee voted on a bipartisan basis to support the president's efforts to create a Department of Homeland Security. I agree with my colleagues that establishing a homeland security department may be appropriate. I only wish the president's proposal had been presented in a way that put forward a central homeland security strategy first. The strategy, presented yesterday, would have been more helpful if the standing committees had been given the opportunity to review it before making their recommendations. I am glad that the Select Committee will have that chance.

The Armed Services Committee was asked to examine those areas of H.R. 5005 within its jurisdiction-namely the functions being transferred from the Department of Defense and from the national security elements of the Department of Energy. The administration's proposal requested only modest transfers in these areas and the committee, by and large, supported those requests.

The committee did, however, amend the underlying legislation in places to ensure that the capabilities of new Department were enhanced while not doing harm to the critical national security activities of the Departments of Defense and Energy. For example, the committee authorized the Under-Secretary of Homeland Security for Chemical, Biological, Radiological, and Nuclear Countermeasures to stand up an intelligence capability within the new department focusing on these particular types of threats.

The committee strengthened the new department by recognizing the importance of a coordinated research and development program to achieving our homeland security goals. We designated these functions as a core mission for the Secretary. The committee also called for the establishment of a center to serve as the primary location for carrying out research and development at a national security laboratory of the National Nuclear Security Administration. The committee debated whether or not to put in statute the location of this laboratory, as the administration has repeatedly mentioned Lawrence Livermore as its preferred site, but we have left the specifics of this selection to the new Secretary.

The committee believes these changes strengthen the new department while preserving the national security capabilities of the Departments of Defense and Energy. All told, the transfers from the Defense Department only involve about 90 people. This is a good thing, given the disastrous policies the Defense Department is now considering with regard to the size and strength of our military forces.The Baltimore Sun published an article on July 10 indicating that the Pentagon is planning in fiscal year 2004 to drastically reduce the number of men and women in uniform-including 20,000 to 25,000 Army soldiers, 40,000 airmen, 20,000 sailors, and 5,000 Marines. In total over 90,000 servicemen and women may be forced to leave the services. Such a reduction is totally unacceptable, particularly while our nation is at war.

I bring this to the Select Committee's attention because these cuts-if undertaken-would do enormous damage to U.S. national security. The administration's homeland security strategy contemplates the expanded use of military forces for homeland security missions. This proposal raises serious questions about existing law-in-

cluding the 1878 Posse Comitatus Act-that would have to be carefully considered. But in general terms, the strategy underlines the importance of a strong U.S. military to homeland security.

Beyond the United States, President Bush has publicly stated numerous times that the war on terrorism will continue for some time. Yet, while we still have forces searching for terrorists in Afghanistan, helping fight terrorism in the Philippines, training military forces in the Republic of Georgia, equipping and training government forces in Colombia, and aiding the peace process throughout the Balkans, Defense Secretary Rumsfeld is contemplating reducing our troop strength.

Such a consideration is more amazing if you consider what the chiefs of the military services have been saying for some time. In testimony before September 11, Army Chief of Staff, General Shinseki, told the Armed Services Committee that the Army needed 40,000 additional troops to meet its mission requirements. Admiral Clark, Chief of Naval Operations, told us he needed 14,000 more sailors. The Chief of the Air Force, General Ryan, and the Commandant of the Marine Corps, General Jones, testified that their services needed 10,000 more airmen and 4,000-5,000 more Marines respectively.

This was the reality before September 11 and the pace of operations for our troops has only increased and expanded since then. The Congress must ask Secretary Rumsfeld to reverse this trend by increasing, and not dramatically reducing, the number of men and women in uniform. This is essential to our ability to defend the American people at home and to fight nation's wars abroad.

Thank you for the opportunity to testify, Mr. Chairman. I hope the Select Committee is able to support the recommendations of the Armed Services Committee.

Chairman ARMEY. Thank you. The Chair recognizes the gentlelady from Ohio.

Ms. PRYCE. Thank you, Mr. Chairman. I don't really have any questions at this point.

It is a pleasure to have you here, Mr. Skelton. Thank you for your committee's hard work on this. It is one of the most important things that this Congress will have before it and, probably, many of us have looked at in our entire careers. So thank you for your assistance with our deliberations.

Thank you, Mr. Chairman.

Chairman ARMEY. The gentlelady—or gentleman from Texas, Mr. Frost.

Mr. FROST. Well, thank you very much, Ike, and I want to underscore one thing that you said.

On the document—in the document the President issued yesterday, Homeland Security, National Strategy, on page 48 in that document is one paragraph: "Federal law prohibits military personnel from enforcing the law within the United States except as expressly authorized by the Constitution or an act of Congress. The threat of catastrophic terrorism requires a thorough review of the laws permitting the military to act within the United States in order to determine whether domestic preparedness and response efforts would benefit from greater involvement of military personnel, and if so, how." .

This is the posse comitatus that you referred to. When you put that statement side by side with the statistics that you have included in your statement, quoting from the Baltimore Sun, saying that the administration is contemplating reducing our active duty force by over 90,000 people in 2004, it is ludicrous.

It is ludicrous to think that we could reduce our standing force by 90,000, which is already fairly small and which has extraordinary demands being put upon it right now, as you indicated in your statement, and at the same time take some of that reduced

force and have them patrol our borders. I don't understand this. I think you are absolutely correct to caution us on that point.

I don't know where we go from here. This committee is not being asked at this point—if I understand correctly, there is nothing before us on the question of posse comitatus. Perhaps we would make a comment on that in any report that we would issue, but you are correct to sound the alarm about our situation and reducing our active duty forces, particularly if the administration is serious about the reports that it may—and I underscore may—invade Iraq anytime soon.

Mr. SKELTON. Our committee, in the base bill that we passed out and passed on the floor, actually increased the end strength of each of the services, reflecting testimony that—.

Mr. FROST. The defense authorization bill?

Mr. SKELTON. Yes.

Mr. FROST. Not what you sent to this committee, but the—.

Mr. SKELTON. No. Excuse me, our base bill, the authorization bill.

Based upon testimony ranging back over 2 years, including testimony that year, where Admiral Blair, CINCPAC in the Pacific, Joe Ralston, the commander in chief in Europe, both said they didn't have enough personnel to meet their commitment, and General Buck down at the Forces Command said that the troops are stretched and strained today—and you see the active duty challenges that we have are being met by some 85,000 Guard and Reservists. And the fewer Guard and Reserves that are available for the governors or for the civil support teams or for national disasters that come along, that are outside of any of what we are talking about today, would be a detriment to many Americans.

So we have to consider this, and I raise it with this committee, because you should understand all of this works together. There is no singular part or parcel, separate from the other when you talk about homeland security or the security of our Nation.

Mr. FROST. You are exactly correct, and I—I, as one Member, appreciate your bringing this to our attention.

Chairman ARMEY. The gentleman from Ohio.

Mr. PORTMAN. Thank you, Mr. Chairman.

Mr. Skelton, thank you for being here this morning to give us your learned perspective.

Just a general point: This administration has made it a priority, as you know, to increase not just the number of people in our military, but also their pay and benefits, improve their equipment, improve their training; and I know they have worked closely with you and with Chairman Stump in that regard.

As a result, we have a stronger military, and we are a flexible military.

Mr. SKELTON. We do.

Mr. PORTMAN. And I think it was interesting that they chose, in putting together this proposal to the Congress, not to include the military in the homeland security area. As you mentioned, 90 people would be transferred, and it is an office that Secretary Rumsfeld supports being moved, because it relates directly to homeland security.

But you are absolutely right, there is a seamless relationship between homeland security and our national defense, and you see that clearly with the Coast Guard, but also with all of the other entities involved in protecting our borders and making sure that we have the right information so that we can react to this new threat.

You said in your testimony that you were concerned about the strategy. You now have seen the strategy. Are you satisfied with the strategy as laid out yesterday by the President?

Mr. SKELTON. I must tell you, from a perusal of it, it is positive. To be right honest, receiving it only yesterday, I have not had the opportunity to fine-tooth-comb it, but basically it is in the right direction.

I wish I had a better answer for you, but time has not allowed me to study it as each of us should.

Mr. PORTMAN. In our deliberations, we have talked a lot about flexibility, and in order to keep costs down and in order to be able to better respond to an agile enemy, we all want to be sure that there is flexibility and that this is a lean department.

You actually gave the President more flexibility in your proposal. Instead of naming Lawrence Livermore Labs as the lead agency—.

Mr. SKELTON. No—.

Mr. PORTMAN. —the President—.

Mr. SKELTON. There is nothing wrong with that. I think we did right.

Mr. PORTMAN. Could you give us a little more background as to why you believe that it is not appropriate for the Congress and this committee to propose a specific lead, but rather, to put that decision at the President's level?

Mr. SKELTON. Well, we think it is important to have a central research and development operation, no question about that; and it ought to be at one of the laboratories. And I don't think you will find a major disagreement on that.

The administration has recommended Lawrence Livermore as the site. However, there will be a serious discussion between those areas, the three particular laboratories, as to which one is best.

Why tie the Secretary's hands? Although one is recommended, why should we put it into law? So what is wrong with flexibility? The end result would be the same, if not better.

Mr. PORTMAN. And the key is to get the best R&D and to have that flexibility?

Mr. SKELTON. The important thing is that you have a central system, a central place for research and development, because that will be a challenge for the various threats that are out there, some we haven't even dreamed of.

Mr. PORTMAN. Thank you very much, Mr. Skelton.

Mr. SKELTON. Thank you.

Chairman ARMEY. The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. Skelton, thank you for your service to our country. It is really one of the exceptional people in the House and particularly in the context of our Armed Services and defense issues. Really, I think you are a giant in that regard.

I really don't have a question, except to join with you and Mr. Frost in the strategy document that the administration put out yesterday. I am concerned about that section.

I believe that the essence of what we want to ultimately achieve in homeland security starts with prevention, which means good intelligence, raw materials analyzed in real time, shared across the spectrum, so that we can then act when we need to in a preventive capacity. And thereby the military of the United States is an essential, if not the key, ingredient—after that, intelligence gathering—to perform that preventive function.

I do not see them providing a role here domestically in, in essence, law enforcement functions; and I think that is a dangerous proposition for this country. If we were being—if we had ships coming up or armies crossing borders, of course that would be different, but in essence to suggest that the Defense Department would act in what are essentially law enforcement obligations, I think is a dangerous proposition.

I think we need to reserve our capabilities and the risks of the challenges that we will face for the preventive aspects that we want abroad, and so I want to commend you for raising that issue. I know it is not part, physically, of the administration's proposal, but since the strategy is ultimately going to guide the future actions of the administration, it is important to raise our sabers now and start saying kind of what we think about this.

So thank you for doing that, and I appreciate your service and your information.

Mr. SKELTON. Thank you for your comments. We should remind ourselves that there are, at the present time, some 27 national forward civil support teams which would help in the event of a disaster. There will be a proposal to establish a total of 51, is my understanding.

Let me mention a concern with you. You mentioned intelligence. There are two aspects to intelligence. Number one is gathering it, which is sometimes very difficult and you rely on everything all the way from electronics on the one hand to HUMINT on the other. And the second is that of analyzing it; and I am concerned about there being too many layers of analysis, and while that happens, something bad comes to pass. So put that in the back of your mind so there will not be layers of bureaucratic intelligence analysis that would cause us to miss the boat in something untoward happening. That concerns me.

I am not just sure how you would write it, or prevent that, but just put that in the back of your mind. I think that is a potential problem for all of this.

Mr. MENENDEZ. Well, I appreciate your comment. I am sure our distinguished ranking member on this committee and on the Intelligence Committee, Ms. Pelosi, is right on top of those issues and has been leading in that regard.

I just want to comment on your part of the National Guard in the context of helping us respond. That is much different than the law enforcement aspect, and certainly that is one that we would embrace.

Thank you for your comments. I yield back the balance of my time.

Chairman ARMEY. Gentlelady from Connecticut.

Ms. DELAURO. Thank you very much, Mr. Chairman. I want to thank Ranking Member Skelton for being here and for being a continued advocate for our armed services. And I thank you for your years of service in this committee and the knowledge that you will bring to this.

I think that there are questions that have to do with the relationship between the Department of Defense and the—how the Pentagon, which is charged with fighting terrorism abroad, will work with the new department that is fighting terrorism here at home; and I think one of the crucial areas to take a look at is, how do the two departments handle the competing demands of Coast Guard and National Guard? And I would love to have your views on this and your sense if there is any—what the process might be for coordination, and whether or not—get your opinion on whether or not the two Guard services will have the necessary capabilities to meet both departments' demands.

Mr. SKELTON. I don't think there is a problem regarding the National Guard. As you know, their commanders in chief on a day-to-day basis are the governors, and they perform many domestic duties—disaster, et cetera—on a Federal level, unless they are federalized to serve, as we have some 85,000 Guard and Reservists serving on active duty today. The civil support teams, 27 of which exist to date, are the best examples, but I don't think that is a problem.

The question, to which I don't have an answer, is the one dealing with the Coast Guard, because you have a bifurcated set of duties. One is search and rescue, which they do a phenomenal job. The other is drug interdiction, and they are first class now.

On the other hand, you have antiterrorism-type of activities. I don't know how you are going to bifurcate that. That will be one of the biggest challenges your committee has. I don't have a solution for that, unless there is some sharing agreement between the Department of Transportation, which owns the Coast Guard, and the department head of Homeland Security; of maybe bifurcating the duties or certain sections of the Coast Guard. There is no easy answer to this.

Now, I know this may be one of your biggest challenges, and I wish I had a good answer for you. There is none.

Ms. DELAURO. I thank the ranking member.

Thank you, Mr. Chairman.

Chairman ARMEY. Gentlelady from California.

Ms. PELOSI. Thank you very much, Mr. Chairman. I want to join you and our colleagues in commending the distinguished ranking member of the Armed Services Committee for his wonderful leadership and his very thoughtful statement today, which is very valuable to the committee.

I appreciate the caution you recommend in your statement in terms of posse comitatus and the Posse Comitatus Act. Also your concerns that you raised, not directly related to our work here, but certainly related to the mission that we have, which is to protect the American people, to reduce risk to them. And, of course, force protection is a very important part of what we do on the intelligence side of it. So your insightful comments are very helpful.

I also want to say that while it is not the work of our committee today, I look forward to—not now because the time does not permit, and it is a much longer discussion—to hearing some of your thoughts on transformation of the military, which will be very important to protecting the American people. I know that you will always be a leader in that regard.

So I thank you for all that you have done for young men and women in the armed services. We are very, very, very proud of them, and thank you again for your leadership in helping them do their job, to do our constitutional duty to protect and defend the American people.

Thank you very much, Mr. Chairman.

Mr. SKELTON. I appreciate your kind words.

This intangible thing we call "transformation of the armed services" is real. It is looking ahead to potential threats and challenges so that we will have the Armed Forces prepared to face them in the years ahead. Each of the services is working on them, and I hope that it is about ongoing challenge, that the next several years will find us not only modernizing but transforming into the secure force that we need.

It is a major challenge on our committee, but we appreciate your support and your help.

Ms. PELOSI. Thank you very much, distinguished gentleman.

Thank you, Mr. Chairman.

Chairman ARMEY. Mr. Skelton, does your committee have any direct testimony from the Pentagon about the force reduction plans reported in the Baltimore Sun?

Mr. SKELTON. No.

Chairman ARMEY. It is conceivable then that the Baltimore Sun can simply be wrong?

Mr. SKELTON. I don't believe it is.

Chairman ARMEY. You do not believe it is. Would you not find it unacceptable, patently unacceptable, for the Baltimore Sun to have information regarding force strength that your committee does not have?

Mr. SKELTON. I don't think it is a good idea, but I do believe the reporter is a highly respected reporter, and I believe what it said.

Chairman ARMEY. How would the Baltimore Sun have information about the force strength of the United States armed services that the House Armed Services Committee would not have? By what basis could a reporter have that information and your committee not have it?

Mr. SKELTON. I can only tell you to ask the reporter that.

Chairman ARMEY. You know, I thank the gentleman for that suggestion. I believe I will ask the Pentagon that.

Mr. SKELTON. Good. I think you will receive an interesting answer.

Chairman ARMEY. Thank you. Thank you for your testimony. And the witness is excused with great appreciation.

The Chair now looks forward to hearing from the distinguished chairman and ranking member of the Energy and Commerce Committee. I believe it is—would be accurate for the Chair of the Select Committee to observe that both the chairman and the distinguished ranking member of the Energy and Commerce Committee

understand, with a great deal of adeptness, the administration of the committee's business under the 5-minute rule.

I think that you are both experienced before this chairman, so let me just remind you that it is indeed the practice of this committee to take testimony under the 5-minute rule. We would ask you to please submit your formal statement for the record, and if you could make your independent statements within the 5-minute rule, we will try to see to it that the committee addresses its questions within the context of that rule as well.

And we do welcome you so much for your testimony here. We will begin with Chairman Tauzin.

**STATEMENT OF THE HONORABLE W.J. (BILLY) TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE**

Mr. TAUZIN. Thank you, Mr. Chairman. First, let me indicate that we have had two days of full committee hearings, in which we heard from 40 different witnesses from Federal, State, local, academia, professors, all sorts of research communities, et cetera.

We should also point out that after those 2 days of hearings, the work we presented to you was approved unanimously by our committee. It was constructed in a bipartisan fashion, just as was the bioterrorism preparedness bill, the sweeping $4.6 billion bill that our committee shepherded through Congress most recently, and was done in a true bipartisan fashion.

I want to thank Ranking Member Dingell for that great effort that allows us to bring to you a bipartisan set of recommendations in regard to our committee's jurisdictional areas in this critical area of homeland security.

There are four specific areas we want to address. First, with respect to biomedical research and emergency preparedness of the Department of Health and Human Services, in our committee we literally recognize the role of the department and actually enhance its capacity beyond that which the President originally proposed. But we want to make it clear that HHS would still maintain primary responsibility over human health-related research. Most of which is currently being conducted by the CDC and by the NIH. We understand the administration supports this clarification and does not wish to duplicate the research capabilities of NIH and CDC.

We also understand from Governor Ridge's testimony that it was not the administration's intent to give a new Secretary the unilateral authority to direct these HHS programs or their priorities, but rather simply to ensure collaboration between the two agencies; and I think we concur in the need for that.

However, we do not believe the new department should have primary authority, including budgetary authority, over bioterrorism programs that remain at HHS. Substantively, we don't believe the new Secretary should have primary control over the $1.9 billion in NIH grants relating to pathogens and countermeasures, or the $1.5 billion in public health emergency grants to State and local public health departments.

We simply want to point out that this money spent by these agencies is spent not just to prepare the country for the possibility of bioterrorism, but it is for building up the infrastructure, such as

surveillance, communications systems, our improved responses for all sorts of human health emergencies, whether they are naturally occurring or intentionally caused by some threat. We want to hopefully make sure that those programs don't get crippled by a new complex bureaucratic model.

The administration recognized as much by leaving these programs at HHS, but the model that is put up, one that would put the programs in HHS. But subject it to the authority of Homeland Security, raises some real problems. For example, language that suggests the new Secretary could direct or manage public health emergency activities raises some very difficult questions.

For example, who would declare the public health emergency? Who would issue quarantines? That is normally done through the authority of these agencies.

Administratively, we believe it would be unnecessarily cumbersome and bureaucratic for the funds to first go to the Homeland Security Department and then be appropriated through these agencies for these ordinary, ongoing public health purposes.

Last, with respect to HHS, the committee recommends retaining at HHS the Assistant Secretary of Public Health Emergency Preparedness. This is the office we created in the bioterrorism bill. Now, we support the transfer of several of its responsibilities, the operation of the Office of Emergency Preparedness, The National Disaster Medical System, and the Metropolitan Medical Response System, but we want to note something for you.

If FEMA goes to the new department, then it makes sense to move these three functions over. But if you make a decision not to move FEMA, then we would question the appropriateness of even moving these three functions because they are more closely associated with the work of FEMA.

Second, with respect to critical, physical, and cyber infrastructures, such as those that run telecommunications and electric power systems, we think the President's efforts on consolidation and increased coordination are right on the mark; but we have some concerns. The original language could have been construed to give the new Secretary regulatory authority over the security of critical infrastructures that are currently regulated by the Federal Government, or that are now regulated by other Federal agencies.

We make it clear in our print to you that the creation of this new department does not include new regulatory powers for the Secretary to directly compel security improvements through regulations or mandates. Rather, you would work with the State, Federal and other agencies who have jurisdiction to enhance security and to work directly with the private sector in the collaborative fashion designed in the President's report.

We also recommend the emphasis on cyber security within the new department be greatly enhanced. What we have done over the last 4 years, Mr. Chairman, is an extensive review of the vulnerability of America's agency cyber security weaknesses. I have to tell you, every system we looked at we used the GAO red teams to come in and challenge those systems and every single one demonstrated pervasive weaknesses.

So we recommend to you the creation of the Federal computer security red teams in the new department to, in fact, test these sys-

tems out and provide information and recommendations to strengthen them. We think this needs to be a high priority of the new department.

Third, in the area of research and development, we believe that the committee concurs in the need expressed by many of those in Congress to have this new department play a critical role in coordinating, accelerating and improving the focus on research and development in the new technologies that are going to be used to fight terrorism. For example, the things that are going to be included in our reports to detect the possibility of radiological material coming in.

To address these needs, we recommend the new department serve as a focal point for technological research and development activities, and that it establish a Federal technology clearinghouse. Not to design the technology, but simply to go through the recommended technology improvements and recommend which ones work and which ones don't work for all the agents of government who may in fact use this technology to better protect our ports in our country.

We think the current bill makes it unclear as to whether the new department could directly contract with the national laboratories. We make it clear they can't. They can directly task the national laboratories to do work for them in this regard.

Fourth, with respect to the control of dangerous pathogens and select agents, in the bioterrorism bill, we set up the within CDC a department that has the capacity to track not only who has these agents, but when they transferred it, for what reason they transferred, and the license of the section and transfer of these agents. It is a critical component of that bioterrorism bill.

We also set up something similar within the Department of Agriculture for pathogens and agents that might affect animal health; that has some relation to the section in CDC.

If the CDC section is going to be transferred to this new agency, we would obviously be concerned that the section in Agriculture would similarly go with it. If the second doesn't, then we question whether the first should go. Otherwise, it is going to create some real problems in coordinating between pathogens that affect animals and may similarly affect human health in terms of bioterrorism threats.

In closing, I want to again thank you for allowing us to come and make these recommendations and to thank my colleague, John Dingell, who has been an extraordinary partner in our committee's work in making these recommendations to you.

Thank you, Mr. Chairman.

[The statement of Mr. Tauzin follows:]

PREPARED STATEMENT OF HON. W.J. (BILLY) TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you, Mr. Chairman. I am pleased to join you and the ranking Member, Congresswoman Pelosi, to provide testimony regarding President Bush's historic proposal to create a new Department of Homeland Security. I believe the President's proposal reflects a sound framework for Congressional consideration, and I fully support creating a Cabinet-level department with an empowered Secretary to get this critical job done.

I am here today to testify on behalf of the Members of the Committee on Energy and Commerce who convened last week and voted, without opposition, to support

a Committee Print that preserves the President's key priorities in the areas within our Committee's jurisdiction. We did so while clarifying the new Department's powers and authorities, enhancing the functions and focus of the new Department, and improving the workability of the interface between the new Department and the Departments of Health and Human Services and Energy.

Over the past three weeks, the Committee has given serious deliberation to the President's proposal. We held two days of hearings at which over forty witnesses from Federal, State, and local governments, the private sector, academia, and the scientific and research communities shared their views on the President's proposal. In addition, over the last year, the Members of the Committee helped to shepherd through Congress a sweeping $4.6 billion bioterrorism preparedness bill that the President recently signed into law. In both of these efforts, we were able to work in a bipartisan fashion to address homeland security, and I want to thank and praise the Committee's Ranking Member, John Dingell, for working with us to get this done.

The Committee's recommendations to the Select Committee fall into four specific areas, which I will address in turn. First, with respect to the biomedical research and emergency preparedness activities of the Department of Health and Human Services, the President's proposal rightly recognizes what our Committee's oversight has revealed—that the Federal government's bioterrorism-related programs have been cumbersome to navigate and have been poorly coordinated in the past, leaving critical gaps unattended while being duplicative in other aspects. We agree with the President that the new Department should play an important role in changing that. In particular, given that the new Department will have important intelligence, threat, and vulnerability-related information necessary for the identification of program priorities, the new Department should develop our national strategic plan for bioterrorism activities and identify our most urgent national priorities, including priorities for programs at HHS. Our Committee Print not only recognizes this role of the new Department, but enhances it beyond what the President initially proposed.

The Committee Print also makes clear that HHS will maintain primary responsibility over human-health related research, most of which is currently being conducted by CDC and the National Institutes of Health (NIH), and that this new Department will not engage in such R&D efforts. We understand that the Administration supports this clarification, and does not wish to duplicate the research capabilities of NIH and CDC at the new Department. We also understand, based on Governor Ridge's testimony before our Committee, that it was not the Administration's intent to give the new Secretary the unilateral authority to direct these HHS programs or their priorities, but rather simply to ensure collaboration between the two agencies. We concur with the need for such collaboration and our Committee Print adds an explicit requirement that the Secretary of HHS must collaborate with the Secretary of Homeland Security on setting the HHS research priorities related to countermeasures for terrorist attacks.

However, we do not believe that the new Department should have primary authority—including budgetary authority—over bioterrorism programs that remain at HHS. Substantively, we do not believe that the new Secretary should have primary control over the $1.9 billion in NIH research grants relating to pathogens and countermeasures, or the $1.5 billion in public health emergency grants to state and local public health departments included in our recently enacted bioterrorism legislation. As GAO experts emphasized in testimony before the Committee, much of the terrorism-related research currently being performed through NIH and CDC is dual-purpose in nature—serving the priorities and needs of both counter terrorism and traditional public health. Similarly, the grants to state and local public health departments and hospitals are not just to prepare for the possibility of bioterrorism, but for building up basic infrastructures such as surveillance and communication systems to improve response to all sorts of public health emergencies, whether intentionally caused or naturally occurring. Unlike more conventional acts of terrorism or those involving radiological or chemical elements, a bioterrorist attack will look, at the beginning, just like a naturally occurring disease outbreak. The people, resources, and skills necessary to respond to bioterrorism will not likely be different than those necessary to respond to naturally occurring outbreaks of diseases. We cannot and should not separate either of these dual-purpose activities, or have them be under the under the control of two different departments.

The Administration recognized as much by leaving these programs within HHS. But its model—one in which the programs remain in HHS but are subject to the authority of the Homeland Security Department—potentially creates more problems than it would solve. The Committee does not believe it is feasible to separate authority from responsibility, or to separate the officials charged with administering

those responsibilities from the personnel required to do so. Moreover, any language suggesting that the new Secretary could direct or manage the public health emergency activities of HHS raises many difficult questions, such as who can declare public health emergencies or issue quarantines under the Public Health Service Act. The Committee believes that these activities are properly authorized and administered under the Public Health Service Act. Neither a wholesale transfer of these responsibilities, nor some unusual splitting of responsibilities, is warranted.

Administratively, we believe it would be unnecessarily cumbersome and bureaucratic for the funds for such activities to be appropriated in the first instance to the new Department, only to be "contracted" back to HHS for further distribution to NIH, CDC, and the hundreds of grant recipients conducting such research and preparedness activities. The Committee supports the need to improve the coordination of funding on such activities across the Federal government, but we believe that such coordination can occur without the control of HHS funds. Under the Administration proposal, the new Secretary would not receive control over the substantial research funds of other agencies that conduct research activities similar to those of HHS, including the Departments of Defense, Veterans' Affairs, and Agriculture, the Central Intelligence Agency, and others. Given that fact, the Committee does not believe that budgetary control is necessary with respect to HHS research dollars to ensure such coordination.

The type of budgetary maneuvering described in the Administration's proposal could also result in delays, hampering our efforts to get the money out the door and into productive use as quickly as possible. These grant programs are already in place at HHS and appear to working quite well. We do not believe it makes sense to potentially disrupt these programs now by routing them through the new Department, only to have the new Department contract back with HHS to manage them.

Last with respect to HHS, the Committee Print recommends retaining at HHS the Assistant Secretary for Public Health Emergency Preparedness created by the recent bioterrorism response act, in order to coordinate remaining HHS emergency preparedness functions and to serve as a liaison to the Homeland Security Department. But we support the transfer of several of his responsibilities, including the operation of the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System. These are operations that currently work closely with the Federal Emergency Management Agency (FEMA). We note that if the Select Committee chooses not to transfer FEMA or its response functions to the new Department, it would no longer make any sense to transfer these emergency response activities of HHS to Homeland Security either. If FEMA is not transferred, I believe that most of Title V of the Administration's proposal would no longer be appropriate, including the transfer of the National Strategic Stockpile of vaccines and drugs run by HHS.

Second, with respect to the protection of our Nation's critical physical and cyber infrastructures—such as those that run our telecommunications and electric power systems—the President's efforts at consolidation and increased coordination are right on the mark. The key to success in this area is to recognize that many of the most important critical infrastructures are privately owned and operated, and may not be subject to Federal security mandates or requirements. Thus, the only way to succeed in ensuring their protection is through a strong and effective public-private partnership for national security.

The original language of H.R. 5005 could have been construed to give this new Secretary regulatory authority over the security of critical infrastructures that are not currently regulated by the Federal government, or that are regulated now by other Federal agencies. Based on testimony before our Committee by Governor Ridge, it is clear that such an interpretation was not intended by the Administration. Thus, the Committee Print makes an important clarification to ensure that the new Secretary's authority to assess vulnerabilities and support protective measures with respect to private sector critical infrastructures does not include new regulatory powers for the Secretary to directly compel security improvements through regulations or mandates. Rather, the Secretary will work with the other Federal, State or local agencies that have jurisdiction over such sectors to enhance security, and would work directly with the private sector in a collaborative fashion.

The Committee Print also recommends that the emphasis on cyber security within the new Department be greatly enhanced. Over the past four years, our Committee has conducted extensive oversight of the cyber security practices of many of the agencies within our jurisdiction, including the Departments of Health and Human Services, Commerce, and Energy, as well as the Environmental Protection Agency. With the help of expert computer teams, sometimes known as "red teams," from the General Accounting Office, we found that, without exception, the computer systems of these agencies were riddled with pervasive weaknesses. Our homeland security

depends on building improved defenses to cyber attacks, which are occurring every day. As a result, our Committee Print proposes the establishment of a Federal cyber security program that will provide computer security expertise to other Federal civilian agencies to help improve protection of their critical information systems. This program will include a Federal computer security "red team" to test, and provide recommendations on, the security of key Federal information systems. It also will promote R&D on security enhancements for critical information systems, particularly the command and control systems that our Nation's critical infrastructures depend upon—called SCADAs ('ska-duhs'). The vulnerability of SCADA systems—such as those that control our electricity networks or the operation of our large dams and drinking water systems—needs to be a high priority for the new Department.Third, in the area of research and development, it is important for us to remember that new and improved technologies and American ingenuity and innovation are among the greatest advantages we have in fighting terrorism. Thus, the Committee concurs with the need expressed by many others within and outside of Congress for this new Department to play a critical role in coordinating, accelerating, and improving the focus of research, development, and implementation of new technologies in our fight against terrorism.

Our country's top scientists are working through existing programs at our national laboratories to develop new methods for detecting and preventing terrorists attacks—such as improved sensors to detect radiological devices, and new scanners to screen luggage and cargo. But our oversight of these programs has shown that they are not well-coordinated. As a result, our Nation's current ability to detect radiological or nuclear materials that may be entering our ports or other border entry locations is woefully inadequate, and I strongly believe that the Federal government must improve both our research in these areas, as well as the speed of deployment of viable technologies to prevent illegal radiological devices from entering our country. We have heard from those on the front lines that they need guidance from the Federal government as to what types of technologies are available, what they should be looking for in such technologies, and how best to implement them. Yet today there is no single Federal agency they can turn to for help.

To address these needs, the Committee Print recommends that the new Department serve as the focal point for such technology research and development activities within the Federal government, and that it establish a Federal technology clearinghouse to assist other Federal agencies, State and local governments, and the private sector in evaluating, implementing, and disseminating information about key homeland security technologies, such as radiation and bio-weapon detectors. We do not intend to create mandatory Federal standards for such technologies, or a Federally-approved list of technologies. Rather, the goal is to provide assistance and guidance to those on the front lines as they seek to evaluate and implement the use of such technologies, so as to accelerate deployment of useful technologies and better protect the American people from weapons of mass destruction.

In addition, H.R. 5005 is unclear as to whether the new Department could directly contract with our national laboratories with respect to the transferred DOE functions and programs, or whether it would have to negotiate with DOE over such work through the traditional "work for others" program. The Committee Print ensures that direct tasking of the laboratories by the new Department would be permitted, and would indeed be the anticipated method. Such an approach will ensure that the new Department can carry out these important R&D responsibilities in the most direct and effective manner, and avoid the bureaucracy and extra costs involved in the current DOE "work for others" program.Fourth, with respect to the control of dangerous biological agents and toxins known as "select agents," the Committee Members recently helped to enact a sweeping new registration, tracking, and security structure—both for those select agents regulated by the Centers for Disease Control and Prevention because of their potential human health threat, and for those agents regulated by the Department of Agriculture because of their potential threat to livestock and crops. While the Administration's proposal clearly transfers the CDC select agent program to the new Department, it is less clear with respect to the companion USDA program.

The Committee recognizes that there are certain disadvantages to transferring the CDC select agent program. But if both the CDC and USDA programs are transferred to a single department, it will enhance the joint registration and regulatory system that is a key component of our recently-passed bioterrorism act. These are companion programs designed to serve as one national registration and regulatory system for tracking the possession and use of the most dangerous biological agents. If the agricultural select agent program remains at USDA, then the Committee views the transfer of the CDC program as only exacerbating existing coordination

problems. We simply do not think it makes sense to transfer half of this program to the new Department, while leaving the other half at another Federal agency.

In closing, I ask you to take into consideration and lend support to the recommendations of the Committee on Energy and Commerce when you mark up the President's homeland security proposal. We will be pleased to work closely with the Select Committee on the matters within our jurisdiction and ask that you continue to provide opportunities to do so. Thank you for inviting me to testify today, I would be happy to respond to any questions.

Mr. DELAY. [Presiding.] Thank you, Mr. Chairman.

Mr. Dingell, you are recognized for any statement that you want to make.

**STATEMENT OF THE HONORABLE JOHN D. DINGELL, RANKING MINORITY MEMBER, COMMITTEE ON ENERGY AND COMMERCE**

Mr. DINGELL. Mr. Chairman, thank you for the privilege of being here. I join Chairman Tauzin in bringing the amendments, adopted unanimously by the Committee on Energy and Commerce. The committee functioned bipartisanly with both staff and members working together.

I think this committee knows my grave doubts of the wisdom of much of the President's proposal. Quite frankly, I think it is a fine opportunity for confusion, for waste, for overlap, for duplication, and quite frankly, for a splendid amount of delay.

Having said that, our committee has done its duty, and we have thought to bring you a sensible and workable way in which to address matters within our charge. I ask you to respect the expertise, experience and hard work that the committee has given to this matter when you consider what to recommend to the House.

I want to praise my chairman and my colleagues on both sides of the aisle for the work that they have done, and done in a bipartisan fashion.

Perhaps the most important element of our work is the protection of the important public health and biomedical research programs from potential inadvertent harm. We make it clear in title III that the Department of Health and Human Services will continue to control funds and priorities in human health-based research in collaboration with the new department.

We also make it clear in title V that HHS will retain the primary responsibility for carrying out public health preparedness activities at the Federal, State and local levels, again in consultation with Homeland Security.

Essentially, the Department of Energy—rather, the Committee on Energy and Commerce has responded to the concerns of the public health community, which overwhelmingly supports our recommendations to you. The General Accounting Office, bioterrorism experts and others have also supported what we have done, and we have tried, in consultation with them, to strike an appropriate balance.

Another important element of our proposed amendment is a twofold savings clause. Absent specific authorities transferred to the legislation, the new Secretary will be given no new regulatory responsibility; and the legislation does not change or allow the new Secretary to override the regulatory authority of the existing agencies. This clause found in section 737 ensures that we will not sac-

rifice regulatory certainty, slow down ongoing efforts to assess vulnerabilities for critical infrastructures, or jeopardize other vital programs if this new department is to be created.

The committee's process goes into many more issues, and I know the staff on both sides of the aisle have been working closely with the staff of the individual members of this committee and of the committee.

We are also doing our best to be constructive under a process that I find both objectionable and unduly constraining. I believe the haste shown here is counterproductive to the shared goal that we all have of improving this Nation's homeland security. I urge this committee not to make matters worse by ignoring or undoing the many improvements that have been developed, again on a bipartisan basis, in the Committee on Energy and Commerce.

[The statement of Mr. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, RANKING MINORITY MEMBER, COMMITTEE ON ENERGY AND COMMERCE

I join Chairman Tauzin in presenting the amendments adopted unanimously by the Committee on Energy and Commerce. All of you know of my grave doubts about the wisdom of much of the President's proposal. And you have probably figured out that I am not a fan of this rushed and truncated process for addressing an issue of this magnitude. But our Committee has done its duty, and has brought to you a sensible and workable way to address the matters within our charge. I urge you to respect the Committee's expertise, experience, and hard work as you consider what to recommend to the House.

Perhaps the most important element of our work is the protection of important public health and biomedical research programs from potential inadvertent harm. We make it clear, in Title III, that the Department of Health and Human Services (HHS) will continue to control the funds and set priorities in human-health related research in collaboration with the new Department. We also make it clear, in Title V, that HHS will retain the primary responsibility for carrying out public health preparedness activities at the federal, state, and local level—again in consultation with Homeland Security. Essentially, the Committee on Energy and Commerce has responded to the concerns of the public health community, the General Accounting Office, bioterrorism experts and others by striking an appropriate balance.Another important element of our proposed amendments is a two-fold savings clause. Absent the specific authorities transferred in the legislation, the new Secretary is given no new regulatory responsibility, and the legislation does not change, or allow the new Secretary to override, the regulatory authority of existing agencies. This clause, found in Section 737, ensures we will not sacrifice regulatory certainty, slow down ongoing efforts to assess vulnerabilities for critical infrastructures, or jeopardize other vital programs, if this new department is to be created.

Our Committee's product goes into many more issues, and I know staff on both sides of the aisle have been working closely with the Select Committee Members' staff to explain what we have done and why. We are doing our best to be constructive under a process that I find objectionable. This haste likely will be counterproductive to the shared goal of improving this Nation's homeland security. I urge the Select Committee not to make matters worse by ignoring or undoing the many improvements developed on a bipartisan basis in the Committee on Energy and Commerce.

Chairman ARMEY. [Presiding.] Thank you, gentlemen, for your statements, and we are going to operate under the 5-minute rule.

We will begin with questions of the gentleman from Texas, Mr. Delay.

Mr. DELAY. I thank you for your statements. I just have one quick question.

One of the main objectives of the administration's bill was to get technology expedited into the hands of the first responders, the emergency responders, at the State and local levels.

Do you have any ideas based upon your testimony that we could accomplish that?

Mr. TAUZIN. I have no doubt we can. The whole concept of setting up the technology clearinghouse within this department is designed to do that. What we have learned is that port authorities don't know whether or not to call to find out what kinds of equipment would really do the job of testing to see whether or not someone is trying to bring in something harmful to this country.

One of our ports in Virginia has volunteered on their own and they spent a great deal of money installing equipment in some of their cranes to do that. But we had to rush in and give them advice because they had no one to turn to.

This department needs to be tasked with the job of actually clearing what technologies work, what should be the standards to have a quality enough product out there so that it really does give us a measure of security; and then, hopefully, assist in the State and local grants that we provide in the bioterrorism bill to make sure that those technologies are deployed properly.

Mr. DELAY. But I think the key word of my question is "expedited." how do we get past what is the normal bureaucracy that takes sometimes more than a year to approve technology?

We are in the process right now of—in the Transportation Security Administration, on baggage screeners, and it seems they want to buy old technology when new technology is almost ready, yet they want to go spend all this money for old technology and don't want to wait for the new technology.

Mr. TAUZIN. We include in here measures recommended by Heather Wilson that would actually invite those in the community who are inventing and improving technology to bring it to the Department so that it can be quickly reviewed for effectiveness, and then recommendations are issued from that.

In other words, the Department would not actually tell anyone, you have to install this or that particular technology, but it could test quickly whether or not the manufacturer or the inventors' suggestions about the quality of his product are true or valid, and then make recommendations to folks in the private sector and in some public agencies on whether or not that technology might meet their needs.

Expediting it obviously is going to be the role of the new Secretary and making sure this happens very quickly.

Mr. DELAY. Mr. Dingell, do you have any comments on that?

Mr. DINGELL. I have nothing to add to what my chairman said.

Mr. DELAY. Thank you and thank you for your testimonies.

Chairman ARMEY. The gentlelady from California.

Ms. PELOSI. I would like to follow up on Mr. DeLay's question.

First, I want to welcome both of you and thank you for your excellent presentations and the hard work that went into developing your product today.

On the intelligence side, we have needs and leads. We know, you know, what we need technologically and we try to go find that; or people come in with leads which are excellent. I spoke to a technology group a couple of weeks ago, and I said we had approximately 7,500 suggestions coming forward, and that morning they said, no, it is now up to 10,000. That was a few weeks ago.

So this new department, as well as other agencies of government, are going to have to be very resourceful and agile in how we can accommodate what will help us technologically.

I would have hoped that this department would have been more of a reflection of the advances in technology and used technology for coordination rather than attempting to establish a gigantic department, which I think is an old-fashioned way of approaching it, especially heeding the distinguished ranking member's caution about acting in haste, that we are going very fast.

But hopefully, with all of the collective wisdom of our Chairs and ranking members and the receptiveness of our distinguished chairman to heed the recommendations, we will be able to produce something that will reduce risk to the American people and manage our resources judiciously, as the President spells out in his strategy.

My question was one that you addressed, Mr. Dingell, in your comments, and that was an important part of your legislation, and that is section 337 relating to the regulatory authority of existing agencies.

I asked some of the Cabinet Secretaries yesterday if they thought that any regulatory authority of an existing agency that was not spelled out to be given to Homeland Security, in their view, resided where it was to begin with, in the existing agency. They all said, yes.

Would you spend a moment to tell the committee the basis of your putting forth this as a priority and why, therefore, it is important?

Mr. DINGELL. Thank you.

This was a matter of very special concern in the committee to us. When you reorganize, you have to be sure that you know what you transfer and what you do not transfer. The best way of being sure that you transfer what you want, you don't create confusion and disorder later, is by being exquisitely precise. The functions of section 737 are to assure that.

The section achieves two important results. First, it makes it clear that except for regulatory authority that comes with specific functions being transferred to the new department, no new regulatory authority is being created by the provisions of section 201 or other parts of the bill. That is H.R. 5005.

I want to make it clear, we limit this to the sections within the jurisdiction of our committee, and I have sought to do nothing about the responsibilities of other committees. Oh, I think this committee, in its wisdom, may very well want to consider whether you want to apply something like section 737 to the work of other committees, but I leave that to your wisdom and your discussion with those committees.

Second, the rule of construction ensures that existing regulatory authorities of agencies, our part of agencies that are not being transferred to the new department are not changed or diminished in any other matter. For example, the Nuclear Regulatory Commission, the Environmental Protection Agency and other agencies have authority and responsibilities to assess vulnerabilities of critical infrastructures in their areas of expertise.

This provision is important to ensure that those agencies can continue to exercise their authorities to protect the American people. And I want to make it very clear, if you transfer authorities from the existing agencies, Food and Drug, and NRC, EPA, the Department of Energy, you may very well find that you leave yourself in a situation where you have all of a sudden moved important public health or other concerns like that to an agency that really doesn't concern itself with those questions and is concerned with security.

I would beg you to be exquisitely careful of that because there is great opportunity for mischief here.

Ms. PELOSI. Thank you.

Mr. Chairman, would you like to comment?

Mr. TAUZIN. Let me second Mr. Dingell's comments. Not only did we spend more time on section 737, which is a rule of construction that is going to be critical for agencies and courts to decide whether this new department has new authority to regulate, or whether it is taking authority from someone else who had it in our government structure.

This rule of construction has been very carefully vetted with our counsel, and many of us who helped write it, to do two things. One is to protect against an inadvertent transfer of authority, or complications or confusions about that particular subject matter. And secondly, to make it clear, however, in our savings clause that is we don't mean by this reservation not to require the collaboration and the coordination of the Secretary, the roles he is given in respect to other sections of the bill.

One final thought. Again, we cannot, obviously, recommend to you what you might do with sections not under our jurisdictional control. But if this works for the sections under our jurisdictional control, we urge you to seriously think about whether or not it might work for other areas not covered in our report to you.

Ms. PELOSI. Once again, thank you very much for your very valuable contribution and for your leadership.

Thank you, Mr. Chairman.

Chairman ARMEY. The gentlelady from Ohio.

Ms. PRYCE. Thank you very much, Mr. Chairman. And Chairman Tauzin, I am very sorry, I missed your presentation. But I have a question about your committee's work in terms of changing the Department, the proposal the Department has to make the Division of Chemical, Biological, Radiological and Nuclear Countermeasures into a division focused primarily on research and technology. And I am sure you addressed that in your remarks.

But many have criticized the administration's effort, up to now, of being too broad already. And broadening this aspect of it, I would like your thoughts about how this could, or perhaps may not, detract from the division's mission to prevent these chemical and nuclear, biological attacks on American soil.

And do you think that broadening this part of the plan is a good idea in terms of how large it is already?

Mr. TAUZIN. Well, first of all, there is no question that in our hearings, as I say, we had 40 witnesses that came forward. We learned two things. One is that much of this work is already being conducted on very important areas of research and development.

That is critical in the various authorities that currently exist in those departments, and we don't want to interfere with that.

On the other hand, this department should have the right, for example, to specifically direct the laboratory to examine an issue that may affect the security of our homeland. So we have made it clear they have that power to specifically direct some laboratory research that may be necessary. But, as I said, we very much object to the notion that they ought to control the funding that eventually goes to these departments to do these kinds of things that currently are being done in research and development at NIH and CDC, that generally affect the public health or agricultural health of our country, when that work is customarily performed for nonterrorist activities. So we have tried to balance it very carefully.

In structuring the bill, our recommendations has a requirement for collaboration and consultation in giving the new Secretary actual authority to direct research when he or she may need it for protection of our homeland, but nevertheless respecting the current role of these agencies who every day protect us from infectious diseases and outbreaks and who every day are working on cures for cancer and all the other things that are critically important to our country without a terrorist threat.

Ms. PRYCE. Does your committee's proposal put this under the new department?

Mr. TAUZIN. We leave to the HHS, as the President has recommended, these functions, but we give to the new department the right, in fact the obligation, to consult with, collaborate with these agencies in setting priorities that might affect homeland security. And we give them, as I said, specific authority to direct research at our labs when it is clear that research will yield some benefit to homeland security.

Ms. PRYCE. Thank you, Mr. Chairman. I yield back.

Chairman ARMEY. The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to thank both the chairman and the ranking Democrat on the work that they have done.

I raised a series of questions with Secretary Thompson, Governor Ridge and others when they were here, based upon statements made by a variety of people on the whole question of our public health and research, and I think that you have addressed it; but I want to raise them again and have you tell me whether what you did in committee responds to these concerns.

Dr. Margaret Hamburg of the Nuclear Threat Initiative said that if these programs, referring to public health research and work of the CDC, are carved out of their current habitats and moved into the new proposed department that the likely outcome would be to weaken and fragment our Nation's capacity to respond to infectious disease, whether occurring naturally or caused intentionally. Dr. Tara O'Toole of the Center for Civilian Biodefense at Johns Hopkins said that if this takes place, the country will be forced to create parallel work forces, one in Homeland Security for bioterrorism preparedness and another in HHS for normal public health functions. And the GAO found that the structure, as proposed, does not ensure both the goals of homeland security and public health will

be met or how priorities for basic public health capacities currently being funded to the dual CDC programs will be maintained.

Do you believe what you did in the committee—particularly, I saw your comments, Mr. Dingell, on title III. Do you believe that that responds to those concerns, as well as you, Chairman Tauzin?

Mr. TAUZIN. We think they do. We make it very clear, and we understand the administration supports us in this clarification. Those programs remain with the agencies that are conducting that research and development. Research and development does not move to the new department. The new Secretary does not have the power to set the priorities.

Mr. MENENDEZ. That is different than the administration's mark.

Mr. TAUZIN. That is a little different. We clarified it, I suppose is a better way to put it.

What we made clear is that the new Secretary nevertheless has the right to collaborate with those agencies in defining priorities. So, in fact, the President and new Secretary determine that the work of these agencies can best be prioritized in an area that is critical to a new element affecting homeland security. Collaboration is then required to determine that new priority.

Mr. MENENDEZ. We would want all of our departments to collaborate in terms of suggesting what is the best course for public health in the Nation, including within a security context, but your committee made it very clear that HHS retains the power to make that decision at the end of the day.

Mr. TAUZIN. That is correct. Obviously, who controls the money has a lot to do with that. That is why our committee strongly recommends that the new Secretary not have primary control over the $1.9 billion that goes into NIH grants or the $1.5 billion that goes into public health emergency grants. We think that money needs to go to those agencies, so that they maintain their primary role in setting the priorities of those research and development projects, always giving the Secretary and the President the capacity to collaborate those agencies and reassessing priorities, if that is necessary.

But controlling the money obviously does shift and lever the decisions and priorities; and we think not only would that be wrong, but that would be a much more cumbersome way in which to make the money flow expeditiously to the purposes intended.

Mr. MENENDEZ. Mr. Dingell, would you agree with that?

Mr. DINGELL. I agree absolutely.

Mr. MENENDEZ. And that vote that took place was bipartisan in your—.

Mr. TAUZIN. Yes.

Mr. MENENDEZ. Also, one thing: I want to commend you, Mr. Tauzin. Something we have not touched upon in this committee or looked at in the context of this department, but it is cyber security, and you make the point in your written statement that the vulnerability of some of these systems that control our electricity networks or the operation of large dams or drinking water systems is incredibly important and subject to attack. In the committee's mark, could you describe where within the new department you see such functions taking place?

Mr. TAUZIN. We actually recommend a special department within the new department. Those will be focused on cyber security. And the reason we recommend that is because our 4-year hearing process into this matter has quite disturbed us.

We have had red teams from GAO come in and demonstrate in front of our committee members the ease with which they have been able to hack into sensitive government material, sometimes not into a government agency, but a government agency that is a link to a government agency. They have been able to compromise the security systems, and been able to take control of our microphones, they have been able to take control of the video cameras on top of computers in some of these agencies.

And to see them do that in our committee, I think heightened all of our awareness. This new threat to our Nation, which we understand now from the Intelligence Committee information gathered and presented to us, very much includes cyber attack capabilities. It needs to be a high priority, a special unit within the new department focusing on strengthening and improving the security systems of our Nation's sensitive infrastructures, not just those that are public, but very importantly, as you point out, the private water systems or electric systems or utility systems that are critical to our Nation's health and economy.

Mr. MENENDEZ. Thank you.

Chairman ARMEY. We can't help but observe how much more active these hackers will be when they all have broadband.

Mr. TAUZIN. Absolutely. But again you make a good point. With the slow-speed dial-up systems that currently exist, it is one thing to protect them, but when you get into digital broadband high-speed systems, we had better have a special department within this new department on top of these new systems because they are going to be extraordinarily vulnerable. And the technology has changed so rapidly that unless somebody is on it constantly, and as Mr. DeLay pointed out a minute ago, unless somebody is finding new technology, not the old technology, we are going to be in a lot of trouble.

Chairman ARMEY. Thank you.

Mr. PORTMAN. Thank you, Mr. Chairman. I appreciate the testimony on Energy and Commerce. I appreciate the seriousness with which the Committee, on a bipartisan basis, has looked at its areas of jurisdiction and notwithstanding—so Mr. Dingell's larger concerns have given us some constructive changes. The big one is, I think, the funding issue.

Secretary Thompson, as you know, testified before this committee that he believed that the administration's proposal is the proper way to go; in other words, taking some of these funding decisions of public health away from him and, instead, putting them in Homeland Security.

You talk about a consultation process where the Secretary of HHS will continue to have that budget authority, but he would consult with the Homeland Security Department and that Secretary. Is there a way to strengthen that?

In other words, can you see a way where, perhaps not a veto, but there would be more than simply consultation on behalf of the

Homeland Security agency to be sure they are getting the public health information they need?

Mr. TAUZIN. Mr. Portman, I think we have literally tried to strike that balance. The original language required consultation. We went a great deal forward when we talked about collaboration to actually make the decisions together when it comes to homeland security priorities. But again I don't have to tell you, it is one thing to leave the program at HHS, CDC, or NIH and then have a new Secretary control the funding.

How can you not agree with the man who has the money to decide whether or not you spend it?

Mr. PORTMAN. You are aligning responsibility and authority.

The second question—and Mr. Dingell feel free to chime in here on these—there are in your draft section 503 changes with regard to the Secretary of Homeland Security and his ability to be able to respond to a threat of a nuclear incident. Your language, as I read it, says he must wait for an actual threat to occur before he can take charge of a nuclear incident response team. Is that accurate?

Mr. DINGELL. I don't think that is what we said, and I don't think that is what we have intended. I think we expect a certain amount—I think the language of this proposal indicates—an expectation is that the Department of Homeland Security will do the things it has to do on a participatory basis to provide the necessary security protection of the public interest here.

We face a very major problem. A huge problem this country confronts is addressing problems of health, of biology, of risks from diseases and things of that sort. We have a wonderful mechanism set up to address that. If you make changes, you are liable to significantly adversely affect that capacity. We don't want that to be hurt any more than it has to be by the changes we are engaging in here.

We are trying, at the same time, to see to it that the new agency gets the authorities it needs to address the concerns it confronts. Those will occur less frequently, but they will require considerable participation at the right time and fashion.

We want to see both occur, but we don't want to lose what has been very valuable in this country, and that has been the ability to move forward on diseases and public health risks which are very severe, and we didn't want to see the shift of emphasis from public health to simply addressing the problem of a momentary exercise, which involved essentially addressing some kind of a terrorist act.

It is a difficult balancing, but you have to understand you have to protect both capabilities.

Mr. TAUZIN. The staff indicates to me, Mr. Portman, that we didn't make any significant changes.

Mr. PORTMAN. So section 503 in terms of the nuclear incidents is pretty much the way the administration proposed it?

Mr. TAUZIN. Yes. My staff indicates to me that we have not materially affected the print that was offered in the bill.

Mr. PORTMAN. I do appreciate the fact that your committee has seen some inadequacies in our response to bioterrorism and taking advantage of this opportunity to try to streamline that approach, so that next time we are faced with such a threat, we can be better prepared; and I want to commend you for that. And I think, again,

you have given the Select Committee some constructive suggestions along these lines over and above what the administration had proposed.

One final quick question, Mr. Dingell: You were here when the Department of Energy was created. You were integral to that. What lessons did you learn from the creation of the Department of Energy that we could—.

Mr. DINGELL. Lessons? Well, the following—.

Mr. TAUZIN. Restrain yourself, John.

Mr. DINGELL. One, be very careful. Two, it is full of surprises. Three, you are liable to create enormous confusion and mess you can't anticipate. And last I would say be careful what you ask for because you are just liable to get it and you may be sorry.

Mr. TAUZIN. I will be more specific with you, Mr. Portman.

The Department of Energy was, in many cases, an agency cobbled together with a lot of different things that were happening in our government. Many of those areas cobbled together not only don't get along, but are antagonistic to one another in many cases. It is an agency riddled with fiefdoms, and I believe one of the most unfortunate, badly cobbled together agencies of the Federal Government.

And Mr. Dingell's advice to the President at the very beginning of this process, to look at what happened in the Energy Department when it was created.

Mr. PORTMAN. To be sure there was a clear mission, clear strategy—.

Mr. TAUZIN. And to make sure we don't repeat those mistakes has been a good message.

Mr. DINGELL. One of the things I learned—and I handled the legislation on the House side as the chairman of the subcommittee of jurisdiction—is that through a remarkable effort of cooperation, coordination, and so forth, led by a wonderful gentleman by the name of Frank Zarb for both President Ford and President Nixon, we were able to meet the serious character of the energy threat that we confronted.

We did it without setting up a new department. We did it as a Nation by having the President fully behind the power, the prestige and capability of Mr. Zarp to address this; and he did it with an extraordinary level of understanding and cooperation, which he engendered among all who were concerned, including the private companies which were absolutely vital to the accomplishment of these goals.

I didn't understand it at the time, but looking back in history, I can tell you, I do now understand what he did. I can telling you that when you have a crisis, you don't just manufacture a department to deal with it. You begin to bring in all the people that you have to bring in to do the work, and you get them to cooperate in America—public, private, ordinary citizens, all of them who will work together on this.

I can tell you, you put them in a department, and then the warfare and the trouble starts. And I can just tell you that you should anticipate you are going to have a vast period of confusion when you set this agency up. It is going to be counterproductive.

Mr. TAUZIN. We are going to have to oversee every part.

Chairman ARMEY. Let me thank both our witnesses and the gentleman from Ohio.

The gentlelady from California.

Ms. PELOSI. I have already had my questions. I want to join in thanking our distinguished witnesses for their excellent testimony, and I know you have the last word.

Chairman ARMEY. I believe I heard the Chair—I heard the chairman have the last word, and I believe it is a good word for us, "oversight." the agency and the Federal Government must be subjected, as all of our Federal Government must, to congressional oversight. I have no doubt that your mark is instructive on that as it is on other matters.

I want to thank both of you gentlemen and your committee for a good mark. It is quite constructive to me as I prepare my chairman's mark. Thank you for your testimony, and we may excuse our witnesses with great appreciation.

Without objection, the Select Committee will stand in recess until 2 o'clock.

[Recess.][2:05 p.m.]

Chairman ARMEY. The committee will come to order.

The committee is delighted to hear from the Government Reform Committee. Gentlemen, we try to work with a 5-minute rule here. We will, without objection, place your written statements in the record, and we will ask you each in your turn, so far as you are able, to summarize your opening statements within the 5-minute rule; and then we will proceed from there to questioning under the 5-minute rule.

With those admonitions, we will begin with Chairman Burton.

## STATEMENT OF THE HONORABLE DAN BURTON, CHAIRMAN, COMMITTEE ON GOVERNMENT REFORM

Mr. BURTON. Thank you, Mr. Chairman. I would like to say at the outset that I probably will go a little bit over the 5 minutes, and that is because we had the whole bill, not just parts of it, and there were 40-some amendments that we dealt with. So I will try to be as brief as possible.

First of all, I would like to say how proud I am of what the committee did on this bill. We marked it up last Thursday. We started working at 10:00 in the morning and finished close to 2:00 the next morning, a 16-hour marathon. We had almost 40 amendments, and when we were through, even though we had a lot of discussions and disagreements, the bill was passed by a vote of 30 to 1.

At the beginning of the meeting, I said that I wanted this to be bipartisan. And I have to say to my colleague, Mr. Waxman, who is here, it was bipartisan; and we had disagreements and long debates, but I think things were handled in a pretty fair way, and we all worked together.

I am especially proud of the fact that we voted together to keep the main building blocks of the President's plan, as some of the other committee's did not. And I am a strong supporter of President Bush's plan. We voted to keep the Coast Guard in the bill. We voted to keep the INS in the bill. We voted to keep the Secret Service and FEMA in the bill, and those are very important votes.

Without those agencies, the Department of Homeland Security simply won't work. You cannot have a department that focuses on border security without the Coast Guard. You cannot have a permanent department that focuses on recovery from terrorist attacks without FEMA.

The fact remains that we weren't prepared to prevent what happened on September 11, and we weren't prepared to recover from a terrorist attack of that magnitude. We need to have these agencies working together in a coordinated way to prevent the next terrorist attack. By creating this new department, we think we are going to improve upon that coordination.

Let me say a few words about management flexibility. Putting together this department is going to be a huge undertaking. They are going to need some flexibility to get the job done. We did not give the administration everything that they asked for; however, we put together proposals on procurement and property and personnel that I think are balanced and fair. I think these provisions are sound, but at the same time, we are open to further discussions. People may have ideas that will improve on what we have done, and obviously what you decide will be the final decision.

I want to emphasize two specific personnel issues, first, the Morella amendment. I have a lot of respect for Connie Morella. We worked together on a number of issues, but I disagree with her on this amendment. Her amendment would limit the President's authority to restrict collective bargaining at the Homeland Security Department on national security grounds. I think this would be a very big mistake.

First of all, there is no evidence of a problem here. This is a power that has been used sparingly by Republican Presidents and Democratic Presidents, so I don't understand what problem we are trying to fix.

Secondly, we are in a war. The Homeland Security Department is a central part of our strategy to win that war. Why would we want to give the President less authority over Homeland Security, in that department, than he has over any other department?

This was probably the most controversial issue we dealt with last week, and by the way, we had members of the committee who are strong supporters of Federal employees speak against this amendment as well. It was approved by only one vote.

I think it is a mistake to limit the President's national security authorities right now, since we are in a war; and I would ask the Select Committee to reconsider that issue.

The second issue I want to raise in this area is pay ceilings. At one time or another, almost every Federal agency has come to our committee and asked that they have these pay ceilings lifted for the senior executives. I think that is a mistake. We have had agencies come to us and ask that they be allowed to pay their managers more than the head of an agency. That does not make sense from a management standpoint and doesn't make sense from a fiscal standpoint either. When you look at those agencies that have been given exemptions from the pay ceilings, I think you will find that their costs have gone up and that their management has not necessarily improved.

So I would ask that you would follow our example and not remove the pay ceiling.

Now, regarding indemnification, the indemnification provisions that we added to the bill are very important. There are high tech companies across the country that are developing cutting-edge technology to help prevent terrorist attacks, but in some cases, they cannot sell them to the government because they can't get enough insurance. The risks of liability from major terrorist attacks are so great that insurance companies cannot, or will not, afford to insure these products.

We need these new technologies to protect the country and critical infrastructures. Right now we are vulnerable.

We put together a very responsible proposal to deal with this problem. It would allow the Federal agencies to indemnify contractors for antiterrorist technology after they purchased as much private insurance that they can get. In other words, if they buy insurance up to a certain level that is the maximum level they can get, they are worried about their exposure, the government will be able to provide a hold harmless clause above that.

The Secretary of Homeland Security could also indemnify contractors on behalf of State and local governments on the same terms. The Director of OMB would have a very strong role to play in the process to protect the interests of the taxpayers.

This proposal has bipartisan support, and I hope you will include this in the bill you send to the floor.

Finally, I would like to make a few brief comments on the issue of visas. I believe very strongly that the authority for issuing visas belongs at the Homeland Security Department. I think this is part of our first line of defense against terrorists trying to get into this country. The State Department has never taken security concerns very seriously in this area. Many of my colleagues agree with me, including the chairman of the Judiciary Committee, Mr. Sensenbrenner. Unfortunately, we did not prevail last week and I want to give you a couple of examples.

Charles Parish worked in Beijing. He granted visas to people because of sexual favors and money. He took the Fifth Amendment before my committee. After he took the Fifth Amendment, he got four separate raises, was promoted, and they put him in charge of checking out visas for Iran and Iraq in the Middle East; and here is a guy who sold visas for sex and money. Now, I just can't understand how the State Department could allow that.

We had visa fraud in Qatar. Just last week it was reported that an employee there was selling visas for $10,000 or more apiece. He sold one visa to a person who was involved or linked to the September 11 tragedy.

We had fraud cases in other countries. In Guyana, a fellow got 21 years in prison for selling 800 visas for over $10,000 apiece and 26 of the individuals he sold visas to committed crimes in the U.S. including gang rape and other crimes. In Juarez, Mexico, a consular officer was recently arrested for selling visas. Also, a DEA embassy staffer was recently convicted for bribery for helping Nigerians obtain fraudulent visas.

This has to be tightened up, and I don't see the State Department tightening it up.

Now, they also failed to investigate the September 11 tragedy. This is something most people don't know. We learned that GAO interviewed a number of the consular officers over in Riyadh, Saudi Arabia, and when they asked the consular officers about the visas they were dealing with before the tragedy on September 11, they said the people from GAO were the first people to ask them about that. And this was just recently; nobody from the investigative arm of the State Department ever went over and checked that out, and you would have thought that would have been the first thing they would have done.

They also had a process over there called Visa Express where you could go get a visa from a travel agent, and it was just rubber-stamped at the embassy. Three of the hijackers received their visas through the Visa Express program; and that should be eliminated right now. And the State Department still has that ongoing, even though that is a tragedy.

Let me just end up by saying I am disappointed that we had a compromise on that. We did work with our colleagues on the Democrat side. In particular, we worked with Representative Lantos on this. We did come up with a compromise where there would be a person from Homeland Security in each embassy to oversee that. That is a giant step in the right direction, but I still feel personally, and I think many of my colleagues do, that we ought to take the visa situation completely out of State and put it under Homeland Security. That is the first line of defense.

And finally let me just say once again that I think the committee did an outstanding job. I compliment my colleague, Mr. Waxman, and his colleagues for their cooperation; and I hope that you will look favorably on almost everything we did.

[The statement of Mr. Burton follows:]

PREPARED STATEMENT OF THE HON. DAN BURTON, CHAIRMAN, COMMITTEE ON GOVERNMENT REFORM

Good afternoon. Thank you for inviting me to testify before you today.

Before I talk about the substance of the bill, I want to say a few words about the Government Reform Committee. I'm very proud of the work that our Committee did on this bill. We marked it up last Thursday. We started working at 10:00 in the morning, and we went straight through until 1:00 the next morning. We voted on nearly 40 amendments. At the end of that process, we approved that bill by a vote of 30 to 1.

At the beginning of our meeting, I said that I wanted us to have a bipartisan process—and it was. We had some disagreements. We had some long debates. But we handled every issue in a fair and open way. At the end of the day, we wound up with a good bill that Republicans and Democrats voted for.

KEEPING THE STRUCTURE INTACT

I'm especially proud of the fact that we voted to keep together the main building blocks of the President's plan. I'm a strong supporter of this plan.

- We voted to keep the Coast Guard in this bill.
- We voted to keep the INS in this bill.
- We voted to keep the Secret Service and FEMA in this bill.

Those were very important votes. Without these agencies, the Department of Homeland Security won't work. You cannot have a department that focuses on border security without the Coast Guard. You cannot have a department that focuses on recovery from terrorist attacks without FEMA.

The fact remains that we weren't prepared to prevent what happened on September 11. And we weren't prepared to recover from a terrorist attack of that magnitude. We need to have these agencies working together in a coordinated way to

prevent the next terrorist attack. By creating this new department, we're going to improve that coordination.

MANAGEMENT FLEXIBILITY

Let me say a few words about management flexibility. Putting this department together is going to be a huge undertaking. They're going to need some flexibility to get the job done. We didn't give the Administration everything they asked for. However, we've put together proposals on procurement and property and personnel that I think are balanced and fair. I think these provisions are sound, but at the same time, I'm open to further discussions if people have ideas that will improve what we've done.

I want to emphasize two specific personnel issues. First—the Morella Amendment. I have a lot of respect for Mrs. Morella. We've worked together on a number of issues. But I disagree with her on this amendment. Her amendment would limit the President's authority to restrict collective bargaining at the Homeland Security Department on national security grounds. I think this would be a mistake.

First of all, there's no evidence of a problem here. This is a power that's been used very sparingly, by Republican Presidents and Democratic Presidents. So I don't understand what problem we're trying to fix. Secondly, we're in a war. The Homeland Security Department is a central part of our strategy to win that war. Why would we want to give the President less authority over the Homeland Security Department than he has over any other Department?

This was probably the most controversial issue we dealt with last week. And by the way, we had Members of the Committee who are strong supporters of Federal employees speak against this amendment. It was approved by only one vote. I think it's a mistake to limit the President's national security authorities right now, and I would ask the Select Committee to reconsider this issue.

The second issue I want to raise in this area is pay ceilings. At one time or another, almost every Federal agency has come to my Committee and asked to have the pay ceilings lifted for their senior executives. I think this is a mistake. We've had agencies come to us and ask that they be allowed to pay their managers more than the head of the agency. That doesn't make sense from a management standpoint. And it doesn't make sense from a fiscal standpoint. When you look at those agencies that have been given exemptions from the pay ceilings, I think you'll find that their costs have gone up, but that their management hasn't necessarily improved. So I would ask you to follow our example and not remove the pay ceiling.

INDEMNIFICATION

The indemnification provisions that we added to the bill are very important. There are high-tech companies across the country that are developing cutting-edge technology to help prevent terrorist attacks. But in some cases, they can't sell them because they can't get enough insurance. The risks of liability from a major terrorist attack are so great that insurance companies can't afford to insure these products.

We need these new technologies to protect critical infrastructures. Right now, we're vulnerable. We've put together a very responsible proposal to deal with this problem. It would allow Federal agencies to indemnify contractors for anti-terrorist technology after they've purchased as much private insurance as they can get. The Secretary of Homeland Security could also indemnify contractors on behalf of state and local governments on the same terms. The Director of OMB would have a very strong role to play in the process to protect the interests of the taxpayers. This proposal has bipartisan support, and I hope you'll include this in the bill you send to the floor.

AUTHORITY OVER VISAS

Finally, I'd like to make a few brief comments on the issue of visas. I believe very strongly that the authority for issuing visas belongs at the Homeland Security Department. I think this is part of our first line of defense against terrorists trying to get into this country. The State Department has never taken security concerns very seriously. Many of my colleagues agree with me, including the Chairman of the Judiciary Committee. Unfortunately, we didn't prevail last week.

I'm disappointed in that, but I do think that the compromise we've arrived at is better than the Administration's proposal. It would give the Homeland Security Department the authority to have employees on site at every consulate to monitor visa activity. And it would clarify that the final authority to reject a visa application rests with the Secretary of Homeland Security. I hope the Select Committee will adopt this language. I also hope that you'll adopt an additional amendment that we

approved that would terminate the Visa Express program in Saudi Arabia. Fifteen of the 19 September 11 hijackers came from Saudi Arabia. Three of them got their visas through the Visa Express program. Given those facts, I can't imagine why we would have a program in that country that let's people apply for their visas through a travel agent. It doesn't make any sense. The fact that the State Department continues to defend it speaks volumes about why this responsibility belongs at Homeland Security.

Thank you again for allowing me to testify. That concludes my statement. I'd be happy to take any questions.

Chairman ARMEY. Thank you. Mr. Waxman.

**STATEMENT OF THE HONORABLE HENRY A. WAXMAN, RANKING MINORITY MEMBER, COMMITTEE ON GOVERNMENT REFORM**

Mr. WAXMAN. Members of the Select Committee, thank you for inviting me to testify today.

It is clear we need homeland security legislation. Federal departments are not working together as they should to protect our Nation. Unfortunately, the bill proposed by the President has serious flaws; in fact, I think it may well cause more problems than it solves.

Last week, I joined with Representative David Obey, the ranking member of the Appropriations Committee, in sending a letter to Governor Ridge outlining a number of serious concerns with this bill; and I ask that that letter be part of the record.

Chairman ARMEY. Yes. The record is open, and without objection, it will be in.

[The information follows:]

*July 9, 2002.*

DEAR GOVERNOR RIDGE: Congress is considering the President's proposal to create a new Department of Homeland Security on an accelerated schedule. But now that Congress has received the legislative language that would implement the President's plan. Many issues have arisen about the details of the proposal. We are writing in the hope that you will be able to provide expeditious responses to these concerns.

The issues fall into ten main areas. First, the new Department will inherit a vast array of responsibilities that have nothing to do with homeland security. These include administering the National Flood insurance Program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of responsibilities unrelated to homeland security risks bloating the size of the bureaucracy and diluting the new Department's counterterrorism mission.

Second, the legislation lacks an effective mechanism to coordinate the activities of the many federal agencies that have major homeland security functions. The President's submission to Congress listed 153 different agencies, departments, and offices involved with homeland security.[1] After the creation of the proposed new Department, this number actually will increase to 160 agencies, departments, or offices with security roles. But the draft bill does not include a mechanism for developing and implementing a unified homeland security strategy across the entire government.

Third, there are inefficiencies and coordination problems that will arise when parts of agencies are removed from their existing departments and moved to the new Department. The goal of the legislation is to make government more efficient, but some of the proposed changes could have exactly the opposite effect. For example, GAO has testified that programs transferred from the Department of Health and Human Services include "essential public health functions that, while important for Homeland Security, are critical to basic public health core capacities."[2]

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[1] President George W. Bush, The Department of Homeland Security (June 2002) (hereinafter "White House Briefing Document") (on line at *http://www.whitehouse.gov/deptofhomeland/*).

[2] General Accounting Office. Homeland Security: New Department Could Improve Coordination but May Complicate Public Health Priority Setting, 6 (June 25, 2002) (GAO-02-883T).

Fourth, despite prior assurances that the Administration supported reforms of the Immigration and Naturalization Service (INS) that were passed by the House, The President's proposal would import the INS into the new Department of Homeland Security wholly intact and without these needed internal reforms.

Fifth, the legislation includes broad exemptions from our nation's most basic "good government" laws. The legislative language would allow the new Secretary, in conjunction with the Office of Personnel Management, to waive all provisions of our civil service laws. These laws have evolved over many decades to ensure that our government has a professional civil service hired on the basis of merit rather than political favoritism. Yet the proposed legislation would allow the new Department to waive all of these protections, including those that prohibit patronage, protect whistle blowers, provide for collective bargaining rights, and ensure health and retirement benefits.

A similar approach has been taken with procurement and the management of real property. Under the proposal, the Secretary does not have to comply with cornerstone procurement principles, such as open and competitive bidding. Moreover, basic government in sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act, have been limited in their application to the new Department.

Sixth, the President's proposal would give the new Department extraordinary powers to avoid meaningful congressional oversight. Not only would the new Department be able to exempt itself from civil service, procurement, and property laws, it would also be able to rearrange functions, eliminate offices, and transfer large amounts of appropriated funds without having to seek prior Congressional approval.

Seventh, the proposal does not address the potential for disruption in the nation's war against terrorism. According to David Walker, the Comptroller General of GAO:

> [R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country a terrorism.[3]

Although Administration officials have compared this restructuring to the formation of the Department of Defense in the 1940s, that reorganization was not attempted until after the war was over, and even then it caused confusion and inefficiencies for decades.

Eighth, there is no comprehensive national strategy for combating terrorism to guide the new Department. Logically, a major bureaucratic reorganization like this should be proposed as part of a comprehensive national strategy for providing homeland security. But in this case, the reorganization is occurring in a vacuum. There is no national strategy that identifies the major threats the nation faces and explains how the new Department will meet them. Nor is there a comprehensive threat and risk assessment that identifies and prioritizes threats in a coherent manner.

Ninth, the costs of this proposal have not been identified. Although the Administration has stated that the creation of this new Department "would not 'grow' government,"[4] this is not credible. According to the nonpartisan Congressional Budget Office, even the less ambitious reorganization proposed by Senator Lieberman will cost taxpayers over $I billion over the next five years.[5] Costs for the Administration's plan inevitably will be higher.

Finally, the Administration's proposal was developed in secret by a small group of White House advisors, without substantive input from the agencies that handle homeland security. It is being rushed through Congress on an accelerated schedule. This is not normally an approach that produces sound policy. The potential for making grave mistakes as a result of this truncated process should be a serious concern for all Americans.

We need to work together to address the concerns raised in this letter and to make improvements in the legislation. Your response to the issues and questions raised in the body of this letter will be an important step in this process. For this reason—and given the short time frame Congress has for consideration of the legislation—we urge you to respond by July 15, 2002.

**I. TRANSFER OF FUNCTIONS NOT RELATED TO HOMELAND SECURITY**

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[3] U.S. General Accounting Office. Homeland Security: Proposal for Cabinet Agency Has Merit, But Implementation Will Be Pivotal to Success, 5 (June 25, 2002) (GAO-02-886T).

[4] House Briefing Document, *supra* note I, at 17.

[5] Congressional Budget Office, Cost Estimate: S. 2452, National Homeland Security and Combating Terrorism Act of 2002, 1 (June 17, 2002).

According to the White House briefing document issued on June 7, 2002, the Department of Homeland Security "must be an agile, fast and responsive organization."[6] Transferring functions that do not involve homeland security to the new Department, however, interferes with this goal. Giving the new Department unnecessary responsibilities inevitably will expand the size of its bureaucracy and dilute its counterterrorism mission.

At the same time, giving vital but unrelated government responsibilities to the Department creates the risk that these responsibilities will be neglected and performed poorly. As GAO has concluded, many of the unrelated functions being given to the new Department "represent extremely important functions executed by the federal government that absent sufficient attention, could have serious implications for their effective delivery and consequences for sectors of our economy, health and safer research programs and other significant government functions."[7] Despite these risks, many important government functions that are not related to homeland security are being transferred to the new Department. In fact, the new Department will have to carry out over three dozen completely unrelated missions under the President's proposal.

Section 402(3) of the President's proposal would transfer the Animal Plant Health inspection Service (APHIS), which is now currently part of the Department of Agriculture, into the new Department. APHIS has nearly 8,000 full-time employees (FTEs), but few have responsibility for inspecting plants and animal products at the border. The other APHIS employees perform functions that are critical to various sectors of the economy, but are not related to homeland security. For example, APHIS is responsible for:

- Eradicating pests, such as the boll weevil, the citrus canker, the gypsy moth, and various noxious weeds through detection and control strategies throughout the United States;
- Approving animal drugs that are made from biological materials, such as animal vaccines;
- Approving field trials of genetically modified crops; and
- Maintaining the missing pet network at *www.missingpet.net.*

Section 502(1) of the President's proposal would transfer the Federal Emergency Management Agency (FEMA) into the new Department. To date, however, FEMA has had a limited role in counterterrorism. According to former FEMA director James Lee Witt, "[o]ver the last decade FEMA has responded to more than 500 emergency and major disaster events. Two of those were related to terrorism (Oklahoma City and New York City)."[8] In Mr. Witt's view, "[f]olding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards."[9] Major FEMA responsibilities that are unrelated to homeland security include:

- Providing flood insurance and mitigation services (including pie-disaster mitigation, the Hazard Mitigation Grant Program, and flood mapping);
- Conducting various programs to mitigate the effects of natural disasters, such as programs to assist states in preparing for hurricanes and the National Earthquake Hazards Reduction Program;
- Providing temporary housing and food for homeless people; and
- Operating the National Fire Data Center and the National Fire incident Reporting System to reduce the loss of life from fire-related incidents.

Section 402(4) of the President's proposal would transfer the United States Coast Guard out of the Department of Transportation and into the new Department. The Coast Guard describes itself as a "multi-mission, military, maritime" agency. Although it performs some security-related functions, it also conducts many others unrelated to homeland security. For example, Coast Guard responsibilities include:

- Providing navigational tools to ensure that vessels can navigate the nation's waterways;
- Promulgating and enforcing boating regulations to ensure that oceangoing vessels are safe;
- Protecting the nation's fishery resources, as well as its endangered species, by enforcing prohibitions against illegal and excess fishing;
- Protecting the maritime environment by preventing oil spills in the nation's waters and ensuring that spills are cleaned up expeditiously if they happen: and

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[6] White House Briefing Document, *supra* note 1, at 16.

[7] GAO-02-886T, *supra* note 3, at 19.

[8] James Lee Witt and Associates, Department of Homeland Security and FEMA (white paper) (June 19, 2002).

[9] *Id.*

• Maintaining a fleet of ships that is capable of breaking ice in order to maintain maritime mobility and monitors the movement of glaciers.

These Coast Guard functions are essential, but they could be jeopardized by the transfer to a new Department focused on homeland security. Indeed, the effects of the shift in the Administration's priorities are already being felt. According to the Administration's homeland security budget justification for fiscal year 2003, "[a]fter September 11, the Coast Guard's port security mission grew from approximately 1–2 percent of daily operations to between 50–60 percent today.[10] Without a sustained commitment to its core marine and fishery functions, the Coast Guard's ability to protect boaters and the marine environment will be jeopardized.

There are many other examples of unrelated functions being transferred to the new Department. The transfer of the Environmental Measurements Laboratory from the Department of Energy (DOE), for example, will make the new Department responsible for maintaining the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, as well as the program that assesses the quality of 149 private laboratories that measure radiation levels. Radiation measurement quality control undoubtedly will seem like a small item to the new Department of Homeland Security, but assuring that the laboratories make accurate measurements is important, as mistakes potentially could affect public health and cause large unnecessary public expenditures at DOE facilities.

Appendix A contains a list of 40 unrelated functions that would be transferred to the new Department by the President's proposal. While it may be impossible to create a new Department without transferring some unrelated functions, there would seem to be serious dangers inherent in the wholesale transfer of unrelated functions as contemplated in the Administration's proposal.

**II. LACK OF EFFECTIVE COORDINATING MECHANSMS**

At the same lime that the Administration's proposal transfers numerous unrelated functions to the new Department, the proposal also fails to include provisions that would ensure the coordination of the more than 100 federal entities that will continue to have significant homeland security functions.

According to the Administration, "*responsibilities for homeland security are dispersed among more than 100 different governmental organizations.*" [11] Indeed, an organizational chart provided by the White House listed 153 different agencies, departments, and offices with a role in homeland security (see Figure 1). The White House argues that the President's proposal would solve this problem by "transforming and realigning the current confusing patchwork of government activities into a single department." [12]

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In fact, however, the President's proposal will not simplify this patchwork and may even make it worse. Even after all of the changes proposed in the President's legislative language, the federal government would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to an analysis by the minority staff of the Appropriations Committee, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President's proposal, from 153 to 160 (see Figure 2) [13]

IMAGE HERE (See if same as prior image)

One example of the continued need for coordination across agencies involves providing emergency response. According to the Administration:

Currently, if a chemical or biological attack were to occur, Americans could receive warnings and health care information from a long list of government organizations, including HHS, FEMA, EPA, GSA, DOJ, OSHA, OPM, USPS, DOD, USAMRIID, and the Surgeon General - not to mention a cacophony of local agencies.[14]

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[10] President George W. Bush, Securing the Homeland; Strengthening the Nation, 18 (undated) (hereinafter "fiscal year 2003 Budget Justification') (on line at *http://www.whitehouse.gov/homeland/homeland—security—book.html).*

[11] House Briefing Document, *supra* note 1, at I (emphasis in original).

[12] *Id.*

[13] A post-transfer organizational chart provided by the White House Office of Management and Budget shows the number of federal agencies, departments, and offices dropping to 134. The While House chart, however, lists the new Department of Homeland Security as having only six offices involved in homeland security. The White House chart omits major components of the new Department that will have homeland security functions, including the Coast Guard, the Office of Threat Analysis, and the office responsible for stale, local, and private sector coordination.

[14] White House Briefing Document, *supra* note 1, at 5.

But under the President's proposal, all but one of these 11 federal agencies (FEMA) would continue to exist, and this one agency would be replaced by the new Department. The potential for confusion—and the need for effective coordination—remains as great after the creation of the new Department as before.

In fact, in some cases, the reorganization will actually create confusion. Currently, three separate federal agencies are in charge of protecting the food supply: the Food and Drug Administration (FDA), which prevents adulteration of fruits, vegetables, processed foods, and seafood; the Environmental Protection Agency (EPA), which regulates environmental contaminants, such as pesticides; and the Department of Agriculture, which regulates the safety of meat and poultry for human consumption, as well as the spread of plant and animal pests through food products. Leading experts, such as the National Academy of Sciences, have called for consolidating these diffuse authorities into a single agency.[15]

The Administration's proposal, however, would further fragment regulation of the food supply by transferring some of Agriculture's responsibilities to the new Department, creating a fourth food safety agency. APHIS, which is charged with inspecting imports to ensure that pests and bugs that could harm crops or livestock do not enter the United States, would become part of the new Department. But the Food Safety inspection Service of the Department of Agriculture, which inspects domestic and imported meat and poultry for threats to human health, would remain at Agriculture. The nonsensical result, as GAO has observed, is that "the focus appears to be on enhancing protection of livestock and crops from terrorist acts, rather than on protecting the food supply as a whole."[16]

One area in which coordination is urgently needed is among law enforcement and intelligence agencies, in particular the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). How the new Department would relate to these agencies is not clear, however. One of the primary missions of the new Department is to "[p]revent terrorist attacks within the United States."[17] The Administration says that a new department with this mission is needed because "[t]oday no one single government agency has homeland security as its primary mission."[18] But the FBI has also just undergone a major reorganization. Now, it's primary mission is also "[p]rotecting the United States from terrorist attack"[19]—identical to that of the new Department of Homeland Security. As a result, rather than having no single federal agency with homeland security as its mission, the Administration seems to be proposing two.

Under the Administration's proposal for a new Department of Homeland Security, there will be a new office for intelligence and threat analysis. This office will assist in "pulling together information and intelligence from a variety of sources."[20] Similarly, under FBI Director Mueller's reorganization proposal, there will be a new office in the FBI called the Office of Intelligence that will also assist in "pulling together bits and pieces of information that often come from separate sources."[21] The Department of Homeland Security's intelligence office would "have the ability to view the dangers facing the homeland comprehensively, ensure that the President is briefed on relevant information, and take necessary protective action."[22] Similarly, the FBI's intelligence office will be charged with "providing analytic products to policy makers and investigators that will allow us to prevent terrorist acts."[23] This does not appear to be a recipe for a unified approach.

The investigation of the September 11 attacks has already revealed serious lapses in the analysis and sharing of intelligence information. In July 2001, an FBI special agent in Phoenix reported to his supervisors that followers of Osama bin Laden might be training at U.S. aviation schools and suggested a nationwide canvass of the schools.[24] But this warning was apparently ignored. As early as January 2001),

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[15] National Research Council. Ensuring Safe Food from Production to Consumption, National Academy Press (1 998) (recommending a major overhaul of food safety laws and appointment of a single federal official to oversee food safety). *See also* U.S. General Accounting Office, *Food Safety and Security : Fundamental Changes Needed to Ensure Safe Food* (Oct. 10, 2001) (GAO-02-47T) (recommending a single food safety agency).

[16] GAO-02-886T, *supra* note 3, at 18.

[17] White House Briefing Document, *supra* note 1, at 8.

[18] *Id.* at 1.

[19] Statement of Robert S. Mueller, III, before the Senate Committee on the Judiciary (June 6, 2002) (on line at *http://judiciary.senate.gov/testimony.cfm?id=279&wit—id=608*).

[20] House Briefing Document, *supra* note 1, at 14.

[21] Mueller Statement, *supra* note 19.

[22] White House Briefing Document, *supra* note 1, at 14.

[23] Mueller Statement. *supra* note 19.

[24] FBI *Whistle–Blower Assails Bloated Bureaucracy*, Washington Post (June 7, 2002).

the CIA obtained information that two of the September 11 assailants—Nawaz al Hazmi and Khalid al–Midhar—met with al–Qaeda agents in Malaysia. But this information was not provided to the INS until August 2001, by which lime al–Hamzi and al–Midhar had already entered the United States.[25]

The Administration's proposed bill, however, does not adequately address these problems. Although the bill gives the Secretary of Homeland Security rights of access to reports, assessments, and analytical information from other agencies that relate to threats and vulnerabilities, the Department remains primarily a "consumer" of intelligence information collected by agencies outside its control after that information is already processed by those agencies. This passive role will not ensure that the new Department obtains access to information that the collecting agencies deem insignificant, such as the warning from the FBI agent about flight schools. Although the Administration's bill allows for the transmittal of "raw" intelligence from outside agencies to the Department of Homeland Security, the Department is not given the resources to cope with the volume and complexity of this information.[26] Moreover, the new Department has no "tasking" authority to direct what intelligence is collected, making it difficult for the new Department to ensure that possible threats it identifies are properly pursued.

Another concern is the potential for confusion and interference in the actual response to bioterrorist incidents. The FBI will bring a law enforcement focus to the scene of a bioterrorist event, while the new Department will be concerned with the emergency response. Under the President's proposal, it is unclear which will prevail. Under Presidential Decision Directive 62, which was signed during the previous Administration, the FBI was designated as the lead agency for "crisis management," which included efforts to anticipate, prevent, and resolve terrorist attacks. FEMA was designated the lead agency for "consequence management," which included broader measures to protect public health and safety. The President's proposal seeks to "clarify" these responsibilities by "eliminating the artificial distinction between 'crisis management' and 'consequence management.'"[27] But it does not describe how the new Department and the FBI will handle the scene of a bioterrorist attack if they both arrive at the same time with fundamentally conflicting interests and goals.

There are many other instances of coordination problems that the President's proposal does not address. It is unclear in the President's proposal, for instance, how the Department of Homeland Security would organize and coordinate the various different police forces that exist among federal agencies. The Administration's proposal would transfer some of those forces (the Federal Protective Service, which protects buildings belonging to the General Services Administration (GSA)), but not others (the security forces protecting Department of Energy, Veterans, and judicial buildings). Moreover, removing the Federal Protective Service from GSA creates its own problems because, as GAO has observed, "security needs to be integrated into the decisions about location, design and operation of federal facilities."[28]

What is urgently needed is an effective entity at the While House level that can unify the disparate federal agencies with homeland security functions behind a comprehensive national strategy. This is supposed to be the mission of the White House Office of Homeland Security, which President Bush created in October 2001, and which you head. But the proposal does nothing to give the head of the office the kinds of authority needed to succeed.

**III. PROBLEMS WJTB EXTRACTING CERTAIN AGENCIES**

The sections above have raised concerns with transferring functions unrelated to homeland security and the lack of coordinating mechanisms regardless of whether agencies are inside or outside the structure of the new Department. Also of concern are the potential effects of removing certain functions from their home agencies.

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[25] Terrorism "Watch List" *Was No Match for Hijackers*, Washington Post (Sept. 23, 2001); *Can We Stop the Next Attack?*, Time.com (March 3. 2002). The CIA has claimed that it provided information on al–Midhar as early as January 2001, but the FBI has asserted that the information provided contained little detail. Sources: *CIA Warned FBI About Hijacker,* CNN.com (June 4, 2001); FBI and CIA *Fight It Out Over Who Was to Blame for September 11 Blunders*, The Guardian (June 5, 2002).

[26] Of the 1,000 people slated to staff the new Information Analysis and Infrastructure Protection Division, 800 reportedly will come from the FBI's National Infrastructure Protection Center(NIPC). These individuals, however, are already fully occupied with their current responsibilities, which involve protecting critical infrastructure, particularly with respect to computer and information technology. If given the new role of processing all raw intelligence information from the FBI, CIA, and other intelligence agencies, the existing NIPC staff would be both overwhelmed and diverted from its current tasks.

[27] White House Briefing Document, *supra* note 1, at 12.

[28] GAO-02-886T, *supra* note 3, at 18.

This is a particular problem for the functions being transferred from the Department of Health and Human Services (HHS). Section 502(5) of the President's proposal would move the Office of the Assistant Secretary for Public Health Emergency Preparedness and "the functions of the Secretary of Health and Human Services related thereto" to the new Department of Homeland Security. This provision makes little sense. In the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Congress created the Office of the Assistant Secretary for Public Health Emergency Preparedness in recognition of the need to have a central office in HHS to coordinate how the various agencies within the Department respond to public health emergencies.[29] Moving this office to another department will not eliminate the need for a coordinating office within HHS. It will simply recreate the same problems within HHS that Congress was attempting to fix.

Richard Falkenrath, director of policy at the White House Office of Homeland Security, was asked about this problem during a briefing for staff on July 1,2002. He answered that the challenge of coordinating emergency preparedness and response activities within HHS could be handled by "a couple of people" in the Secretary's office. Obviously, this cavalier attitude is seriously misinformed.

Section 505 is also problematic. It transfers control over HHS programs to provide assistance for state and local preparedness from HHS to the new Department. These funds, which total over $1 billion, allow states and localities to enhance their surveillance, communication, and laboratory abilities, all of which are essential for responding to numerous public health threats, including threats that are not related to terrorism. As GAO has stated, these programs "include essential public health functions that, while important for homeland security, are critical to basic public health core capacities."[30] As a result, GAO made the following conclusions:

We are concerned that this approach may disrupt the synergy that exists in these dual-purpose programs. We are also concerned that the separation of control over the programs from their operations could lead to difficulty in balancing priorities. Although the HHS programs are important for homeland security, they are just as important to the day-to-day needs of public health agencies and hospitals, such as reporting on disease outbreaks and providing alerts to the medical community. The current proposal does not clearly provide a structure that ensures that both the goals of homeland security and public health will be met.[31]

Section 403 also creates uncertainties by transferring to the new Department vague authorities over visa processing. Currently, approving and denying visas is an important activity of the State Department, which processes about 400,000 immigrant visas and over six million non-immigrant visas annually. To perform this function, the State Department employs thousands of foreign service officers skilled in hundreds of languages. Section 403(1) transfers to the Secretary of Homeland Security "exclusive authority" over this function, but this authority would be exercised "through" the Secretary of State. As a result, it is unclear whether the State Department must concur in policy decisions, or whether this is merely an administrative function. Additional statements by the Administration have not clarified this provision. The Administration has stated that consular officers will remain employed by the State Department, but that the new Secretary of Homeland Security will delegate back to the Secretary of State some visa functions unrelated to security.

Similar problems affect the provisions transferring portions of the Department of Energy. The provisions in the bill are ambiguous and potentially very broad. For example, section 302(2)(G) of the President's proposal would transfer "the advanced scientific computing research program and activities" at Lawrence Livermore Laboratory to the new Department. Although the exact scope of this provision is unclear, it appears to encompass parts of the Lawrence Livermore Laboratory's Computation Directorate, which supports other programs at the laboratory by providing computing capacity and capability, as well as research, advanced development, and operations and support related to computing, computer science, and information technologies. Such a transfer could harm the laboratory's ability to support its key mission—safeguarding the stockpile of nuclear weapons—as well as other core laboratory activities.

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[29] According to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. Law 107–588), the Assistant Secretary coordinates all agency interfaces on emergency preparedness between HHS and "other departments, agencies and offices of the United States." This person also "[i]nterfaces between the Department and State and local entities with responsibility for emergency preparedness." As part of this person's duties, he or she also "coordinate the efforts of the Department to bolster State and local emergency preparedness for a bioterrorist attack or other public health emergency."

[30] GAO-02-883T, *supra* note 2, at 6.

[31] *Id.* At 8.

Section 302(2)(E) gives the President authority to transfer from DOE to the new Department any life science activity within the biological and environmental research program that is related to microbial pathogens. The result would be that ongoing DNA sequencing of harmful microbes could be transferred to the new Department, while virtually identical work on microbes with beneficial uses (such as microbes that break down pollution) would stay at DOE. Splitting this highly specialized work risks weakening the effectiveness of both.

**IV. LACK OF RECOGNITION OF DISPARATE IMMIGRATION FUNCTIONS**

In April, the House passed legislation (H.R. 3231) recognizing the two distinct functions of the INS: an immigration services function and an enforcement function. As part of this reform effort, the bill would split the INS into a Bureau of Citizenship and Immigration Services and a Bureau of Immigration Enforcement, both under the supervision of an Associate Attorney General for Immigration Affairs within the Department of Justice. The legislation aimed to correct longstanding and widely- recognized systemic problems within the INS by separating out its distinct and often conflicting service and enforcement functions.

When the House immigration bill was being considered, the Administration expressed its support. In addition, when the White House issued its briefing document regarding the new Department of Homeland Security, that support was reiterated. The briefing document stated the following:

The new Department of Homeland Security would include the INS and would, consistent with the President's long-standing position, separate immigration services from immigration law enforcement.[32]

Despite these assurances, however, the legislative language proposed by the President would import the INS into the new Department of Homeland Security intact and unreformed. There are no details whatsoever regarding the structure of the INS after it is transferred to the new Department. As a result, the Administration's proposal fails to address internal structural and coordination problems that hamper the effectiveness of the INS.

**V. EXEMPTION FROM "GOOD GOVERNMENT" LAWS**

The Administration's proposal would create broad exemptions to the nation's "good government" laws. It would make the civil service, procurement, and property acquisition and disposal laws essentially optional for the new Department. In addition, the President's proposal would weaken valuable sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act. The bill would also create a weak management and oversight structure by not fully applying the Chief Financial Officers Act, the law governing Chief information Officers, and the Inspector General Act.

**A. Exemptions from Civil Service Protections**

The nation's civil service laws have evolved over many decades to ensure that the government has a professional civil service hired on the basis of merit rather than political favoritism. Section 730 of the President's proposal, however, would give the Secretary the authority to create an alternative personnel system. The only limitation in the statute is that the system should be "flexible, contemporary, and grounded in the public employment principles of merit and fitness."

Under the President's proposal, employees of the new Department could be exempted from essential provisions of title 5 of the United States Code. No rationale has been offered to explain why affording these basic protections for federal workers and their families would undermine the mission of the new Department The civil service provisions that become optional include the following:

- The prohibition on discrimination r employees on the basis of political affiliation and on coercing political activity (anti-patronage protection);
- The prohibition on hiring or promoting a relative (anti-nepotism protection);
- The prohibition on reprisal against employees for the lawful disclosure of information about illegal and wasteful government activity (whistleblower protection);
- The preferences for veterans in hiring and in reductions-in-force;
- The protection from arbitrary dismissal or demotion through due process appeal rights to the Merit Systems Protection Board;
- The right to organize, join unions, and bargain collectively with management over working conditions;
- Sick and annual leave for federal employees and family and medical leave;
- Retirement benefits, such as the Civil Service Retirement System and the Federal Employees' Retirement System; and

[32] White House Briefing Document, *supra* note 1, at 10.)

• Health insurance through the Federal Employees' Health Benefits Program.

Moreover, important programs for ensuring diversity in the federal workforce, such as the requirement to recruit minorities, would also become optional under the proposed legislation.

Another potential threat to the civil service laws is section 732(b), which allows the Secretary to hire an unlimited number of employees through "personal service" contracts rather than through the civil service system. Although the rationale for this provision seems to be to allow the new Department to obtain certain specialized services in an emergency, there do not appear to be any limits on its use. For example, current law requires these types of contracts to be temporary (no longer than one year) and subject to salary caps (no higher than the GS–l5 level). The President's proposal would allow these contracts to go on indefinitelv and at any rate. In effect, the section provides an alternative vehicle for bypassing the protections and requirements of the civil service system.

**B. Exemption from Procurement Rules**

Under section 732(c) of the President's proposal, the new Secretary could waive any and all procurement statutes and regulations, and the Secretary would not be required to comply with the cornerstone procurement principles of open and competitive bidding. In a section-by-section analysis provided by the White House, the Administration asserts that "normal procurement operations would be subject to current government-wide procurement statutes and regulations."[33] To the contrary, however, the legislative language would add the new Department to the list of entities listed in 40 U.S.C. 474, such as the Postal Service, which would exempt entirely the Department from the federal government's normal acquisition laws.

As a result, there is no guarantee that the new Department would be getting the lowest prices, the best quality, or the best deals. Fundamental principles of federal procurement such as the following would not apply:

• The requirement that acquisitions be publicly advertised;

• The requirement that sufficient notice be given to allow companies to respond;

• The requirement that all responsible bidders be given the chance to compete for a given acquisition; and

• The requirement that all contractors be rated on the same criteria when competing for a given contract.

These bedrock principles have helped to maintain competition in federal contracting, which history has proven to be the best way to ensure the best quality at the lowest prices while maintaining a system free of favoritism or abuse. In addition, long-standing preferences for small- and minority- owned businesses designed to encourage their development and access to federal contracts would no longer be guaranteed.

Section 732(a) of the President's proposal would explicitly grant the new Department so-called "other transactions authority" for research and development contracts. This authority was given to the Defense Department to eliminate the open and competitive bidding process in order to attract nontraditional contractors. In fact, however, it has been used mainly by traditional contractors to negotiate contracts that waive the federal government's rights to review financial management and cost information, as well as its rights to use new inventions discovered through research funded by the federal taxpayer.[34] In reviewing the use of this authority by the Defense Department, the inspector General found that these that types of contracts "do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud."[35] .

**C. Exemption from Property Rules**

The new Department will acquire a considerable inventor of federal property, particularly through the Coast Guard, which owns valuable real estate across the country. Sections 732(d) and (f) of the President's proposal, however, would give the new Department broad authority to acquire and dispose of both real and personal property. Specifically, the Department could acquire replacement real property through exchange or transfer with other agencies or through the sale or long-term lease to

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[33] The White House, *Analysis for the Homeland Security Act* of 2002, 11 (undated).

[34] In general, for intellectual property developed with federal funding, the government normally retains a nonexclusive, nontransferable, irrevocable, and paid-up (royalty-free) license to use the intellectual property.

[35] Inspector General, Department of Defense, Comments on the *Service Acquisition Reform Act* (H.R. 3832), 11(Mar. 12, 2002) (concluding that "other transactions have not attracted a significant number of nontraditional Defense contractors" and that "traditional protections for the public trust do not exist, for the most part, for other transactions").

the private sector, in addition, the Department would be authorized to retain the proceeds of such transactions.

Currently, under the 1949 Property Act, federal agencies must determine whether they own "excess" property they no longer need. GSA then screens this excess property for other federal uses. If there are no federal uses for the property, GSA declares the property "surplus" and screens it for "homeless" or "public benefit" uses, such as for schools, correctional institutions, airports, and other entities. If no beneficial public use is found for the property. GSA may sell the property through negotiated sales at fair market value without restrictions on use. The property may also be sold to the public through a bidding process if a negotiated sale does not occur. Under the Administration's proposal, however, none of these procedures will apply.

The Government Reform Committee reported a comprehensive reform of federal property laws earlier this year (H.R. 3947). This reform gave agencies more flexibility to manage their property, but it also included safeguards to ensure that agencies respond to community input, consider local zoning laws, and receive fair market value. None of these safeguards are incorporated into the Administration's proposal.

**D. Exemption from Freedom of Information Act**

Section 204 of the President's proposal would exempt the new Department from complying fully with the Freedom of information Act (FOIA). If nonfederal entities or individuals provide information voluntarily to the new Department that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism, that information would not be subject to FO1A. This exemption would apply to information that "is or has been in the possession of the Department."

FOIA was designed to preserve openness and accountability in government. In order to protect sensitive information, FOIA already contains sufficient exemptions from disclosure. These exemptions cover critical infrastructure information. FO1.A does not require the disclosure of national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4). Therefore, new exemptions to its provisions do not appear necessary.

The danger in creating new exemptions to FOIA is that important information about health and safety issues could be withheld from the public. In fact, the provision is drafted so broadly that it could be used to "launder" embarrassing information through the new Department and thereby prevent public disclosure.

One particular target of the new FOIA exemption appears to be the "Risk Management Plans" that chemical plants are required to file under the Clean Air Act. These plans inform communities about the dangers they would face in the event of an explosion or chemical accident in a nearby plant. Chemical industry officials argued that Congress should restrict public access to this information because the information could be used by terrorists to target facilities.

Congress addressed this issue by carefully balancing the goal of informing emergency responders and the public about potential risks of chemical accidents with the goal of keeping sensitive information away from terrorists. In the Chemical Safer Information Site Security Act of 1999, Congress concluded that information about potential "worst case" scenarios should remain available to the public, but with certain restrictions to prevent a searchable database from being readily posted on the internet. Congress ensured public access to basic information about the risk management plans, preserving the right of Americans to know about chemical accidents that could impact their families and communities. Under the President's proposal, however, chemical companies could now prevent the disclosure of all Risk Management Plans under FOIA simply by sending them to the new Department.

**E. Exemption from Federal Advisory Committee Act**

Section 731 of the President's proposal would exempt advisory committees established by the Secretary of the new Department from the Federal Advisory Committee Act (FACA). FACA requires that any committee formed to provide advice to the federal government, and which consists of members who are not federal employees, must follow certain rules in order to promote good-government values such as openness, accountability, and a balance of viewpoints. Generally, FACA requires that such committees announce their meetings, hold their meetings in public, take minutes of the meetings, and provide the opportunity for divergent viewpoints to be represented.

To protect sensitive information, FACA includes exemptions for information that relates to national security issues or information that is classified. As a result, many agencies with homeland security missions, such as the Department of Justice, The Federal Bureau of investigation, and the Department of Defense, currently operate under FACA without difficulty. The President's proposal contains no explanation why the new Department could not also comply with FACA. In fact, the only two

agencies that are exempt from FACA are the Central Intelligence Agency and the Federal Reserve.

At least 27 advisory committees that currently exist would be transferred to the new Department under the President's proposal. These existing advisory committees, which are currently subject to FACA, include the Navigational Safety Advisory Committee at the Coast Guard, the Advisory Committee of the National Urban Search and Rescue System at FEMA, the Advisory Committee on International Child Labor Enforcement at the Customs Service, and the Advisory Committee on Foreign Animal and Poultry Diseases at APHIS. When rechartered under the Homeland Security Department, none of these advisory committees will be subject to the FACA requirement on balance and openness.

In addition, the President's proposal waives important conflict of interest laws that apply to individuals serving on advisory committees. Under section 731, if an individual serves on an advisory committee, the individual will be exempt from the provisions of sections 203, 205, or 207 of Title 18. United States Code. These sections contain important protections. Section 207, for example, provides that a person who serves on a committee that is advising an agency on a specific matter cannot lobby the agency about the same matter after leaving the advisory committee. No rationale is provided for exempting members of advisory committees from these protections against conflicts of interest.

**F. Exemption from Chief Financial Officer Act**

Section 103(d)(4) of the President's proposal would authorize the President to appoint the Department's Chief Financial Officer (CFO) without Senate confirmation. Current law requires that a CFO of a cabinet department either be: (1) appointed by the President with Senate confirmation; or (2) designated by the President from among agency officials who are Senate-confirmed.[36] In either case, current law requires that CFOs be Senate-confirmed.

In addition, the President's proposal contains no language making the CFO Act applicable to the new Department. The CEO Act contains core financial management, accountability, and reporting requirements that are at least as important for the new Department as they are for other covered agencies, which include all existing cabinet departments. Moreover, section 602 of the President's proposal provides that the CEO shall report to the Secretary or to another official of the Department as the Secretary may direct. This section is inconsistent with the CFO Act, which requires that the CEO report directly to the agency head regarding financial management matters.[37]

These exemptions from financial management requirements make little sense. According to GAO, "[i]t is important to re-emphasize that the department should be brought under the Chief Financial Officers (CEO) Act and related financial management statutes."[38]

**G. Exemption from Chief Information Officer Legislation**

The proposal does not appear to give the Chief information Officer (CIO) of the new Department the same status and responsibilities as ClOs at other agencies. Section 603 of the President's proposal provides that the ClO shall report to the Secretary or to another official of the Department as the Secretary may direct. The Clinger–Cohen Act, however, requires that the ClO report directly to the agency head.[39]

In addition, the Clinger–Cohen Act specifies numerous responsibilities for ClOs. These include developing an accounting, financial, and asset management system that is reliable, consistent, and timely; developing and maintaining information systems; and assessing and reporting on progress made in developing information technology systems. The President's legislative language, however, does not specify any responsibilities for the ClO. In fact, the bill would assign responsibility for information technology systems to an Under Secretary for Management at the new Department, a responsibility assigned to the CI0 under the Clinger–Cohen Act.

**H. Limits on Access to Information by Inspector General**

Section 710 of the President's proposal would subject the inspector General (IG) of the new Department to the Secretary's control and would authorize the Secretarv to prevent the IG from doing work in areas involving certain information. These areas are quite broad and extend to information concerning any "matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to na-

[36] 31 U.S.C. § 901(a)(l).
[37] 31 U.S.C. § 902(a)(1).
[38] GAO-02-886R, *supra* note 3, at 33.
[39] 44 U.S.C. § 3506(a)(2)(A).

tional security." Under the President's proposal, the Secretary could prohibit the IG from doing work "if the Secret determines that such prohibition is necessary. . . to preserve the national security or to prevent a significant impairment to the interests of the United States."

IGs at certain other agencies (such as the Defense Department and the Justice Department) have similar limitations on access. But in those cases, the IGs are directed to report to Congress if the relevant Secretary impedes their access 10 necessary information. In the case of the IG for the new Department, this important check on Secretarial interference has been eliminated. Instead, the proposal would give the responsibility of reporting interference with an IG investigation to the Secretary, who would have an obvious conflict of interest in full reporting.

**VI. EXEMPTION FROM CONGRESSIONAL OVERSIGHT**

In addition to creating exemptions to many of the nation's good government laws, the President's proposal would substantially undercut Congress' ability to conduct oversight of the new Department. Through several broad and sweeping provisions in the President's proposal, the Secretary of the new Department would have new powers to rewrite enacted legislation and override budgetary decisions made by Congress.

The President's proposal would give the Secretary of the new Department the equivalent of a lump-sum appropriation of more than 530 billion, in transferring the various existing agencies to the new Department. Several provisions of the President's proposal allow the Secretary to transfer agency balances to the new Department. Section 803(e) of the President's proposal allows the new Secretary to allocate those funds as the Secretary sees fit, and it expressly overrides the provision of permanent Jaw that requires funds transferred to be used only for the purposes for which they were originally appropriated. Taken together, these provisions allow the new Secretary to rewrite appropriations relating to both homeland security and all other functions conducted by the new Department.

Section 733(b) creates for the new Secretary a permanent blanket grant of authority to transfer between appropriations accounts up to 5% of the appropriations made each year for agencies within the new Department, so long as the Appropriations Committees are given 15 days notice. This provision could allow the Secretary to transfer $2 billion or more per year rather than addressing potential funding misallocations through the annual congressional appropriations process.

In addition, section 733(a) allows the Secretary to "establish, consolidate, alter, or discontinue" any organizational unit in the new Department, including those established by statute, upon 90 days notice to Congress. Although the Coast Guard and the Secret Service are exempt from this provision, all other agencies transferred to the new Department could be abolished entirely with no input from Congress.

**VII. POTENTIAL FOR SERIOUS DISRUPTION IN THE WAR ON TERROR**

The Administration asserts that the "current components of our homeland security structure will continue to function as normal and there will be no gaps in protection as planning for the new Department moves forward." [40] Unfortunately, this is a difficult goal to achieve, and the proposal submitted to Congress contains no implementation plan that shows how disruptions will be avoided.

In fact, the history of corporate and government reorganizations is not encouraging. As a management professor from Columbia University recently remarked. "[t]o think that a structural solution can bring about a major improvement in performance is a major mistake." [41] In the corporate world, more mergers fail than succeed.[42] According to one expert, "[p]rivate-sector data show that productivity usually drops by 50 percent in the first four to eight months following the initial announcement of a merger, largely because employees are preoccupied with their now uncertain future." [43]

The model most often cited by the Administration is the creation of the Department of Defense in 1947. But that reorganization was not undertaken until after World War II was over. Moreover, the newly created Defense Department was riven with strife for decades after its creation. As recently as 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split

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[40] White House Briefing Document, *Supra* note 1, at 4.

[41] The Experiment Begins, National Journal (June 1 5. 2002).

[42] *See e.g., Breaking Up is Hard, Merging is Harder,* New York Times Week in Review (June 23,2002) ("Indeed, business history is littered with failed attempts to unite far-flung enterprises that would prosper through sheer scale"); and *Stressed Out: Can Workplace Stress Get Worse?,* Wall Street Journal (Jan. 16, 2001) ("75% of those deals, by several experts' estimates, will fail to achieve expected results").

[43] Max Stier, *Homeland Security:* Mega Merger. Washington Post (June 25. 2002).

the island in half because they could not figure out how to cooperate.[44] The original 1947 reorganization required four different amendments, the last being the Goldwater–Nichols Act of 1986, before the problems created by the 1 947 reorganization were finally addressed.

GAO has closely tracked the history of government reorganizations. According to David Walker, the Comptroller General of GAO:

> Often it has taken years for the consolidated functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management challenges for decades . . . [R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism.[45]

Given this history, the burden should be on the Administration to show how this bureaucratic reorganization can be accomplished successfully. But virtually no detail has been provided to Congress that addresses these serious implementation issues.

**VIII. LACK OF NATIONAL STRATEGY**

Most experts recommend three concrete steps for developing an approach to homeland security: First, evaluate the threats posed to the country: second, develop a plan for dealing with those threats; and third, implement that plan through whatever reorganization and realignment of resources is necessary. It appears, however, that the Administration has taken exactly the opposite approach: White House officials proposed the reorganization first; they will come out with a strategy second; and they may eventually do a comprehensive assessment of the threats facing the country.

Experts have consistently criticized the United States for failing to have a comprehensive national strategy for fighting terrorism. GAO has made this finding repeatedly.[46] The U.S. Commission on National Security, the bipartisan group headed by former Senators Warren Rudman and Gary Hart, found that "no overarching strategic framework guides U.S. national security policymaking or resource allocations."[47] Likewise, the independent panel headed by Governor James Gilmore concluded that "the United States has no coherent functional national strategy for combating terrorism."[48]

Nine months ago, in October 2001, the White House agreed with this assessment. In the executive order creating the White House Office of Homeland Security, President Bush recognized that developing a national strategy was essential in the fight against terrorism. The executive order establishing the Office provided that:

> The mission of the Office shall be to develop and implement the coordination of a comprehensive national strategy to secure the United States from terrorist threats or attacks.[49]

When you assumed your position, you also recognized that developing this strategy was your top assignment, calling it your "main mission"[50] and your "very first mission."[51] In a speech in April, you said, "I take every word of that executive order seriously," and you promised that the strategy would be "guided by an overarching philosophy: risk management: focusing our resources where they will do the most good, and achieve the maximum protection of lives and property."[52]

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[44] *Repeating the Past,* National Journal (June 15, 2002).

[45] GAO-02-886T, *supra* note 3, at 5.

[46] See U.S. General Accounting Office. Combating Terrorism: Selected challenges and Related Recommendations (September 2001) (GAO-01-822); U.S. General Accounting Office, Combating Terrorism: Need for Comprehensive Threat and Risk Assessments of chemical and Biological Attacks (September 1999) (GAO/NSLAD-99-163); and U.S. General Accounting Office *Combating Terrorism. Threat and Risk Assessments Can Help Prioritize and Target Program Investments* (April 1998) (GAO/NSIAD-98-74).

[47] The United States Commission for National Security/21st Century, *Road Map for National Security: Imperative for Change* (Mar. 15, 2001).

[48] Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. *Toward a National Strategy for Combating Terrorism (Second Annual Report)* (Dec. 15, 2000).

[49] Executive Order 13228)

[50] *Ridge Says Focus is on Expanding Homeland Security Resources,* Speech at Homeland Security Conference, U.S. Department of State (Washington, DC) (on line at *http://usinfo.state.gov*).

[51] *Tom Ridge Speaks to the Associated Press Annual Luncheon,* Office of the White House Press Secretary (APR. 29. 2002) (on line at *http://www.whitehouse.gov/news/releases/2002/04/20020429–3.html*).

[52] *Id.*

Since that time, the national strategy has been promised repeatedly. In the budget justification for fiscal year 2003, the Administration made this statement:

> The United States has never had a national blueprint for securing itself from the threat of terrorism. This year with the publication of the National Strategy for Homeland Security, it will.[53]

Unfortunately, this strategy has not been developed.[54] As a result, Congress still does not have a list of priorities set forth in a clear way and cannot gauge whether your reorganization proposal best serves the nation's security goals. Moreover, the new Department will have no clear strategy to implement after it is created. As John R. Brinkerhoff, civil defense director at FEMA under President Reagan, has stated: "The Bush Administration is doing the wrong thing for the wrong reasons. What worries me the most is that we've put the cart before the horse: We're organizing, and then we're going to figure out what to do."[55]

**IX. COST**

The Administration has stated that the creation of this new Department "would not 'grow' government."[56] According to the Administration: "The cost of the new elements (such as the threat analysis unit and the state, local, and private sector coordination functions), as well as the wide management and administration units, can be funded from savings achieved by eliminating redundancies inherent in the current structure."[57]

This is not a credible statement. CBO has examined the costs of the reorganization proposal put forth by Senator Lieberman (S. 2452). According to CBO, the Lieberman bill "would cost about $1.1 billion over the 2O03–2007 period."[58] CBO writes A] new cabinet-level department would require additional resources to perform certain administrative functions, including new positions to staff the offices of the Inspector General, general counsel, budget, and Congressional affairs for the new department."[59] In addition. CBO states that the new Department would require additional funding for "centralized leadership, coordination, and support services," and that "new departmental staff would be hired over the first two years following enactment of the legislation."[60]

The Administration's proposal is significantly more ambitious and costly than Senator Lieberman's. It includes more agencies, such as the Transportation Security Administration with over 40,000 employees. Moreover, it requires the new Department to take on a host of new functions, including:

> A new office for "Intelligence and Threat Analysis" to "fuse and analyze intelligence and other information pertaining to threats to the homeland from multiple sources,"[61] including a new "system for conveying actionable intelligence and other information"[62] and a new system to "consolidate the federal government's lines of communication with stale and local public safety agencies and with the private sector";[63]

- A new "state-of-the-art visa system, one in which visitors are identified by biometric information";[64]

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[53] Fiscal Year 2003 Budget Justification. *supra* note 10, at 6. The Administration continued: "The Budget for 2003 is a down payment on a larger set of homeland security initiatives that will be described in the national strategy and reflected in the 2004 and later budgets." *Id.* at 7.

[54] In testimony before the Government Reform Committee on June 20, 2002, you stated that the principles of the national strategy have been evident "ever since the President sent up his 2003 budget initiative." House Committee on Government Reform, "Hearing on The Hearing of Homeland Security: An Overview of the President's Proposal (June 20, 2002) (stenographic record). This statement is misleading at best. The budget justification for fiscal year 2003 included absolutely no information about the newly proposed Department of Homeland Security, which the Administration now says is the cornerstone of the national strategy. Moreover, the Administration's budget justification for fiscal year 2003 makes clear that no national strategy existed when the budget justification was submitted to Congress. Fiscal Year 2003 Budget Justification. *supra* note 10. at 6.

[55] *Bush's Homeland Gambit,* National Journal (June 15, 2002)

[56] White House Briefing Document, *supra* note 1, at 17.

[57] *Id.*

[58] CBO Cost Estimate, *supra* note 5 (specifically excluding the costs of obtaining a new or leased building and centralizing staff and resources there).

[59] *Id.*

[60] *Id.*

[61] White House Briefing Document, *supra* note 1, at 3.

[62] *Id.* At 14–15.

[63] *Id.* At 14.

[64] *Id.* At 10.

• A new "automated entry-exit system that would verify compliance with entry conditions, student status such as work limitations and duration of stay, for all categories of visas";[65]

• New "interoperable communications," including "equipment and systems" for the "hundreds of offices from across the government and the country" that make up the "emergency response community" (this would be a "top priority" of the new Department);[66] and

• A new "national system for detecting the use of biological agents within the United States," including a new "national public health data surveillance system," and a new "sensor network to detect and report the release of bioterrorist pathogens in densely populated areas."[67]

In addition to these new functions, the President's proposal would establish an entirely new bureaucracy, complete with a management hierarchy and accompanying staff. According to the President's legislative language, the new Department would have up to 22 Deputy, Under, and Assistant Secretaries. This is more than the number of Deputv, Under, and Assistant Secretaries at the Department of Health and Human Services, which administers a budget about ten times the proposed budget of the new Department of Homeland Security.

Like CBO, GAO has also concluded that the new Department will impose costs on the taxpayer. According to GAO, "[n]umerous complicated issues will need to be resolved in the short term, including a harmonization of information technologv systems, human capital systems, the physical location of people and other assets, and many other factors."[68] As a result, GAO concludes that the President's reorganization proposal "will take additional resources to make it fully effective."[69]

Mark Everson. Controller at the Office of Federal Financial Management within the White House Office of Management and Budget, was asked about these costs at a staff briefing on July 1, 2002. He said that the Administration had no estimate of the transition costs of creating the new Department and no estimate of the level of savings to be achieved by combining agencies. The only thing he said he knew was that these unknown costs would equal these unknown savings.

Obviously. Congress needs more concrete information about budget costs before it can legislate intelligently.

**X. PROCESS**

When the President made his nationally televised address on June 6, 2002. announcing his proposal for a new Department of Homeland Security, it came as a surprise not only to Congress and the American people, but also to the agencies. departments, and offices affected by the proposal. The plan was put together with so much secrecy that "[n]o Cabinet secretary was directly consulted about a plan that would strip 170,000 employees and $37 billion in funding from existing departments."[70] In fact, there was so little communication between the White House and the agencies that at least one major agency had to call the minority staff of the Committee on Government Reform to learn whether it was affected by the reorganization plan.

This closed process utilized by the Administration is ill-suited to ensuring that all potential problems are identified and addressed beforehand. Moreover, the risk of making policy mistakes is compounded by the rushed process being used in Congress to consider the legislation. Ii is not clear how in this process the time and opportunity will be found to make sure the legislation is done correctly.

**XI. CONCLUSION**

The issues raised in this letter exemplify the serious questions that should be resolved before Congress completes work on this legislation. For this reason, we urge you to respond in detail and in writing to the concerns raised in this letter by July 15, before the House select committee starts its consideration of this bill.

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[65] *Id.*.

[66] *Id.* At 12.

[67] *Id.* at 13.

[68] GAO-02-886T, *supra* note 3, at 2.

[69] *Id.*

[70] *Bush Plan's Underground Architects; In Silence and Stealth, Group Drafted Huge Security Overhaul,* Washington Post (June 9, 2002).

Sincerely,

HENRY A. WAXMAN,
*Ranking Minority Member,*
*Committee on Government Reform*

DAVID R. OBEY
*Ranking Minority Member,*
*Committee on Appropriations*

## APPENDIX A

### TRANSFERRED FUNCTIONS NOT RELATED TO HOMELAND SECURITY

*Animal Plant Health Inspection Service*

*Animal Welfare Act:* APHIS enforces the Animal Welfare Act, the act that regulates the exhibition of animals in zoos and circuses and the Transportation of animals on commercial airlines.

*Bioiechnology Regulatory Policy:* APHIS regulates the movement, importation, and field testing of geneticallv engineered plants and microorganisms.

*Canadian Geese:* APHIS works with state wildlife agencies and local governments to address problems with non-migratory, resident Canadian geese.

*Disease and Pest Detection and Eradication:* APHIS is responsible for the detection and eradication of pests and diseases that affect crops and livestock For example, on September 20, 2001, APHIS implemented the accelerated National Scrapie Eradication Program. A few of the other pests and diseases APHIS monitors for and eradicates include: the boll weevil; the fruit fly; rabies; the Asian Longhorned Beetle; the cirrus canker program; and the plum pox virus.

*Horse Protection Act:* APHIS enforces the Horse Protection Act, the act which prohibits horses subjected to a process called soring from participating in exhibitions, sales, shows, or auctions.

*Missing Pets:* APHIS maintains the missing pets network at *www.missingpet.net*

*National Poultry Improvement Plan:* This is an industry/state/federal program that establishes standards for evaluating poultry breeding stock and hatchery products to ensure they are free from hatchery-disseminated and egg-transmitted diseases.

*Noxious weeds:* APHIS cooperates with federal, state, and private organizations to detect and respond to infestations of invasive plants, such as branched broomrape and small broomrape.

*Screwworm:* APHIS is working to ensure that screwworm is not reintroduced into the United States. This eradication program is close to its goal of establishing a permanent sterile screwworm barrier in the eastern third of Panama.

*Trade Issue Resolution and Management:* APHIS monitors emerging foreign pest and disease threats at their origin before they have an opportunity to reach U.S. ports. APHIS also participates in trade agreements.

*Veterinary Biologics:* AIPHIS regulates veterinary biologics including vaccines and diagnostic kits.

*Coast Guard*

*International Ice Patrol:* The Coast Guard has a fleet of ships designed to break ice in cold regions to ensure that boats are able to navigate the waterways.

*Marine Safety:* The Coast Guard enforces regulations to ensure that boats and other marine equipment meet safety standards.

*Maritime Drug Interdiction:* The Coast Guard interdicts drugs illegally brought into this country on the waterways.

*Maritime Law Enforcement:* The Coast Guard enforces the laws of the waterways.

*Maritime Mobility Missions:* The Coast Guard provides aids to navigation and bridge administration to ensure that vessels are able to navigate our waterways.

*Oil Spill Cleanup:* The Coast Guard helps to prevent oil spills in the nation's waters and assists in their cleanup when they occur.

*Protection of Natural Resources:* The Coast Guard protects our domestic fishery resources and marine environment.

*Search and Rescue:* The Coast Guard, as one of its primary missions, rescues troubled vessels and people on the nation's waterways.

*Customs*

*Border Drug Interdiction:* The Customs Service fights against drug smuggling at the United States border.

*Copyright Protection:* The Customs Service helps to enforce the Copyright Acts.

*Enforcement of Health and Safety Laws:* The Customs Service checks imports to ensure that they comply with health and safety laws.

*Fostering of Trade:* The Customs Service works with the trade community and identifies and confronts trade issues facing the country.

*Child Pornography Prevention:* The Customs Service enforces laws protecting against child pornography.

*Fair Trade Protection:* The Customs Service enforces a variety of fair trade laws such as the Lanham Trade–Mark Act and the Trade Act of 1974.

*Protection of Species at Risk:* The Customs Service enforces laws protecting threatened species such as the Bald Eagle Protection Act and the African Elephant Conservation Act as well as the Endangered Species Act of 1973.

*Revenue Collection:* The Customs Service provides the nation with its second largest source of revenue.

*Stolen Antiquities and Art:* The Art Recovery Team works to recover stolen pieces of art and antiquities.

*Tariff Enforcement:* The Customs Service ensures that U.S. tariff laws are enforced.

**Department of Energy**

*Energy Emergency Support:* The DOE Office of Energy Assurance assesses the potential effects of natural disasters such as earthquakes, hurricanes, tornados, and floods on energy infrastructure and provides energy emergency support in the case of such disasters.

*Human Subjects Research Database:* The DOE Environmental Measurements Laboratory (EML) maintains the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, performed by DOE staff, or conducted at DOE facilities. EML also provides direct assistance to the manager of the DOE Protecting Human Subjects Program, such as assisting with production of educational and guidance materials.

*A Quality Assessment Program for Contractor Labs:* EML also runs a quality assessment program for DOE contractor laboratories that measure radiation. The program tests the quality of 149 private Laboratories' environmental radiological measurements.

Mr. WAXMAN. One major problem is that the President's proposal would transfer to the new department a vast array of responsibilities that have nothing to do with homeland security, such as administering the national flood insurance program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new department dozens of unrelated responsibilities will bloat the size of the bureaucracy and dilute the new department's counterterrorism mission.

The President's proposal also lacks an effective mechanism to coordinate the activities of the many Federal agencies with major homeland security functions. According to the administration, there are 153 different agencies, departments, and offices now involved with homeland security. After the creation of the new department, this number actually will increase. There will be a 160 agencies, departments or offices with security roles.

Another serious problem with the bill is its cost. The administration has asserted that the creation of this new department would not grow government. They have stated that any costs that may be incurred will be paid for by eliminating redundancies inherent in the current structure.

Since the administration provided no information on cost, Chairman Burton and I asked the nonpartisan Congressional Budget Office to provide their analysis. They concluded that implementing the President's reorganization proposal will cost the American taxpayers an astounding sum, $3 billion. If this money were used at the front lines of fighting terrorism instead of paying for a new bureaucracy, think how much better off we might be.

Our job in the Committee on Government Reform was to make the flawed proposal from the administration better, and I believe we made some significant progress. The President's original proposal included broad exemptions from our Nation's most basic good government laws. The legislation allowed the new Secretary to waive all provisions of our civil service laws, including those that prohibit patronage, protect whistle-blowers, provide for collective bargaining rights and ensure health and retirement benefits. A similar approach was taken with procurement and the management of real property.

Also, basic government in the sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act, were limited in their application to the new department. Moreover, the Chief Financial Officer Act, the Clinger-Cohen Act dealing with chief information officers, and the Inspector General Act did not fully apply.

The Committee on Government Reform reported a bill that limits many of these exemptions. The civil service protections for Federal worker were restored while allowing for pay flexibility with in the agency. Under our bill, Federal employees who are transferred to the new agency will not have their rate of basic pay reduced. The committee bill also allows the Secretary to lift the salary cap on personal services contracts, but only for an urgent homeland security need; and those contracts still cannot exceed a year.

Finally, the savings clause ensures that theTransportation Security agency rules cannot be expanded beyond TSA. Federal employees would be further protected by a provision in the committee print ensuring that the employees who were in collective bargaining units prior to being transferred to the new department would retain their bargaining rights.

Finally included in the committee's legislation is the right to sue against any person, organization, or employer who retaliates against a whistle-blower. The bill we reported removed the original provision that would have exempted the new department from the Federal Advisory Committee Act. We were also able to fix other provisions to ensure that the Chief Financial Officers Act and the Clinger-Cohen Act apply to the new department. Although I would have preferred stronger language, the IG language on reporting was also strengthened.

Also, the new department will have to manage its real property in accordance with the bipartisan property bill adopted by the committee earlier this year. Moreover, the new department would have a privacy officer, an office of civil rights and a citizenship and immigration service ombudsman.

Our committee print also takes a very different approach to procurement than the administration's proposal. Although I still question the need to deviate from current procurement law, the committee print is an improvement from the administration's proposal because it includes safeguards against fraud and abuse.

There were a few provisions in our committee print that may be considered a step backward for good government. For example, I would have liked the committee to eliminate, not expand, the FIOA loophole in the bill. In addition, I was disappointed that indemnification provisions were included in our committee's mark. This

language could subject the Federal Government to unlimited liabilities incurred from its contractors. In addition, it is inappropriate for the Federal Government to indemnify contractors if they fail to exercise sufficient diligence and would impose an undue burden on the taxpayer.

The procurement provisions also expanded the use of credit cards for the purchase of items up to $5,000. This very morning in our committee we heard testimony, how these cards are being used at strip clubs and to buy clothing from Victoria's Secret at taxpayers' expense. As Representative Schakowksy and I wrote Secretary Rumsfeld, we should be curbing this abuse, not expanding it; and I ask that this letter also be made part of the record.

Chairman ARMEY. Without objection.

[The information follows:]

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM
*Washington, DC, July 17, 2002.*

Hon. DONALD RUMSFELD
*Secretary of Defense, The Pentagon, Washington, D.C.*

DEAR SECRETARY RUMSFELD: Revelations about corporate misdeeds and accounting irregularities at companies such as Enron and WorldCom are causing enormous public concern. Increasingly, this concern is spreading to how the federal government manages the taxpayers' money. We in government have an obligation to ensure that the government's accounts are honest and the taxpayers' money is not squandered.

For this reason. we are writing you to bring to your attention serious financial mismanagement within the Department of Defense. Today, testimony and a report are being released by the General Accounting Office that find widespread problems in the use of travel and purchase cards at the Defense Department. A copy of the testimony and report are enclosed.

Travel cards are special credit cards given to employees by the Defense Department that are intended to be used to pay for travel on official business. But GAO investigators found that these cards are regularly being used for nonofficial business. According to the testimony of Gregory Kutz, the Director of Financial Management and Assurance for Defense at GAO, 15% to 45% of the charges on the travel cards that GAO reviewed were for personal—not government—use.

For example, GAO investigators found that the travel cards were frequently used by Army personnel to obtain cash at strip clubs. GAO found that Army personnel would present the cards at a strip club and ask for cash. The strip club would then commonly charge a 10 percent fee for the cash and record it as a "restaurant" transaction. GAO also found that these travel cards were being used to pay for everything from dating and escort services to casino and internet gambling to cruises.

GAO's investigation of purchase cards is similarly disturbing. These purchase cards are designed to provide a convenient method to purchase supplies that are not available through the General Services Administration (GSA) or would take too long to purchase through GSA. Although use of the cards is strictly limited to purchases for official business, GAO's report finds that these cards are regularly being used to purchase personal goods.

According to the GAO report, the personal goods bought with taxpayer dollars on these purchase cards include jewelry, cosmetics, and computer equipment. The purchases reviewed by GAO included:

- An estimated $30,000 spent on items such as rings, purses, and clothing, including purchases from Victoria's Secret;
- Over $10,000 spent on a trip to Las Vegas, personal clothing, and paying personal bills;
- An estimated $100,000 for a variety of items including a computer game station, digital camera, and a surround sound system; and
- $630 for escort services.

According to GAO, this abuse can be traced to the poor financial management practiced by the Department of Defense. Proper use of these cards requires that someone independently verifies that the goods were received by the government and that the purchase was for a government use. GAO found rampant failures to provide

these safeguards. In fact, GAO found that "none of the installations. . . audited had a comprehensive or effective program of oversight and monitoring." [1]

These new GAO findings are unfortunately not isolated examples of financial mismanagement at your Department. Last year, GAO found that Navy personnel were similarly using government purchase cards to acquire personal items.[2] And the Inspector General found that in fiscal year 2000 alone, "$1.2 trillion in department-level accounting entries . . . were unsupported because of documentation problems or improper because the entries were illogical or did not follow generally accepted accounting principles." [3]

Earlier this year, the Department convened a task force to examine the issue of travel and purchase cards and, just two weeks ago, the task force issued recommendations on how to address this problem. While we commend your efforts in convening the task force, its recommendations are clearly inadequate. For example, the recommendations do not address how the use of these cards at strip clubs can be avoided. Furthermore, the task force report does not lay out a specific plan for implementing management changes.

We urge you to take immediate and decisive action to address the problems of financial mismanagement at your Department. The Defense Department should institute sound and effective oversight of these cards, as recommended by GAO.

We also urge you to speak out against efforts by Republican leaders in Congress to expand the use of these cards without proper oversight. Just last week, Rep. Tom Davis, the chair of the Subcommittee on Technology Procurement Policy, and Rep. Dan Burton, the chair of the Government Reform Committee, inserted language in the homeland security bill that raised the threshold for transactions using purchase cards from $2,500 to $5,000. Due to the efforts of Rep. Jim Turner, the ranking member of the Subcommittee on Technology and Procurement Policy, the proposed increase in the threshold was reduced from $15,000 to $5,000. But even this increase is too much without proper financial management.

At the same time as the federal budget is deteriorating rapidly, our nation is fighting a new and expensive war on terrorism. We can not afford to allow financial mismanagement to continue: The American people need to be sure that every dollar is well spent. The Department of Defense spent over $6.1 billion with purchase cards in fiscal year 2001. With the increase in the threshold for the cards and the increases in appropriations for the Department, that number is sure to rise. As it does, it is your responsibility to ensure that this money is not wasted.

We respectfully request that you inform us of your plans to rectify this financial mismanagement no later than September 4. 2002.

Sincerely.

JAN D. SCHAKOWSKY,
*Ranking Minority Member*
HENRY A. WAXMAN,
*Ranking Minority Member*

Mr. WAXMAN. With regard to the structure of the department, I would have liked the Government Reform Committee to limit the size of the department. For example, an amendment to strike the Secret Service from the department failed on a vote of 16 to 17, but not all members were in attendance. An amendment to strike the Coast Guard from the department also failed on a vote of 16 to 17.

Now, there were some close votes in our committee, but I must say that our committee worked in a bipartisan basis; and the decision to keep the civil service rules, for example, were the unanimous decision on a bipartisan basis of our committee. The Morella amendment was the only part of that that engendered some controversy and was decided by a close vote.

I was pleased that the committee did not transfer the Bureau of Consular Affairs of the State Department to the Department of

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[1] U.S. General Accounting Office. *Purchase Cards: Control Weaknesses Leave Army Vulnerable to Fraud Waste, and Abuse.* 17 (June 2002).

[2] U.S. General Accounting Office, *Purchase Cards: Control Weaknesses Leave Two Navy Units Vulnerable to Fraud and Abuse* (July 30.2001).

[3] Office of the Inspector General, Department of Defense, *Independent Auditor's Report on the Department of Defense Fiscal Year 2001 Agency–Wide Financial Statements* (Feb. 26, 2002) (D–2002–055).

Homeland Security. In addition, I was pleased that the entire Animal and Plant Health Inspection Service would not be moved to the department under the Government Reform bill, only certain aspects of the service.

Members of the Select Committee, I know you have a lot on your plate to consider, and I look forward to working with you as a homeland security bill moves through the legislative process. Many committees reviewed this bill. Our committee has the primary jurisdiction over government organization and reorganization. I think that as the Select Committee acts, you ought to respect the decisions of the committees that reviewed the bill and allow our work product to be reflected in what you recommend to the full House.

Mr. Burton and I don't agree on every decision we make. He lost one close vote; I lost a couple of close votes. In those cases, I know he wants you to reverse the decision he didn't approve of; and I want you to reverse the decision where we lost. But on those things where we were together, I think we ought to recognize those are issues we ought to put aside; and fight over those matters that were controversial in the committees and not put everything up as if you never had any committees of the Congress with expertise review of these matters.

PREPARED STATEMENT OF HON. HENRY A. WAXMAN, RANKING MINORITY MEMBER, COMMITTEE ON GOVERNMENT REFORM

Members of the Select Committee. thank you for inviting me to testify today. It is clear, we need homeland security legislation. Federal departments are not working together as they should to protect our nation.

Unfortunately, the bill proposed by the President has serious flaws. In fact, I think it may well cause more problems than it solves.

Last week, I joined with Rep. David Obey, the Ranking Member of the Appropriations Committee, in sending a letter to Governor Ridge outlining a number of serious concerns with the bill. I ask that that letter become part of the record.

One major problem is that the President's proposal would transfer to the new Department a vast array of responsibilities that have nothing to do with homeland security, such as administering The National Flood Insurance Program. cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of unrelated responsibilities will bloat the size of the bureaucracy and dilute the new Department's counterterrorism mission.

The President's proposal also lacks an effective mechanism to coordinate the activities of the many federal agencies with major homeland security functions. According to the Administration, there are 153 different agencies. departments, and offices now involved with homeland security. After the creation of the new Department, this number actually will increase there will be 160 agencies. departments. or offices with security roles.

Another serious problem with the bill is its cost. The Administration has asserted that the creation of this new Department "would not 'grow' government." They have stated that any costs that may be incurred will be paid for by "eliminating redundancies inherent in the current structure."

Since the Administration provided no information on cost. Chairman Burton and I asked the nonpartisan Congressional Budget Office to provide an analysis. They concluded that implementing the Presidents reorganization proposal will cost the American taxpayers an astounding sum: $3 billion.

If this money were used at the front lines of fighting terrorism—instead of paving for a new bureaucracy—think how much better off we might be.

Our job on the Committee of Government Reform was to make the flawed proposal from the Administration better. I believe we made some significant progress.

The President's original proposal included broad exemptions from our nation most basic "good government" laws. The legislation allowed the new Secretary to waive all provisions of our civil service laws, including those that prohibit patronage protect whistleblowers. provide for collective bargaining rights, and ensure health and retirement benefits.

A similar approach was taken with procurement and the management of real property. Also, basic government in sunshine laws, such as the Freedom of Information Act and the Federal Advisor Committee Act, were limited in their application to the new Department. Moreover, the Chief Financial Officer Act, the Clinger–Cohen Act dealing with Chief Information Officers, and the Inspector General did not apply fully.

The Committee on Government Reform reported a bill that eliminates many of these exemptions. The civil service protections for federal workers were restored while allowing for pay flexibility within the agency. Under our bill, federal employees who are transferred to the new agency will not have their rate of basic pay reduced. The Committee bill also allows the Secretary to lift the salary cap on "personal services" contracts, but only for a urgent homeland security needs and those contracts still cannot exceed a year. Finally, the savings clause ensures that the Transportation Security Agency (TSA) rules cannot be expanded beyond TSA.

Federal employees would be further protected by a provision in the Committee print ensuring that employees who were in collective bargaining units prior to being transferred to the new Department would retain their bargaining rights. Finally, included in the Committee's legislation is the right to sue against an person organization or employer who retaliates against a whistleblower.

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Also, the new Department will have to manage its real property in accordance with the bipartisan properly bill adopted by the Committee earlier this year. Moreover, the new Department would have a Privacy Officer, an Office of Civil Rights, and a Citizenship and Immigration Service Ombudsman.

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There were a few provisions in our Committee print that may be considered a step backwards for "good government." For example, I would have liked the Committee to eliminate—not expand—the FOIA loophole in the bill.

In addition. I was disappointed that indemnification provisions were included in our Committee's mark This language could subject the federal go to unlimited liabilities incurred from its contractors. In addition, it is inappropriate for the federal government to indemnify contractors if they fail to exercise sufficient diligence and would impose an undue burden on the taxpayer.

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With regard to the structure of the Department, I would have liked the Government Reform Committee to limit the size of the Department. For example, an amendment to strike the Secret Service from the Department failed on a vote of 16–17. but not all members were in attendance. An amendment to strike the Coast Guard from the Department also failed on a vote of 16–17.

I was pleased that the Committee did not transfer the Bureau of Consular Affairs of the State Department to the Department of Homeland Security. In addition, I was pleased that the entire Animal Pant Health Inspection Service would not be moved to the Department under the Government Reform bill, only certain aspects of the Service.

Members of the Select Committee. I know you have a lot on your plate to consider, and I look forward to working with you as a homeland security bill moves through the legislative process.

Chairman ARMEY. Thank you for your testimony. We will now proceed under the 5-minute rule, somewhat racing the clock on the expectation of votes on the floor pending quickly.

I now recognize the gentlelady from California, Ms. Pelosi.

Ms. PELOSI. I defer to Mr. Menendez of New Jersey.

Mr. MENENDEZ. Thank you.

Thank you both for your testimony. One of the focuses I would like to pursue with you which has been, and I think will be, one of the major contentious issues, possibly, in the markup that will take place here on Friday and as we proceed to the floor is what I said, that homeland security should not mean public employee insecurity; and in that context I want to jump off, Mr. Waxman, from the comment you—and Chairman Burton is shaking his head, yes—that in fact putting aside the Morella amendment for a moment, which some suggest expands certain protections, that those fundamental protections that we have described as good government in the first instance and which we have pursued over a long period of time to ensure the quality and the freedom from patronage and partisan influence which have inured to a civil service that is probably amongst the most exceptional in the world is protected under the committee's mark. There has been much between the Cabinet Secretaries that have come here to testify, and comments by members of the committee made, of the need for flexibility.

Do you see any merit in those arguments that would rise to the point that what the committee did should be undone, that the protections for civil servants should be undone? I mean, I am concerned that certain sections of title V speak to issues and give powers—for example, section 7103 allows the President to issue an executive order taking away title V labor management rights, including the right to be in a union for agencies or subdivisions for national security reasons. The President used his authority last January to take away collective bargaining rights for approximately 500 Justice Department workers, most of whom were clerical employees that have been unionized for decades. I look at other possibilities.

Could you speak to that because that clearly is something your committee spent a lot of time on, came to a bipartisan conclusion on, and is going to be one of the major subject matters of debate.

Mr. WAXMAN. Mr. Menendez, Mr. Burton is allowing me to answer this first.

Our committee has jurisdiction over so many of those issues that we have developed an expertise over the years, and for that reason, by unanimous vote of our committee under the manager's amendment offered by Mr. Burton and supported by all the members of our committee, we decided that what the President originally proposed was not sound policy. We didn't think it was necessary to throw out all the civil service protections that protect employees, and also protect the government, because otherwise you could have patronage, you could have employees that wouldn't have health benefits, employees that wouldn't have the same kind of standing as other Federal employees. We didn't think that was a good idea, so we all agreed to put in the bill the existing law regarding civil service protections.

So the Morella amendment was the only issue where we had a division, and our side prevailed by a narrow vote. It would not have expanded anything at all. It simply would have allowed those employees who had collective bargaining rights to continue those collective bargaining rights if they were transferred over to the new department. And the majority supported the Morella—.

Mr. MENENDEZ. Let us me just pursue that one more step because my time is midway gone here.

We have had Cabinet Secretary after Cabinet Secretary say we are not undoing any of those things, we are not undoing union rights, we are preserving whistle-blower protections. We had OPM here saying, well, we are preserving all those things. But as I read your statement on what the committee did, that certainly was not the mark—the President's submission did not provide for those protections.

Mr. WAXMAN. I don't want to be critical of the President's original provision. The Administration had a lot to do in developing the plan. But in that regard, if the Cabnet secretaries thought they were trying to accomplish what you just said they said, they were inaccurate. And what we did, unanimously, is make sure all these those protections were still written in the law and couldn't be waived.

Mr. BURTON. If I may follow up, I think Mr. Waxman is correct. We clarified that. We put in language that we thought was easily understood, and we believe that the protections are there for all the employees that were transferred, and that is as it should be.

I would like to comment briefly, though, since we are talking about the Morella amendment, because I think this is very important, the Morella amendment which passed by one vote weakens the President's authority to prohibit collective bargaining for Federal employees due to national security reasons and that is the main reason why I thought the Morella amendment should not pass.

There are current threats to homeland security that are too serious, and we should not be weakening the President's hand. He should maintain the authority to limit collective bargaining for national security reasons. That is an authority that has been in effect since the Carter administration, and both Democrat and Republican Presidents have never abused that. Since 1979 Presidents Carter, Reagan, Bush, Bill Clinton and George W. Bush used this authority sparingly, only 11 times in 23 years. It has never been misused.

In response to the 9-11 attacks, President Bush excluded from collective bargaining five departments, the Department of Justice offices vital to national security—the U.S. Attorney's Office, the Criminal Division, Interpol, the National Drug Intelligence Center and the Office of Intelligence Policy Review; and especially since September 11 no steps—and I feel strongly about this—no steps should be taken to limit this Presidential authority. I think it would be a terrible mistake, especially since we are in a war, and this amendment really reduces the President's authority further in this new department more than in any other department of government.

So I know this will be a contentious issue, but I hope you will look very closely at the Morella amendment.

Chairman ARMEY. Thank you. As you noticed, the bells are ringing—I guess for me and my gal; I don't know. I think we have time for at least one more question prior to our having to recess, and we will do it as far as we can, but the Chair will ask the witnesses if you would return at end of our short recess. Because your committee's jurisdiction is so large and your work has been so important, this committee is going to want to review it thoroughly.

With that observation, let me call upon the gentlewoman from Ohio.

Mr. PORTMAN. I thank the chairman. I was not expected—.

Chairman ARMEY. Excuse me. I said the gentlewoman from Ohio.

Mr. PORTMAN. I am sorry. That makes more sense, Mr. Chairman.

Ms. PRYCE. I don't know if I am up or not, but I will go.

Gentlemen, thank you very much. Your committee has had the toughest part of all of this because you touch it all; and we are very, very grateful for your hard work, for deferring to the others to kind of wait until they got up and passed, so we had a little bit of a semblance of order with all this. Truly, it is some of the most important work that any of us will ever do; and so we really appreciate your participation last week and this week and all the way through.

Chairman Burton, there was a lot of discussion, and your ears might have been burning a day or two ago as we discussed the Morella amendment and what transpired at the committee; and there was a lot of reference to the Burton amendment as perhaps a compromise to that issue, and I wasn't certain if that was something you had offered in committee or it was just an idea that had been floated. But can you give this group any sense of what the Burton amendment was, how you feel about it now, and if you see it as a true place to compromise.

Mr. BURTON. Obviously, I believe it was the right thing to do. It was in the manager's mark. We had a substitute amendment that we worked with instead of the original bill that was sent up to our committee.

But what it did, which I think is better than the approach taken by the Morella amendment, is, the Secretary of Homeland Security, jointly with the Director of Office of Personnel Management, would be authorized to adjust compensation levels to remedy any pay disparities that exist between employees of the department who perform similar jobs; and that means it probably would raise them up to the level that the highest one had, and I don't think there is anything wrong with that. However, no employee can be compensated above the Cabinet level, and we think that is important, too, for management considerations.

To develop a disciplinary system based on existing law that enables the Secretary to expeditiously suspend or remove employees in the interest of national or homeland security. The system shall include a process for employees to appeal a suspension or removal decision, but it allows him to get rid of them right away in case there is a security problem; to develop and submit to Congress for approval a proposal for a demonstration project for a human resources management system that makes it easier to recruit and maintain talented individuals, and that would ensure that the veterans preferences whistleblower protection and collective bargaining rights were retained, and authorized a performance appraisal system for managers or supervisors—and that would give him 5 years to get that perfected—and finally, to exercise the human resource management authorities under this section in accordance with the merit principles contained in title V of the U.S. Code.

The Morella amendment, as I said before, goes just too far, and at this particular time I cannot for the life of me see why you would go that far when it does not go that far in any other agency.

Ms. PRYCE. Clearly, this is probably the most contentious issue that the House will deal with, at least from the experience of this committee, and if there is a middle ground and if this could possibly be it, it is great that you provided us a place to go.

And, Mr. Waxman, I don't know if you care to comment.

Mr. BURTON. I believe this is a middle ground, a fair ground and I hope the committee will look with favor on that.

Ms. PRYCE. Thank you.

Mr. WAXMAN. If you would permit me to comment, Mr. Burton—I told you what we all agreed to; it was his manager's amendment. It was worked out on a bipartisan basis, and it was adopted unanimously. And this manager's amendment said that we would ensure that veterans' preferences, whistle-blower protection and collective bargaining rights were retained. That was all agreed to.

The Morella amendment dealt with a narrow situation, those people who were transferred from another department into the Department of Homeland Security and who had collective bargaining rights. It regarded whether or not they would retain collective bargaining rights; it was pretty limited in scope.

Now, a majority of the committee,-although the chairman didn't support it, did go along with Mrs. Morella. It was bipartisan.

So that area was controversial, but ensuring civil service protections was not controversal. I hear people talking about civil service laws all being thrown out. That was in the original proposal. I will give the administration the benefit of the doubt that maybe it misdrafted the civil section. What we did was protect veterans' preferences, whistle-blower, collective bargaining rights, and almost all of the civil service laws; we kept those intact. It was only that narrow area where there was controversy.

Ms. PRYCE. Thank you, gentlemen.

Chairman ARMEY. The Chair will recognize the gentlelady from California, Ms. Pelosi, and following the conclusion of response to her, we will recess for such time as 5 minutes following the close of the last vote in the series.

Ms. PELOSI. Thank you, Mr. Chairman. And I thank the distinguished chairman and the ranking member for their fine testimony and hard work on this issue.

As a former member of Government Reform—it was called Gov Ops in those days, in the olden days, and in the olden days—we might have fashioned an old-fashioned department that looks like the one being proposed. I know from the perspective of your committee, which has the vast array, the total array, of government operations as your brief and as one who sits on Appropriations, another place where we see the total view, that I have a tremendous respect for the perspective that you bring.

I have said many times here that I had hoped to see us do something very special going forward with Homeland Security. We want to do what the President calls upon us to do, to do what is best to protect the American people.

In his strategy, he talked—in his strategy, he talks about using our resources judiciously as we reduce risk for the American people. We all share that goal, and we intend to do that.

I would have hoped, and I would like your view from your perspective, that we could have ended up with a very strong—and I hope it could be still be included in our bill—very strong Office of Homeland Security in the White House. An office which really does coordinate the activities of many more agencies, even those that are not—including these, but many more beyond these agencies included in this Homeland Security Department. And to have well as a lean Department of Homeland Security that would address, coordinate technologically, use the benefits of technology in a lean operation where the Secretary would not be bogged down with administrative and management responsibilities, but could, instead, have the value added of this department, the freedom from all of that, and the ability to coordinate rather than manage and organize a department.

Could you express some views on that proposal?

Mr. BURTON. I understand the approach that many of my Democrat colleagues have advocated—.

Ms. PELOSI. If I just may interject, in my conversations with Republicans, it is not a Republican view to have a huge bureaucracy.

Mr. BURTON. I understand. I think the predominant view on the other side, the Democrat side, was that view, but there are Republicans who agree with you.

My personal view is, the President is on track. There has to be coordination that can only be handled by a department head and secretaries working for him to make sure that all those functions work together very rapidly to defend the homeland, and when you have these in different agencies I think it becomes more cumbersome, and it is very difficult for those immediate decisions to be made that will protect us.

For that reason, I think the President was justified in suggesting a new Homeland Cabinet position and agency. I know we might differ on what ought to be included in that—.

Ms. PELOSI. That is our only difference. We all agree there should be a department.

Mr. BURTON. That is right. But I think the approach he suggested, and advocated and our committee voted for, is the right approach.

Mr. WAXMAN. I support the idea of a coordinating body, Cabinet-level position on Homeland Security. It is sort of ironic that the Republicans would want to push a bill that takes the bureaucracy, moves it around, bloats it up and spends billions of dollars.

It is not going to make us any more secure if it's wasted, and I fear, in moving these agencies into one department they won't quite know what to do. It will take a long time before they figure out how they fit in, and during that time, I think our country could be in danger.

Let me give you this example to keep in mind. AOL and Time Warner merged. People thought this was brilliant. Well, this merger into this Homeland Security agency is far greater than that simple merger, and they haven't quite figured out how AOL and Time Magazine and Warner Studios and all the other things that go into

that huge enterprise and that huge corporation should work together. So they are struggling.

But I just worry about what happens in this country if you set up this agency with all the bureaucratic pieces being moved around without, coordination. Yes, give the Secretary of Homeland Security power to insist that certain things be done; but to transfer everything over to one department from others just seems to me quite radical, quite bureaucratic, very expensive, and may in the long run be very self-defeating.

Mr. BURTON. I know we have to vote and I will just take a moment.

I understand Mr. Waxman's position. There is no question in my mind there are going to be some problems in transferring these agencies into Homeland Security, but during that process, I think the President will be very close to the situation and make sure it works smoothly. That is number one.

Number two, we are looking at the long term. This terrorist threat is not going to go away tomorrow. It may be with us through our generation, our kids and long into the future. So I think we need a Homeland Security just like we need a Department of Defense that really deals with the problem of securing this Nation.

Ms. PELOSI. I appreciate and respect both of your opinions. I want to say one thing and then I am going to be gaveled down.

The Brookings Institution has said that the 170,000 is more like 200,000-plus when you factor in everything that goes into the department that is not accounted for yet. There are 85,000 jurisdictions in the United States. Only 125 of them have more people than this department will have.

Salt Lake City, Utah—I am talking about the cities themselves—Salt Lake City, Utah; Providence, Rhode Island; Portland, Maine; Reno, Nevada. The list goes on and on of cities that have less people than the Department of Homeland Security will have. So I think we can all put our best thoughts together as we go forward, how to manage that.

Mr. WAXMAN. It took over a decade before the Department of Defense was fully coordinated. We need this department to be on guard for the American people immediately, not in the long term of 10 years from now.

Ms. PELOSI. Thank you both.

Chairman ARMEY. The Chair would appreciate if the two gentlemen would return. There will be much questioning on the subjects of your jurisdiction. Without objection, the committee stands adjourned until 5 minutes following the close of the last vote in this series of votes on the floor of the House.

[Recess.]

Chairman ARMEY. The committee will come to order. Let the Chair open by thanking Congressmen Burton and Waxman for your willingness to come back for a second round. I am sure our committee members will be drifting up but as it stands, we have the gentlewoman from Connecticut, Ms. DeLauro, and myself here. So Ms. DeLauro, the Chair recognizes you for your questioning under the 5-minute rule.

Ms. DELAURO. Thank you very much, Mr. Chairman. Let me thank my colleagues for your testimony and thank you for your

years of service to the institution and the knowledge that you bring to this effort. It really is—I have characterized the hearings to some of our other colleagues, and I have said that sometimes we just don't get to listen to and talk with our colleagues the way that we should to understand the depth of knowledge that they have on these issues.

Let me just ask Mr. Waxman, if I might, and I asked Mr. Obey about this as well earlier today. There is one section of your letter, of the Waxman-Obey letter which I also had put into the record. I might add if I could just say, Mr. Chairman, that it was on the McLaughlin show that John McLaughlin said that this was one of the best pieces of analysis that he had ever seen of this effort. So I just mention that in passing.

One section of the letter outlines a number of concerns which have to do with the good government provisions. Talk to me a little bit about how the Government Reform Committee's recommendation improve on these provisions. Well, let me just leave it at that.

Mr. WAXMAN. Well, the Burton substitute, which was supported unanimously, did a number of important things that are basically good government kinds of provisions. It said that employees' rights would be protected. Whistleblowers would be protected. The right to collective bargaining would be protected. Those things were agreed to by everyone. The Morella amendment, as I mentioned earlier, and I will go into more detail if the committee chooses, dealt with a very narrow area.

Now, there were other provisions in the Government Reform bill that I want to flag that I did not support. The Freedom of Information Act provisions I thought did not meet good government standards. The President's bill was very broad and exempted all information voluntarily provided to the Department about infrastructure vulnerabilities. from the Freedom of Information Act.

Now, we adopted a Tom Davis amendment that added over 10 additional departments to be exempted from the Freedom of Information Act—and the amendment defined "critical infrastructure" very broad. Lots of information about chemical plants, electric utilities, water systems could be exempted. Freedom of Information Act is working well, and I don't believe it should have been changed.

The indemnity provisions we adopted give the taxpayer potentially unlimited liability. I think that is a mistake, because we ought to indemnify people only if they exercise due care. If they have been negligent, close to bordering on gross negligence, I don't think we ought to indemnify them.

But let me just underscore again, the Burton substitute restored basic civil service laws. It wasn't a compromise. It was something that everybody thought made sense. It was a good government provision, and an important part of the work of our committee.

Ms. DELAURO. I just might add here that with regard to FOIA, there was a statement made by Ronald Dick, Director of the FBI's National Infrastructure Protection Center, that, and I quote, we believe that there are sufficient provisions in the FOIA now to protect information that is provided to us, and a question with regard to that that I had had is if it works for the FBI, the CIA, if it works for the Defense Department, then why do we need a broader exemption for the new department?

Mr. Waxman, you appear to concur with that.

Mr. WAXMAN. I absolutely do.

Ms. DELAURO. Mr. Burton, do you concur with that statement by the FBI Director?

Mr. BURTON. Well, I think the thing that concerned us and Mr. Davis and the White House is that you have new technologies coming online and a lot of businesses have limits of liability that say stop at 10 million or 20 million or 200 million, whatever it happens to be, and they are very concerned—no.

Ms. DELAURO. That is a different issue.

Mr. BURTON. Pardon me. I was thinking about two things at once. I think that Mr. Davis and myself and the President and others felt like that a lot of information would deal with national security would be filtering through the homeland agency, and other agencies as well that involved new technologies, and if the people who are producing this new technology or who were trying to protect things like nuclear power plants felt like that there was going to be some leaks, they wouldn't let that technology go to the agency that we are talking about, Homeland Security, and for that very reason, they felt like we ought to have more exceptions to the Freedom of Information Act.

I have always been very strongly in favor of freedom of information. In fact, I have taken on this administration as well as the previous administration when they tried to block us from getting vital information. However, we are in a war right now, and I think there should be some exceptions and that is why I think this particular clause is important.

Ms. DELAURO. I would just commend to you, and I know my time is up, that the comments of the FBI, the Infrastructure Protection Center and Director talking about that, he felt that there were a number of protections within the law now and that there were the exemptions that were necessary to take care of this, and I just would mention that to take a look at in light of—.

Mr. BURTON. Well, I would presume, and I don't know this for sure, that in the drafting of the original bill that came from the White House and in the discussions we have had, the heads of our CIA and FBI and DIA and other intelligence agencies were involved in the process, and I find it difficult to understand why the FBI Director would take a position different than the President on this. So I will have to talk to him about that.

Ms. DELAURO. Okay. Thank you very much. Thank you, Mr. Chairman.

Chairman ARMEY. The Chair now recognizes the gentleman from Texas, Mr. Delay.

Mr. DELAY. I appreciate both of you coming to testify. Your testimony is probably the most important testimony that we will hear today amongst all of the committees. Obviously your jurisdiction is far reaching and your expertise as a committee are vitally important to what we do here in trying to bring it all together.

Having said that, my first knee-jerk reaction about this proposal when I first heard about it was oh, no, another department, another secretary, bigger government, but I have come to realize that many are looking at this as just a reorganization, and therefore

that is why I think it is important and it is an opportunity to provide reorganization.

Having said that, there have been suggestions that during these hearings from everything to, oh, just have an office over—just make the present Office of Homeland Security a confirmable office and move on to expanded bureaucracy to some—to a model sort of after the Drug Czar with no authority, no manpower, no direction and expect it to do great things, and so we are going to have to rely on you. Could either one of you give me a bigger picture understanding of where you think we ought to be heading in the bigger picture as far as what this department may look like under your vision, if you could? And please keep it short, because I have got a real important second question.

Mr. BURTON. I will go quick. Henry and I have a little different opinion on this, and he can speak for himself. I believe that there will be some problems in the transition, and I believe there may be some times when we will have to be very careful, because terrorists might take advantage of the transformation and transfer of authority. However, in the long run, I think it is absolutely essential that you have one person in charge of homeland security; i.e., Department of Defense for the United States of America, who can make sure that he can coordinate all of these different agencies that are spread all over the place right now, and I don't think he or she can do that if they have to go to the Department of Transportation for one thing or the intelligence department or CIA for another one, and for that reason I think it is extremely important that we put as many of these agencies or parts of these agencies that are going to be dealing with homeland security under one roof with one leader, and I think the President has got his thumb right on the pulse. I think his advisers were right on line, and I think that is why the majority of our committee voted to give him that authority.

Mr. WAXMAN. If I could give you my view of it, I think your initial judgment was probably correct. Think about it, this is the homeland security department, but we are not putting the FBI and the CIA into this new agency, but we are putting the Animal Plant Health Information Services. We are putting the Coast Guard, where they do marine safety, maritime law enforcement, oil spill cleanups. We are taking Customs, where they ore doing border drug interdictions and copyright protection and putting that into the new department. And for the Department of Energy, we take human subjects research database, quality assessment program for contractor labs. These are a lot of things that have nothing really to do with homeland security. So either put everything in this Department or figure out some way for the head of this new department to be able to coordinate with these other groups such as with the FBI and CIA in the most efficient manner, without so much disruption that you end up creating another huge bureaucracy falling all over itself, spending a lot of money and waiting for all the kinks to be worked out.

So I am troubled by it. I think what the President is trying to do is the right thing, but I don't think the administration has thought it through. In fact, from my understanding from the news reports, it was put together very quickly. It was put together even

before the strategy which we recieved yesterday, was drafted. I think once the Administration, I have seen this over the years—announces it wants to do something, it goes forward without rethinking whether the idea makes a lot of sense.

So I would give a strong coordinating function and authority over the FBI and the CIA and other agencies of government that relate to homeland security, but not move all these things over to this new department that we have.

Mr. DELAY. I am running out of time. I want to give you an opportunity, because there is a disagreement between the Judiciary Committee and you on INS. Could you make—briefly make your case for your position on the INS versus the Judiciary's case?

Mr. BURTON. Well, I will go first, I guess. I would just like to follow up on one of the things that Henry said on the last issue real quickly. I know you are out of time but I know you want us to get this question. And that is he didn't mention all of the functions of those agencies. Many of the functions that he did not mention fit very well into homeland security. Some will not, but they will do those functions anyhow. But what we are talking about right now is declaring war on the enemy and protecting America, and the best way to do that is to have these agencies consolidated under Homeland Security.

Now, regarding the INS, it is one of the major building blocks of the department. If we remove it or if we remove just, say, half of it, we are going to be weakening the President's plan very seriously, and that is why the committee voted to keep it in this new department. Like FEMA and a number of other agencies included in the new department, the INS performs a variety of functions beyond homeland security. And I just mentioned that. It facilitates legal immigration and enforces immigration laws. Its security and processing functions are closely related and should therefore both be included in the new department. The INS also works closely with other agencies like Customs Service that has a presence at our borders and will become part of the new department. These two agencies have overlapping functions in both enforcement and processing. Carving out a portion of the INS would jeopardize the Secretary of Homeland Security's ability to develop a cohesive Border Patrol strategy. I think on its face the INS has to be one of the first lines of defense against terrorists getting into the country and keeping them out. So I think it is logical to have that under that Homeland Security Department.

Mr. WAXMAN. Mr. Delay, just as our committee has expertise because of our jurisdiction on civil service and procurement laws and all of that, the Judiciary Committee has had a long history with the Immigration and Naturalization Service. They have just reorganized the INS after a lot of problems with it, and their judgment that they have recommended is to separate the service part from the enforcement part, and the enforcement part they would move over to the Homeland Security Department. The service part they would leave alone. I think that makes sense. I would defer to their judgment, but it does seem to me to make sense, because the enforcement issues are the ones that relate to homeland security.

Mr. BURTON. I just might follow up by saying when you bifurcate or split up an agency like that, I think it takes a lot of time and

effort, and I think what we are trying to do is expedite this as quickly as possible so the functions that are very germane to homeland security are there as quickly as possible.

Mr. DELAY. Thank you, Mr. Chairman.

Chairman ARMEY. Thank you. The gentleman from Texas.

The Chair would like to announce that absent another minority member or Democrat member joining the committee, it would be my attention to recognize the gentleman from Ohio and then I would ask the members on your side to get your heads together and see which of you might seek recognition to represent your side, and then we will conclude with the chairman. So with that intention noted, let me recognize the gentleman from Ohio.

Mr. PORTMAN. Thank you, Mr. Chairman, and appreciate the testimony from both of my colleagues today, both of whom I served with at one time on the committee. I am one of the alums up here on the panel, and I worked with you on various projects. You do have the largest single jurisdiction and you have given us a lot of good things for us to work with in coming up with a mark that we can take to the floor.

I just want to quickly ask about the final vote in committee. Mr. Chairman, what was the final vote in the committee, because we have heard different discussion about how the committee reacted to different proposals?

Mr. BURTON. The Morella amendment passed by one vote. It was very controversial. What were the other ones?

Mr. PORTMAN. How about final passage on the—.

Mr. BURTON. Final passage on the bill was 30 to 1.

Mr. PORTMAN. So it was 30 votes in favor of the restructuring, making the new agency—.

Mr. BURTON. Right.

Mr. PORTMAN. Consolidating all these various departments and agencies?

Mr. BURTON. Right.

Mr. PORTMAN. I have listened to my friend Mr. Waxman talk about the bloated bureaucracy, and I must say somehow it hasn't been properly explained to you or you haven't understood at least what the President was trying to do, because there is no sense this would be a larger bureaucracy. Indeed the whole notion here is to consolidate and I think Mr. Burton said it well earlier, which is right now we have so many different offices and departments. You have said over 150, that the right hand doesn't know what the left hand is doing, and often there are so many masters, there is no master and therefore no one in charge. And therefore it is a matter of accountability, and the notion would not be to leave those bureaucracies as they are but rather to make them work better together and to consolidate them. The bureaucracies are going to be there. If we don't do anything, if we simply put an office in the White House, like the Drug Czar's office, it doesn't do anything to reduce the bloated bureaucracy.

So that is the concept. There will be of course challenges as we do this, as we have seen with every organization, but it is certainly not the intention to bloat the bureaucracy. Rather, it is to streamline it and that is the whole point.

Mr. WAXMAN. Mr. Portman, I would hope you take a look at the letter that Mr.—.

Mr. PORTMAN. I have seen your letter.

Mr. WAXMAN. And I hope you would also look at what the Congressional Budget Office estimated.

Mr. PORTMAN. And I have and that has been misrepresented a number of times.

Mr. WAXMAN. This is estimated to create 21 Assistant Secretary positions. It is incredibly large. I voted for final passage, as did many other Members.

Mr. PORTMAN. I realize that.

Mr. WAXMAN. I did vote for it, although I did not think it was a good bill as it stood. I voted for it and I think others did as well, to send it on to continue to work on the legislation. If this were the final bill before us in the House, I am not sure that I could still vote for it, or certainly if it came out of conference I expected I would vote against it.

Mr. PORTMAN. Hopefully we can address some of your concerns, and one of the concerns that you have raised repeatedly is this notion there will be other nonsecurity functions in the department. The answer to that is clearly that we think some of these entities work quite well together now.

The Coast Guard for instance. You mentioned oil spill a few times. The oil spill function of the Coast Guard is related in an integral way to what they do to protect our borders. So we want to keep that, it works well. It is a good agency.

The Customs Service, which is under the jurisdiction of Ways and Means, where I serve, same thing. You mentioned the Customs Service. You don't want to pull those agencies—.

Mr. WAXMAN. No. But I don't know if you have served on the Transportation and Infrastructure Committee. They have a large expertise on this, and Chairman Young doesn't agree.

Mr. PORTMAN. I understand they have some jurisdiction issues with moving it over at all, but that is not what you are saying. You are saying maybe the border functions should go but not the other functions. He would object to that, because he would say, no, if you are going to move it, you need to do it in full.

I will continue to talk to him on the record in a little while.

Mr. Chairman.

Mr. BURTON. Let me just say that if you move—let us say there is a person or an agency that does two functions. One is a homeland security function as we perceive it. The other is maybe not a homeland security function. If you split that up, what you are talking about is splitting the agency, and you may be talking about more employees, because you are going to have to leave some here and some there, and people who have the expertise in both areas, you are going to have to have two instead of one, and so I think the consolidation process we are talking about, even though you are bringing in some functions that are not germane necessarily to homeland security but some that are, I think is going to make sure that we minimize the amount of new employment that is going to be necessary. Whereas if you split up agencies, I think you run the risk of saying we have got to have people that do this function as well as this function instead of one person or one agency.

Mr. PORTMAN. In some agencies—and Customs is a good example for me because it is in our jurisdiction—but people have multitasks. Coast Guard obviously is another great example of that.

I would say, too, with regard to the alternative, which is to put something in the White House, I have lived through the Drug Czar, and I know you have lived through CEQ and I know how you view that, and maybe you can speak to that, but with no budget authority, no people or ability to move these agencies and departments, it is very difficult to do what we are trying to do here, which is to change a mindset, to make the primary function homeland security, and I would just suggest that if there is going to be an office in the White House, that does not have budget authority, it really is not going to have the strength to be able to perform, even if it is statutory, even if it has a confirmed director within the White House as is the case with CEQ or the Council of Economic Advisers or the Office of Drug Control Policy. They just don't have the ability to do what we need to do to get done here.

Chairman ARMEY. I am afraid I might have to call time on the gentleman from Ohio and we come to a conclusion and—.

Ms. DELAURO. We are going to have it both ways, Mr. Chairman. I will ask a brief question and then yield to Mr. Menendez.

Chairman ARMEY. The gentlelady is recognized.

Ms. DELAURO. Thank you very much. Following up on the cost issue, have you seen any evidence to support the administration's contention that the cost of the new department, including its administration and new entities that it creates, can be funded from savings achieved by eliminating redundancies in the current structure?

Mr. WAXMAN. I can only respond that we asked the Congressional Budget Office to evaluate that idea, that premise, and they came back with an estimated $3 billion expenditure, just for this department. That to me is an incredible amount of money and could be used far more effectively for our national security, internal security in other ways than moving all of the bureaucracy around and moving all these pieces and ending up with 21 Assistant Secretaries.

Mr. BURTON. My view is that there will be initial additional costs. Long term, there will probably be some savings, but I am a realist. I think there will probably be additional expenses, but what we are talking about here, and I hope nobody loses sight of this fact, we are talking about in effect a Department of Defense for America. We have maybe thousands of terrorists, maybe more than that, in the United States who want to do us ill, and we have to do whatever is necessary, not only to protect the infrastructure but every American citizen as much as possible. And we must realize that it may very well cost more money than we anticipate, but what is the alternative? To do less, you run the risk of a real tragedy like we saw on September 11th. And so I don't know what the additional costs might be or if there will be ultimately an additional cost. All I am saying is that we have to do what we have to do to protect this country.

Ms. DELAURO. I will just say, and I am going to yield to my colleague, but it would be good at the outset to lay out the fact that

it is going to cost more money instead of trying to indicate that it probably won't cost more money.

With that I yield to my colleague from New Jersey.

Mr. MENENDEZ. I thank the gentlelady for yielding. Let me go to the INS issue for a moment. The Hispanic Caucus today puts out a statement of principles on this saying they would really like to see it stay in the Justice Department, but if it is going to be transferred, that they would like to see an Under Secretary for all of those immigration functions within the Department of Homeland Security, because we don't want to get to the point that we treat immigration as terrorism.

Is that something that you would be supportive of?

Mr. BURTON. Yes. I think it is very important that those who are coming here to seek freedom and justice and the American way of life not be hampered from getting to the United States, and I think we ought to do whatever is necessary in the Department of Immigration to make sure that those people do have the ability to come to America if they follow the rules and regulations to get here.

But we also believe that it is very important that along with the visa provisions we were talking about earlier, that there be very close scrutiny of people coming into the country to make sure that we don't have terrorists slipping through the cracks.

So I agree with you that we ought to make sure that we still have immigration according to our immigration laws, but at the same time there is going to be a dual purpose there, and that is probably why we made need an additional secretary to deal with that.

Mr. MENENDEZ. Mr. Waxman, let me ask you a question. To the extent that agencies propose to be transferred to this new department end up being transferred to this department, which agencies have multiple missions beyond security? Do you believe that there should be language here for a mechanism of some sort to try to guarantee the other managers of those departments that they are held in their work, in their—.

Mr. WAXMAN. Well, I think that is part of the tricky difficulties we have with this legislation, because, for example, the FEMA agency deals with natural disasters and has a traditional function. We are going to continue to need that agency to deal with those kinds of problems. So I would hate to see that agency disrupted, similarly I would hate disruptions at the Coast Guard and the INS and other agencies as well. That is why we have to be mindful that we are not creating redundant bureaucracies. If we are going to leave them where they are now with some functions and move other functions, we have to figure out how to do that in a careful enough way. Otherwise it seems to me we are going to have a real mess on our hands.

Mr. MENENDEZ. But my concern is while we presume and assume that they will continue those functions unless their budgets are somehow preserved, unless their statements as to those missions are being preserved in the context of a security focus that has been the advocacy for those, there are no guarantees that those missions are preserved in a way in which they can succeed at, and that is of grave concern to us.

Mr. BURTON. If I might comment on that, Mr. Menendez. Our bill expanded the mission statement of this new department to highlight the importance of nonterrorist functions and the need for the department to respond to such things as national disasters, in addition to terrorist attacks. FEMA is a central agency for carrying out that mission. Therefore, it is critical that they be included. And also we are going to have a number of Assistant Secretaries. Many people differ on how many there should be, but I suggest that at least one or two of those Secretaries should be designated to deal with nonterrorist functions to make sure that those are not overlooked or short-changed. It is extremely important that if we transfer an agency in there that can deal with terrorism, will deal with terrorism but has other functions, that those are not neglected.

Mr. MENENDEZ. I thank you, Mr. Chairman.

Chairman ARMEY. So much of what has come from your committee, I recognize another good looking suggestion. We will look into that.

Just to update the committee, we now have two members that have joined the committee who have not had the opportunity to question this panel. The Chair's intention is to recognize the gentleman from Oklahoma on my right, the gentleman from Texas on my left, and then conclude our work with this panel with myself. The gentleman from Oklahoma.

Mr. WATTS. Mr. Chairman, I will try and be brief. Yesterday we heard testimony from the Director of Office of Personnel Management and she was talking about making the bureaucracy work for us, and we have heard the—Ms. Pelosi talked about the same thing, having a lean, streamlined department in the Homeland Security Department, and I know that one of the ways we can do that is by way of technology and different management features, and so forth. And I was pleased to see that you all included in your markup the Federal Information Security Management Act, FISMA, and formerly H.R. 4629, which encourages and supports carrying out innovative proposals to enhance homeland security.

Can either you, Chairman Burton or Mr. Waxman, one or the other or both, I would just like for you to kind of share how you think each of these will help in securing America's homeland.

Mr. BURTON. Well, first of all, we differed a little bit with the administration on this. We expanded the language that they had in the original bill. We did that because we wanted to make sure that we kept the brightest and the best in these positions and that there wasn't a lot of problems with such things as pay disparities and the like.

Let me just go through the kind of language we had further in there to deal with this, and I hope that answers your question. The Secretary of Homeland Security, along with the head of OPM, will be authorized to adjust compensation levels to remedy any pay disparities that exist between employees who come into the department from various areas who are going to perform similar jobs. Obviously if you bring somebody in from one department that is going to do a job and somebody from another department that is going to do a job and there is a pay disparity, you have got to make sure you work that out. And I presume that they would probably raise the pay so that it was comparable.

To develop a disciplinary—however, no employee can be compensated above the Cabinet level, and there was some that wanted to take it to the degree that it would go up to the President's salary and above Cabinet level salaries. We thought that was going to be difficult for management purposes.

To develop a disciplinary system based on existing law that enables the Secretary to suspend or expeditiously suspend or remove an employee in case of national or homeland security: Now, there is a process that we are talking about that would be followed which would guarantee their rights, review of what happened, but they can get them out of that position very quickly if it was a security risk, to develop and submit to Congress for approval a proposal for a demonstration project for a human resources management system that makes it easier to recruit and retain talented individuals. And that would ensure that veterans' preferences, whistleblower protection and collective bargaining rights would be retained and authorized performance appraisal system for managers or supervisors, and finally to exercise the human resource management authorities under this section in accordance with the merit principles contained in title 5, of the U.S. Code.

I don't know—does that answer your question?

Mr. WATTS. Well, I think all of those things are good. The two issues that I addressed or spoke to were the technical innovations in using private sector innovations and technology to manage and to enhance defense of America's homeland. I think what you just shared with us I think does overlap into the question that I asked.

Mr. BURTON. I am sorry. I must have been thinking and missed part of your question. There are provisions in the bill which provide for mechanisms to make sure we get the best technology, the best minds from the outside to make sure that we have the ability and the technology to defend against any kind of terrorist threat or terrorist attack. One of the problems we had in getting the technology, for instance, is some of those companies—and you weren't here when we talked about this previously. Some of those companies have a limit of liability in their insurance, which would—they are afraid that if they were sued, if there was a national tragedy, it would go above their limit of liability. And so we provided a hold harmless provision in there so that the Director of Homeland Security and OPM agreed that we need to provide this protection for that company above their limit of liability. They get the most insurance they could, but above that limit of liability so we could get that technology, and we would go ahead and do it.

Mr. WAXMAN. Before I address your point on FISMA, I want to make a comment on FOIA. I have a concern that we are going to keep a lot of this information from the public, when it is really not a matter of homeland or national security. So I have some misgivings, and I think we ought to continue to look at these new exemptions from FOIA.

There was an issue I will bring to your attention that came up in the committee. In our bill based on an amendment by Mr. Davis, we allow the lowering of standards for computer security in order to make sure that more than one company could compete. That didn't make sense to me. We ought to keep the best standard and tell all the companies they should come up to that standard. I had

a sense that we were doing this because some companies didn't have a good enough system to compete, and they wanted the standard lower so they could also come in and see if they could get government contracts. I didn't think that was the right course for us to take, and you might look at that provision again as well. My staff would certainly be available to help you examine that and rethink whether we want to lower standards for computer security simply to make some companies more commercially viable rather than make our security standard what we wanted out of the whole exercise.

Mr. BURTON. If I might follow up real quickly—.

Chairman ARMEY. If I may ask you to do so.

Mr. BURTON. I missed part of your question, and you asked about three questions in one. I understand the committee adopted an amendment that would improve information security in the Federal Government. Currently information in the possession of Federal agencies is vulnerable because of a lack of coordinated uniform management. Resolving this problem is an important aspect of homeland security because of our reliance on information technology and the advancement of electronic government, and that Mr. Davis provided we put in the bill.

Chairman ARMEY. Thank you.

Mr. WAXMAN. And I just want to add most of that we agreed to. I raise just one point where we had a disagreement.

Mr. WATTS. But I think that is beneficial for this effort, and I was delighted to see you insert that.

Chairman ARMEY. Thank you again, and the Chair recognizes the gentleman from Texas, Mr. Frost.

Mr. FROST. I just would like to nail something down so there is no possibility of misunderstanding, and let me preface by saying I am not asking you about the Morella amendment. Just disregard that for a moment. I am asking you about section 730 in the bill in H.R. 5005, as introduced, and section 730, as reported by your committee. Section 730 as reported—.

Mr. BURTON. Okay. You want us to start off with what was in the bill submitted to us by the White House?

Mr. FROST. Yes. Starting with that, and then I am asking you about section 730 as reported by your committee.

Mr. BURTON. Okay. Well, as reported by our committee—.

Mr. FROST. Let me ask the question, if I may. My question is are you asking this committee to substitute the language for—in section 730 as reported by your committee for the language as appears in the bill as filed, H.R. 5005?

Mr. BURTON. You know, that is a tough question to answer, because I am a very strong supporter of the President and all the work they put in this bill, but I believe, being realistic, the language that the committee came up with is superior, will work better and will solve the problems that are inherent in this kind of a transfer.

Mr. FROST. So you are asking that we use your language?

Mr. BURTON. I believe that would be preferable. Do you agree with that, Henry?

Mr. WAXMAN. I do.

Mr. FROST. Mr. Burton, in the event that this committee does not use your language for some reason, uses the language as introduced rather than your language, will you want the opportunity on the floor when this is considered to offer your language as an amendment?

Mr. BURTON. Well, I would have to discuss with the leadership, people on this committee the reasons why they preferred the other language to our language and make a determination at that point. You know, I am not omnipotent, although sometimes I might think I am, and there may be reasons that I missed for the language that was sent to us in the first place being used rather than ours. However, at the present time, I believe what we put in the bill is the right approach, and unless convinced otherwise, I would support that.

Mr. FROST. And Mr. Waxman, would you want the opportunity to offer that as an amendment on the floor if this committee chose not to put it in the bill?

Mr. WAXMAN. I certainly think the Members should have the opportunity to vote on the provisions that were unanimously adopted by the Government Reform Committee as it relates to government employees.

Mr. FROST. I agree with you, and I hope that this committee will see the wisdom on a bipartisan basis in using the language that was reported unanimously out of your committee, and if this committee does not on a bipartisan basis choose to use the language reported out of your committee unanimously, then as a member of the Rules Committee, I will certainly seek to have that made in order as a floor amendment so that it can be offered—considered on the floor of the House.

Mr. BURTON. One real quick follow-up, and that is you said putting the Connie Morella—.

Mr. FROST. I am not asking about that.

Mr. BURTON. That is a very important amendment, a very important issue, and I sincerely hope the committee will take a hard look at that. I think that should be reversed.

Mr. FROST. But I wasn't asking on that question.

Mr. WAXMAN. But I also think that Mrs. Morella or some other Member ought to be able to offer her provision which was adopted by our committee, because I think it was a worthwhile provision, and it is important to have it debated and Members should be informed and make a decision about it.

Mr. FROST. I understand. I didn't want to confuse the two issues, though, Mr. Waxman, because I wanted to make it clear that as base text, it was the position of your committee, and the chairman has just reiterated that, that the base text adopted by your committee is superior to the base text in the bill as filed with us.

Mr. WAXMAN. Well, the text adopted by our committee includes the Morella amendment.

Mr. FROST. I understand. I am just asking about section 730, though.

Mr. WAXMAN. The Morella amendment was a closer vote, the other parts of it were unanimous, but it was nevertheless the recommendations of our committee.

Mr. FROST. Well, that I understand, but I was asking about section 730 only. Although there are people—Mr. Waxman, there are people who agree with you and people on our side who agree with you on that, but there really are two separate questions, and it is my concern that this committee, our Select Committee, may ignore the very good work done by your committee in redrafting section 730, and I think that would be a mistake and I think it would be a step backwards in the effort to achieve bipartisanship.

I have no further questions.

Mr. WAXMAN. I agree with you.

Chairman ARMEY. Gentlemen, let me thank you for being here. The chairman of this committee does have some questions he could direct to our panel, but the Chair remains confident that in that event he would still remain more satisfied with his own conclusions than the conclusions of the witnesses. So we will spare you the difficulty of responding to my questions.

Mr. BURTON. May I make one final request, and that is if you or any member of the committee requires any information from our staff or ourselves as far as why we did certain things, we will be very happy to provide those for the committee, and I would like to end up by saying these people behind me and I am sure behind Henry worked their tails off. They worked over the weekend. They worked hours and hours on end and they are the unsung heros on this bill, and I just really appreciate all the hard work they did.

Chairman ARMEY. Let me just say, and that is good of you to mention that, we have already—our staffs from this committee have already had the privilege of working with your committee. We do feel very well-informed about the background thinking, the chapter and verse discussions you had. I myself sat up until 1:30 in the morning and watched your markup. I found it scintillating. I don't imagine what I was thinking in my life that I would have preferred to watch till 1:30 in the morning. But it has been a very important exercise, what you have done in your committee.

We will take you up on that offer, and we do so much appreciate the time you have been willing to share with this committee, and thank you so much for your hard work.

The Chair recognizes that we are now being joined by the chairman and the distinguished ranking member of the International Relations Committee, and the Chair would like to invite Chairman Hyde and Ranking Member Lantos to the dais.

Gentlemen, as you approach, let me just explain that it is our procedure here to by unanimous consent put your formal statement in the record and then ask you if you could to summarize your statement to us under the 5-minute rule, each in your turn, and then following that, we will proceed to try to stay on a fairly rigorous schedule by exercising our own questions under the 5-minute rule.

So with that, let me just say thank you for being here. We welcome you. We appreciate your hard work, and Chairman Hyde, we will begin with you.

**STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. HYDE. Thank you very much, Mr. Chairman and ladies and gentlemen of this very important and consequential committee. We will be brief.

Mr. Lantos and I have worked together on this problem, and we are in total accord, as we are on many issues before our committee. The subject of the issuance of visas is a controversial one. There are about 12 million applications for visas every year. The ministerial administration of those 12 million applications for visas is a considerable task.

Some people wanted to take the whole function of issuing visas and transplant it to the Homeland Security Agency or Department, doing away with the State Department's function in this process. We felt that was doing no favor to homeland security, that much of this work, the overwhelming bulk of this work is not connected to homeland security. We felt continuing to use State Department personnel in the consular offices to do the routine work would work, and we would put the Secretary of Homeland Security in charge of policy, of training, of discipline, of regulatory activity and have the power and authority to send people out to these consular offices anywhere in the world should the need arise.

This is the best of both worlds. It utilizes what are already in place in the State Department, consular personnel and at the same time hands over the authority to regulate, to oversee, to train these personnel and to make policy to the Secretary of Homeland Security, and so that amendment was comfortably passed in International Relations. I am happy to say that it passed in the Judiciary Committee comfortably, and I am advised it also passed in Government Operations.

So that is what I am presenting to you today, plus one more issue. I was somewhat startled to learn that in Washington, D.C. there are 41 police agencies; that is, agencies who have the right to arrest people and to carry weapons, 41 of them. I have the list here, and neither the left hand knows what the right hand is doing times 41, and so it seemed to me appropriate that in this important subject of homeland security, we advise the Secretary of Homeland Security of this plethora, this proliferation of police agencies and suggest some regulatory language to have them communicate with each other.

It seems to me that having this firepower and not talking to each other is wasteful and counterproductive. So we don't provide how that should happen, but we suggest and require the Secretary of Homeland Security to look at that and to make regulations that will stimulate interfacing communication between these police agencies. And I am now pleased to yield to my colleague, Tom Lantos.

[The statement of Mr. Hyde follows:]

PREPARED STATEMENT OF HON. HENRY HYDE, CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

First, Mr. Chairman, I would like to thank you for permitting me to explain the compromise provision on visa processing in our Embassies and consulates abroad, which was worked out last week among a bipartisan coalition of members representing the three House committees with jurisdiction over this vital issue.

The President's proposed legislation creating the Department of Homeland Security included important changes in the way in which the U.S. government processes the 10 to 12 million visa applications that stream each year into more than 200 U.S. embassies worldwide. The vast majority of these visa applications are from people who are visiting relatives, touring the country, or doing business in the United States.

The President's plan transfered ultimate authority over visa issuance and refusal to the Secretary of Homeland Security, while continuing to rely on U.S. foreign service officers to perform the day-to-day work of reviewing applications and conducting interviews.

Some expressed concern that the President's plan did not go far enough to ensure that security would come first in the visa adjudication process. In our examination of H.R. 5005 as introduced, we determined that these concerns arose primarily from ambiguity or uncertainty in the language of the legislation. We were able to draft an amendment to clarify and fortify this language, and our amendment was adopted (with minor variations) by three separate Committees during their markups last week.

The amendment which my colleagues—Tom Lantos, Ileana Ros-Lehtinen, and Howard Berman—and I proposed, included several important new provisions:

First, our amendment makes clear that ultimate authority rests with the Department of Homeland Security. No visa will be issued over the objections of the new Department.

Second, our amendment makes clear that the new Department has authority to place homeland security officers in our embassies not only to review individual visa applications, but also to oversee consular activities, train and advise consular officers on homeland security issues, and conduct investigations relevant to these issues.

Finally, our amendment includes a very important provision clarifying that a decision denying a visa is not subject to judicial or administrative review.

Other members proposed more radical changes to the President's plan. While eliminating any role for the State Department in the visa process might be satisfying to those who seek to punish the Department for past failures, over the long run this approach could weaken, not strengthen, our efforts to protect the American homeland. In my judgment, we would not be doing Homeland Security any favors by requiring it to assemble a new overseas bureaucracy to adjudicate 10 to 12 million applications a year, the overwhelming majority of which present no homeland security issues. Our compromise proposal will allow Homeland Security officers to spend more time—as long as it takes—on identifying and dealing with those applications that do present risks to the security of the United States.

The Hyde-Lantos-Berman-Ros-Lehtinen compromise is endorsed by the Bush Administration and by the three Committees of jurisdiction. It will preserve the essence of the Administration's proposal—the sensible division of labor under which homeland security officers will be allowed to concentrate on homeland security functions—while helping to ensure that security concerns will be central to key decisions made abroad.

We would like to thank the Select Committee for its time, and we hope our recommendations will be helpful in its drafting of the final proposal.

Chairman ARMEY. Thank you, Chairman Hyde. Tom Lantos, it is my pleasure, my friend, to have you here.

## STATEMENT OF THE HONORABLE TOM LANTOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LANTOS. Thank you very much, Mr. Chairman, Ranking Member Pelosi, ladies and gentlemen. Let me first say that one of the great joys of my 22 years of service in Congress has been to work with Henry Hyde on the International Relations Committee. I think I can say without any possibility of contradiction that under Henry's leadership, this has been by far the most bipartisan committee of the House of Representatives and probably of either Chamber and that, as Henry stated, we in the International Relations Committee, Mr. Chairman, adopted the Hyde-Lantos proposal unanimously which enjoys the full support of the administration.

I do not serve on the Judiciary Committee, but the Judiciary Committee adopted essentially the same proposal. I do serve on Government Reform, and in Government Reform again overwhelmingly, with Republican and Democratic votes, we accepted this proposal.

So I can only echo Henry's statement, but I would like to take a minute, because I know how precious your time is, to spend a little time on the culture of the Foreign Service as it relates to this issue, because I think this is a very important item. When you are 24 years old and take the Foreign Service examination, at the end of your personal rainbow, Mr. Chairman, there is not the item of issuing visas to Turkish housewives. That is not what you are aiming at. You are aiming at becoming an ambassador 25 years from now and to participate if not in the formulation, at least in the implementation of U.S. foreign policy.

And what we have today is really a 2, 3, 4-year bootcamp for bright young people who do their kitchen police duty in the State Department issuing visas, and they can hardly wait to get a good grade on that so they can move on to other things.

Now, the notion of hiring a whole new bureaucracy of people whose lifetime occupation will be the issuing of visas is an absurdity. The State Department has been issuing visas for over 200 years, and we clearly, following September 11th, need to readjust our priorities and our focus. So the Hyde-Lantos amendment to the administration's proposal recognizes the primacy of the Homeland Security Secretary in all aspects of this process, but handling the issuing of the visas via the State Department. The Homeland Security Secretary will have the opportunity of assigning as many of his people as necessary who will have full authority over the issuance of every single visa that is issued, but it would be absurd to have this whole new department take over a function which on the whole is very well performed. I am fully cognizant of the horrendous failures that have occurred in recent years, the security lapses, and that is why the placement of homeland security people trained for that job in whatever embassy or consular office the Secretary of Homeland Security determines will be done.

There is only one exception in our scheme to the primacy of homeland security, and I think we as members of Congress will appreciate it. If the State Department official rejects a visa application, then Homeland Security cannot overrule him. If the State Department wants to issue a visa, then Homeland Security has full authority to review it, and this I think in more ways than one protects us as Members of Congress, because constituents come to us and say an individual was rejected for a visa, can you use some pressure to get that visa done? If the State Department says no, that is the end of the rope.

I personally believe that our proposal, which has the approval of three committees and the administration, should be probably the easiest provision for your distinguished committee to approve.

Thank you, Mr. Chairman.

[The statement of Mr. Lantos follows:]

PREPARED STATEMENT OF HON. TOM LANTOS, RANKING MINORITY MEMBER, COMMITTEE ON INTERNATIONAL RELATIONS

Mr. Chairman, I would like to thank you, Ranking Democratic Member Pelosi and other members of the Committee for receiving our testimony here today on this critical endeavor, establishing a Department of Homeland Security. I have an extensive written statement, and I ask unanimous consent that it be made part of the record.

Mr. Chairman, nothing this House will do this session is more important than to move forward successfully this gargantuan undertaking, and I believe we must do it in the most expeditious and bipartisan manner possible. It was in this spirit, Mr. Chairman, that Chairman Hyde and I worked together on a bipartisan basis with other members of the Committee to craft a sensible proposal relating to the division of labor between the Secretary of State and the Secretary of Homeland Security with respect to the visa function. I am very pleased that the White House has announced its support for this proposal, and that last week it was adopted by all three House committees that considered it. Moreover, I understand that Governor Ridge confirmed the Administration's support for the Hyde-Lantos Amendment in testimony before your Committee earlier this week.

Under our proposal, which builds on the President's proposal in H.R. 5005, the Secretary of Homeland Security would have all authorities relating to issuing regulations, enforcing and administering the laws on processing visas at United States diplomatic and consular posts abroad. The Secretary would also have the authority to confer this authority on other officials and employees of the U.S. Government. Absent such delegation, however, these authorities would be exercised through the Secretary of State and his highly trained cadre of consular officers. The Secretary of Homeland Security can overturn decisions of consular officers to grant a visa, alter visa procedures now in place, and can develop programs of training for consular officers.

In addition, in the spirit of a bipartisan compromise with those who would like to move the entire visa function to the new Department, the Hyde-Lantos amendment explicitly authorized the assignment of Homeland Security employees in U.S. diplomatic and consular posts abroad. Consular officers would continue to have the primary responsibility for reviewing visa applications. Rather than assume all visa processing functions, Homeland security employees would concentrate on identifying and reviewing cases that present homeland security issues. Homeland Security officers will provide expert advice and training for consular officers, investigate threats and ensure that these officers have access to all the homeland security information necessary to perform their function.

I want to stress again the bipartisan nature of this amendment and its wide-ranging support. It was unanimously adopted by voice vote in the International Relations Committee. Chairman Hyde and Congressman Berman sponsored it in the Judiciary Committee, where it prevailed on a combination of Republican and Democratic votes. And Congresswoman Ros-Lehtinen and I sponsored the amendment in the Government Reform Committee, where it prevailed by an overwhelming voice vote. Late in the Government Reform Committee markup, Congressman Weldon, who had opposed the Ros-Lehtinen-Lantos Amendment, slipped in a further amendment that was inconsistent with some key provisions of the Ros-Lehtinen-Lantos Amendment. I understand that the Administration opposes this amendment. Thus, while I agree with the intent of the provision, that there be more interviews and careful scrutiny of visa applicants from Saudi Arabia, I think the Select Committee either make substantive revisions to the amendment or consider not including it in its mark.

Mr. Chairman and Ranking Member Pelosi, I want to take a brief moment to tell you why I feel so strongly about this amendment. The Department of State has some of our Government's finest civil servants, trained in over 60 languages with decades of experience in dealing with foreign cultures. Their continuation in the Foreign Service is predicated on carrying out their responsibilities successfully if they don't, they will not get promoted and will be forced out of government service altogether.

I believe that the current system can be improved, particularly through additional resources for the State Department to allow more detailed interviews of visa applicants. But I do not agree with those who suggest that the answer is moving the entire visa function to the Homeland Security Department. I do not believe that standing up a whole new bureaucracy, with little experience in foreign languages, cultures, or conditions, and with little opportunity for advancement to higher level posts, will draw the kind of quality people needed to advance our national security.

Even more important, the proposal transferring the entire visa function to Homeland Security would risk overwhelming Homeland Security personnel with non-

homeland security functions and thereby make it difficult or impossible for them to perform their central mission. With all the new agencies that the Secretary of Homeland Security will have to integrate, the last thing this Department should be focused on is creating a whole new system for adjudicating over 11 million visas, at a huge and unknown cost.

In addition, the Hyde-Lantos-Ros-Lehtinen-Berman proposal also included an authority for the Secretary of State to refuse visas if to do so was in the foreign policy or security interests of the United States. This was somewhat of a narrowing of the Administration's proposal, but was consistent with the Administration's goal of retaining the Secretary of State's authority to deny visas on foreign policy grounds and has been endorsed by the Administration. In addition, the amendment makes clear that there are certain authorities that are vested by law in the Secretary of State that should not be affected by this proposal. These authorities include determinations regarding the issuance of diplomatic visas, exclusion and deportation on foreign policy grounds, and implementing Presidential proclamations regarding the admissibility of classes of aliens. Other authorities included authorities that are specifically related to narrow foreign policy concerns, such as the exclusion of certain Haitian human rights abusers and persons who were beneficiaries of U.S. property expropriated by the Cuban Government. While the Committee listed some of the most important provisions in this regard, the list included in the Hyde-Lantos-Ros-Lehtinen-Berman amendment is not meant to be exhaustive, and we expect that the Secretary of State and the Secretary of Homeland Security will reach an understanding through an interagency agreement on the exact division of responsibilities between them.

Finally, Mr. Chairman, the amendment provides that nothing in the amendment shall be construed as creating a private right of action. We did not intend to extinguish any existing cause of action, but wanted to ensure that the reorganization of functions embodied by the amendment did not affect the doctrine of consular nonreviewability or create a new cause of action not otherwise contemplated by law.

Mr. Chairman, Ranking Democratic Member Pelosi, other members of the Committee, I respectfully request that in your markup of H.R. 5005, you adopt the Hyde-Lantos-Ros-Lehtinen-Berman proposal, which is supported by the Administration and was adopted by all three relevant committees. If you do so, I believe the House of Representatives should consider this issue closed, with no need to address it as the legislation moves to the House floor. However, to the extent this issue is considered by the full House, I further request that it is done so in a way that will allow an up or down vote on this particular issue, as opposed to it being buried in the middle of some large-scale immigration reorganization amendment.

Thank you, and I stand ready to answer any of your questions.

Mr. HYDE. If I could just say one thing. The perception among some of our more conservative Republicans is the State Department is a little squishy, and we ought to straighten them out by turning over this vital function to the Homeland Security. I am suggesting that the Homeland Security will be in the driver's seat. It will direct, supervise, oversee, discipline.

Mr. LANTOS. Overrule.

Mr. HYDE. Overrule. It will be a robust supervisor, and so we have still the ability to utilize people that are in place and superimpose on it a robust directorship that should meet the worst fears of people who are concerned that the State Department still exists.

Chairman ARMEY. Thank you. Thank you gentlemen, both, for your opening statement. The Chair now recognizes the gentleman from Texas, Tom DeLay, for his 5 minutes.

Mr. DELAY. I thank you, Mr. Chairman, for being here and Ranking Member Lantos. It is great to have your testimony. Quite frankly, you have done such a thorough job in your committee that I have no questions. It is amazing how you have done this in a bipartisan way but also gotten approval of the administration and anybody and everybody else that may deal with this issue. So I just congratulate you on the job that you have done.

Mr. LANTOS. It helps to be a team of septuagenarians, Mr. Delay.

Chairman ARMEY. I agree with you. I concur fully on the white hair. And the Chair recognizes the gentlelady from California, Ms. Pelosi.

Ms. PELOSI. And I am not going into the white hair bit at all. I want to join you, Mr. Chairman, and our distinguished whip from Texas in commending the gentlemen, the distinguished witnesses, for their fine work. I too want to acknowledge, though, their great leadership on promoting democratic values, which is a pillar of our foreign policy. They have both been champions for promoting human rights. Mr. Lantos has chaired the Human Rights Caucus, and over the years Mr. Hyde in his various capacities in Judiciary and in the International Relations Committee. They bring to the table a value that is central to what we are talking about here, protecting freedom now in our own country, and doing so in a way that values the work of the people who have been issuing these visas but recognizing the concern about protecting the American people. Here the other day the Secretary of State, General Powell testified that he supported the product of the International Relations Committee.

So your work is done. You worked in a bipartisan way and a thoughtful way with balance. That was recognized by the administration. So for your part, you have made our work easier, and I commend you for that. Thank you for your valuable service today and for all time. Thanks, Mr. Chairman. I yield back the balance of my time.

Chairman ARMEY. Thank you. Thank the gentlelady. The gentleman from Oklahoma.

Mr. WATTS. I have no questions.

Chairman ARMEY. Gentleman from Texas.

Mr. FROST. I would just like to add to the other comments and thank you for what you have done. Oh, that the other committees had been able to reach agreement with the administration as effectively as you have.

Thank you.

Chairman ARMEY. The gentlelady from Ohio.

Ms. PRYCE. Thank you, Mr. Chairman. We can tell it is late in the afternoon. The questions are getting fewer and fewer and far between. So I will just add my congratulations to the gentleman and hope that the spirit of bipartisan cooperation that you found in your committee's work will transfer all the way through this process. It is very important that it does, and so thank you for getting us started.

Mr. LANTOS. Thank you.

Chairman ARMEY. The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman. As someone who sits on the committee, I witness firsthand the great work of both the chairman and the ranking Democrat, and I am very pleased with both their work, their leadership and their effort. I just want to take the opportunity, however, to say that I hope—you know, it still sends somewhat of a shiver down my spine when I think that the Secretary of Homeland Security can overturn decisions of consular offices to issue a visa, can alter visa procedures now in place, can develop, in essence—and I know that is what we did, but I am concerned that there are those who will look at immigration as ter-

rorism, and as it is, a consular officer right now has virtually unfettered discretion to make a determination as to whether or not they issue a visa.

Mr. MENENDEZ. Add to that this power of this new Homeland Security Secretary to go ahead and send in—deny someone based on what criteria; we are going to have to be looking at that in the future. I certainly hope that we will continue our oversight of how this unfolds as the committee—as the new Department is created, because I think there are many United States citizens who seek to be reunified with their family who will be facing—their family member will be facing a consular officer somewhere in the world. And there is enormous impact upon the economy of this country in terms of tourism, legitimate tourism of people from across the world that come here that would have a significant consequence to our national economy and to communities across this country for which tourism is a big part. And probably one of the greatest aspects of our democracy is how we permit students to come here from across the world and learn what is so unique about America and hopefully plant those seeds back where they go.

So I certainly commend the work of the two gentlemen and the committee which I am privileged to serve on, but I hope we will continue to be vigilant as this unfolds to make sure that we are stopping those that wish harm to this country, but not stopping those which would both enrich us and for which provides part of our foreign policy and foreign objectives abroad. Thank you, Mr. Chairman.

Chairman Armey. The gentlewoman from Connecticut.

Ms. DELAURO. Thank you very much, Mr. Chairman. And I want to say thank you to Chairman Hyde and Ranking Member Lantos for their testimony and for their good work.

I would associate myself with the remarks of my colleague, Mr. Menendez. As the daughter of an immigrant family, I think that we are always nervous about whether or not we are going to treat immigration with other than the good spirit in which it has provided great strength and energy to this great Nation.

And I would just say that we are relying on your knowledge, your sensitivity, and your good judgment, as you have demonstrated in the work that you put forth here today. So I commend you for what you are doing, and I think we all need to be vigilant to safeguard that very, very, very special quality of this Nation in its immigrants, you know, past, present, and in its future. Thank you.

Mr. LANTOS. Mr. Chairman, if I may just make a one-sentence comment, I fully concur with the statements of my colleagues, Mr. Menendez and Ms. DeLauro. Although my ancestors came on the Mayflower, I try to be sensitive to these concerns to the very best of my ability.

Chairman ARMEY. Thank you. The Chair now recognizes himself, which is no small matter at my age.

Let me begin, Mr. Hyde. Mr. Lantos says about the Weldon amendment—and by the way, let me just say that this chairman observed with great interest the manner in which you won your point indeed in three committees: one where you chaired, two where you served, two where you serve. But there is a difference,

I believe, that is drawn between the language of your own committee, IR, and the language of Government Reform. And that difference is the Weldon language. And I have Mr. Lantos' statement which, Mr. Hyde, I will just read. And he says: I think the select committee either makes substantive revisions to the amendment or consider not including it in his mark the Weldon amendment.

Mr. Hyde do you concur with that?

Mr. HYDE. Frankly, I am not familiar with the Weldon amendment. I understand Mr. Weldon did not, in my opinion, did not understand our amendment and was critical of it. But I did have a talk with him but I am not sure what his amendment did.

Chairman ARMEY. Maybe I can—since Mr. Lantos is on both committees. Mr. Lantos, is it possible that this Chair's writing his own mark, looking at these two iterations, is it possible that my staff might prevail upon your staff for advice on, one, the question should it be dropped all together; or, two, are there revisions that will make this a good service to the American people?

Mr. LANTOS. Mr. Chairman, as I understand the Weldon amendment, it relates to Saudi Arabia, and properly so.

Chairman ARMEY. Yes.

Mr. LANTOS. It was my view that since the Department of Homeland Security has total authority over the issuance of visas, it merely delegates the ministerial functions to the Department of State. Should the Secretary of Homeland Security choose to enunciate a policy according to which all visas in Saudi Arabia must be reviewed by homeland security officials, this would be possible under the original Hyde-Lantos proposal.

My understanding is further, Mr. Chairman, that the administration may want to offer additional refinements, I believe.

Chairman ARMEY. If I may, I do not mean to cut you off, but I think you made the point that indeed under your language, that designation with respect to Saudi Arabia is perfectly within the power.

Mr. LANTOS. It is perfectly within the power of the Homeland Security Department.

Chairman ARMEY. I do not mean to cut you off, but I have a couple of other points I want to cover. A few days ago we had the privilege of seeing the Secretary of State here in the committee, and he displayed for us, actually held up for us, got a picture in The New York Times, the new visa, and talked about some of the reforms that they have put in place in State. And I gather, Mr. Hyde, from your comments that you see this as substantive reform, recognizing some of the problems in State that have troubled us and something that we in this committee should acknowledge and appreciate on the part of the Secretary of State. Is that a correct observation?

Mr. HYDE. Absolutely; yes, sir.

Chairman ARMEY. Thank you. Now, Mr. Lantos, I have admired you for a great many reasons.

Mr. LANTOS. Your judgment has always been flawed, Mr. Chairman.

Ms. PELOSI. Or flawless.

Chairman ARMEY. But I seem to recall, I thought I recalled correctly, that you were one of the few naturalized citizens to be elect-

ed to the United States House of Representatives. Is that not the case?

Mr. LANTOS. That is correct, sir.

Chairman ARMEY. Are there others? I am thinking perhaps Aliena Ros-Lehtinen, Mr. Diaz-Balart. But I feel like this gives you an interesting perspective on a subject that I am fascinated by. America probably today may stand alone as the only Nation in the world that does not differentiate between its own citizens and other persons within its borders with respect to the rights protected for these persons. It is, I think, a fairly unique American experience, one that in fact some nations describe as naive on our part, but I cherish it as a rather special thing.

Is the threat that we face now that prompts us to create this division so great that this Nation should forsake its time-honored tradition of protecting the rights of persons without regard to citizenship?

Mr. LANTOS. I believe, Mr. Chairman, the historic tradition is well worth preserving. I believe we are able to take care of our security concerns by other means, not through restricting rights.

Chairman ARMEY. Mr. Hyde.

Mr. HYDE. If I could revert back to the Weldon amendment, my staff has handed me a note that says the Weldon amendment says no visa may be issued to a Saudi Arabian without an interview by a Homeland Security officer. So it would undo the compromise Mr. Lantos and I have put together, because our language would allow the Secretary to require such interviews but not force them on every applicant.

Chairman ARMEY. I appreciate that. And that was what I grasped. But because you are such an international statesman and such a jurist, I would appreciate your comment on my other question. Do we face such a serious threat from international terrorism that we should forsake what I think has been the special American tradition of making no differentiations in the rights of persons based upon whether they are or are not citizens of the United States?

Mr. HYDE. I would say we should make no differentiation.

Chairman ARMEY. In the rights persons as protected in this country on the basis of whether they are or are not citizens?

Mr. HYDE. I think the Constitution applies to everybody in America, whether you are a citizen or not.

Chairman ARMEY. Thank you. Thank you both.

Do you seek recognition? Very quickly, we will recognize the gentleman from Oklahoma.

Mr. WATTS. I just want to say, Mr. Lantos mentioned at the outset how bipartisan this committee was. And having gotten to know Henry Hyde and Tom Lantos over the last 8 years, I would have been highly surprised if it would have been anything other than bipartisanship and total cooperation. And I just want to say to the both of you, you honor us by being before our committee this afternoon. And I cannot imagine any two other people in all of Congress that work together that have been anymore gracious than you gentlemen have been, and I think a real example for all of us.

And I want to say to you what my papa told me once when I reminded him of how white his hair was getting. He said, "White and

gray hair, when you see that," he said, "that means wisdom. And so it would have been fascinating for me to be in one of your meetings, your deliberations from time to time, and listen to all the wisdom that that white hair has given you both. So I thank you both for how gracious both of you have been.

Mr. HYDE. Mr. Watts, I hate to inform you of this, and Mr. Armey, but both of you are retiring and it takes unanimous consent to do that, and I object.

Chairman ARMEY. Thank you so much. I do see our next panel is here. Thank you.

I should mention as we are changing panels to the very important Intelligence panel, it is with a flurry of activities going on around us; we have prevailed upon so many committees to testify before this committee. It is the intention of this chairman to stay with the process until we complete our hearings. I know some may have to come and go, and some may even switch sides on us for a moment. But I should say we do intend to proceed.

We want to recognize the chairman and ranking member of the Intelligence Committee, Mr. Goss. It is our purpose here to, by unanimous consent, put your prepared statement in the record, except under the 5-minute rule, the points you would like to make before the committee. Ms. Pelosi knows the routine quite well. And we will, after your statements, proceed under the 5-minute rule, and we appreciate you being with us today.

So we will recognize Mr. Goss to proceed.

**STATEMENT OF THE HONORABLE PORTER J. GOSS, CHAIRMAN, PERMANANT SELECT COMMITTEE ON INTELLIGENCE**

Mr. GOSS. Thank you, Mr. Chairman. I appreciate the opportunity to come before you and share the work product of the House Permanent Select Committee on Intelligence on this matter. The establishment of the Department of Homeland Security is recognition that the Federal Government understands the types of threats that terrorism brings to our homeland and that these threats call for a different expanded approach to protecting our national security that was what we needed during World War II and ensuing years.

Mr. Chairman, our Ranking Member Mrs. Pelosi and I have submitted to the committee a recommended amendment to title II of H.R. 5005 that covers the area of information analysis and infrastructure protection. I am pleased to report that the Intelligence Committee passed this amendment out by a vote of 17 to 1 after a lot of hard work and discussion.

The committee also held two hearings on H.R. 5005 with the Director of Central Intelligence, Mr. George Tenet; the Director of the FBI, Robert Mueller; and Governor Ridge. Since HPSCI's markup of 5005 last Thursday, committee staff have discussed our recommendations in some detail with relevant White House staff and others in the administration. We found the administration to be generally supportive of our analysis and information sharing proposals, but there are some areas that they want to have further discussion and we will try and make the benefit of those discussions available to you on a timely basis.

Moreover, there is a unique quality to the analytical portion of the new Department in that this is the only point where all the disparate pieces of information come together. By that I mean that this is where presumably foreign intelligence, Federal law enforcement, and State and local information all come together to be analyzed collectively in order to best understand threats specifically to our homeland and to properly evaluate the weakness in our defenses.

The HPSCI recommendations for the select committee provides for the establishment of an all-source collaborative Intelligence Analysis Center that will fuse intelligence and information from the Intelligence Community as well as from Federal, State, and local law enforcement agencies and the private sector with respect to threats of terrorist acts against the United States. This is something that we do not have right now.

An equally important duty of the DHS Intelligence Analysis Center will be to integrate intelligence and other information to produce and disseminate strategic and tactical vulnerability assessments with respect to terrorist threats. Committee members were concerned that DHS not simply be a department of counterterrorism. Protecting the Nation's infrastructure will require a much broader focus.

For example, vulnerability assessments developed by DHS will not address the insider threat to steal secrets or other information on national resources or infrastructure, for example, nor as the administration's bill specifically addressed, the cyberthreat, terrorist-related or otherwise. Additionally, terrorists' involvement in proliferation of weapons of mass destruction, the financing of terrorist operations themselves, the relationship between narco-trafficking and terrorism, all are missing in the administration's bill and we feel should be dealt with.

The committee's proposal to establish an all-source intelligence fusion center within DHS seeks to fill these national threat and vulnerability analysis gaps. The Center would be charged with developing a comprehensive national plan to provide for the security of key national resources and critical infrastructures. The Intelligence Analysis Center would review and recommend improvements in law, policy, and procedure for sharing intelligence and other information within the Federal Government and between Federal, State, and local governments, an area that needs a lot of work.

The Intelligence Analysis Center is designed to not only support the new Department's intelligence requirements. As important, the Center will establish requirements for the collection and coordination of information and intelligence relating to threats of terrorism against the United States.

The committee believes the proposed Intelligence Analysis Center should be made an element of the Intelligence Community and be a funded program within the national foreign intelligence program in accordance with the National Security Act of 47. Making the center an NFIP element like this will ensure that the Secretary of DHS has full and timely access, which is critical, to all the relevant intelligence pertaining to terrorist threats against the United States, as well to ensure proper coordination between DHS and the

Federal intelligence and the law enforcement agencies of our country.

And rather than transferring Intelligence Community agencies to DHS, the committee has recommended that some intelligence analysts from the civilian and Defense Department components of the Intelligence Community be detailed on a reimbursable basis to the Intelligence Analysis Center for up to 2 years. The specific number of detailees will be determined through cooperative agreements between the DHS Secretary and the Director of CIA, the Secretary of Defense, Attorney General, Secretary of State, and other related agencies.

During the testimony before HPSCI on 5005, Governor Ridge, Director Tenet, and Director Mueller each offered their personal commitments that the new Department would have access to intelligence pertaining to terrorist threats against the United States. And although their stated willingness to share intelligence is appreciated, and I believe they will because of the chemistry that exists between those people, the committee felt so strongly about the issue of the DHS's access to intelligence that it included mandatory language to ensure the immediate provision to the DHS Secretary of all intelligence or other information that is collected by any U.S. Government agency relating to terrorism and infrastructure vulnerability.

The HPSCI language creates a mechanism whereby the President can resolve any disputes between DHS and the Intelligence Community concerning timely access to intelligence. These are very important gaps to fill.

And finally in closing, the Intelligence Committee's proposal envisions an Intelligence Analysis Center that is actual in terms of personnel and infrastructure; appropriately flexible in terms of its authorities and its capacity to address rapidly changing threats to the United States and the nature of terrorism; is unique to our government in that it incorporates the best analytical practices and capabilities that are found both in government and the private sector to defend our country and our people. That is using all of our assets and talents and skills to the best we can bring them together and I think is a timely and important suggestion.

Thank you, Mr. Chairman.

Mr. DELAY. [Presiding.] Thank you, Mr. Chairman.

[The statement of Mr. Goss follows:]

PREPARED STATEMENT OF HON. PORTER J. GOSS, CHAIRMAN, HOUSE PERMANANT SELECT COMMITTEE ON INTELLIGENCE

Mr. Chairman, thank you for this opportunity to address this distinguished committee on an area of great importance to our national security. The establishment of the Department of Homeland Security is recognition that the Federal Government understands the types of threats that terrorism brings to our homeland, and that these threats call for a different, expanded approach to protecting our national security than what was needed during and since World War II. It is indeed unfortunate and ironic that it took a World War II type event, once again, to make the country understand that the world contains individuals who would attack our way of life—our values, our livelihood and our principles—in ways that are anathema to civilized society.

In fact, Mr. Chairman, I believe that the world hasn't changed that much since September 11th. What has changed is the audience. And it is this same audience, the American people, which appears to be supportive of making such a significant change to our government's structure. But with that support, is the requirement to

make sure that we do this right; that national security is enhanced at the end of the day and that we are positioned to reduce the risks to our security—to our way of life—as best as possible. It is with that charge that I am honored to appear before you Today to discuss those portions of the bill that relate to the jurisdictional responsibilities of the House Permanent Select Committee on Intelligence.

Mr. Chairman, our Ranking member, Ms. Pelosi, and I have submitted to the Committee a recommended amendment to Title II of H.R. 5005, that covers the area of Information Analysis and Infrastructure Protection. I am pleased to report that the Intelligence Committee passed this amendment by a vote of 17 to 1, with the one dissenting vote being cast in relationship to the overall process of Congress' proceedings on the establishment of this new department rather than on any substantive differences with the Intelligence Committee's product. This amendment is the result of a significant amount of work by our very experienced and professional staff and our members who have been very significantly involved in these issues through our normal oversight process and as they participate in the bicameral inquiry into September 11th. The Committee also held two hearings on H.R. 5005, with the Director of Central Intelligence, George Tenet, the Director of the FBI, Robert Mueller, and with Governor Ridge. Since HPSCI's mark-up of HR. 5005 last Thursday, Committee staff have discussed our recommendations in some detail with relevant White House staff and have found the Administration to be generally supportive of our intelligence analysis and information sharing proposals for the new Department. There are one or two areas where we will have further discussions, and it is possible that we may offer additional thoughts in the very near future.

Before I summarize the Amendment, let me first give you an idea of why the Committee took such actions. Mr. Chairman, if you look at the overall structure of the new department, you will notice that the vast majority of the organization has to do with planning, implementation, protection and response to terrorist threats and actions. The successful integration and operation of this portion of the department is very important to strengthening our borders, our infrastructure, and our security. This is a critical step in ensuring that federal, state, and local entities are coordinated and effective. What we also know, however, is that combating terrorism relies very much on information and intelligence. We have seen this time and again both in combating the threats posed during the Millennium and during our operations in Afghanistan, the Philippines, and other areas where we are fighting this war. This makes the analysis and proper handling of information and intelligence related to the threats critical to the success of any other actions we may take. I would submit that if the analytical portion of the department doesn't work, the rest of the department's operations and functions are somewhat academic. Moreover, there is unique quality to the analytical portion of the new department in that this is the only point where all the disparate pieces of information come together. By that I mean that this is where, presumably, foreign intelligence, federal law enforcement, and state and local information will all come together to be analyzed collectively in order to best understand threats, specifically to our homeland, and to properly evaluate the weaknesses in our defenses.

This, again, makes having the right analytical approach critical. Such resources must be a priority from the beginning and must be robust and dynamic, and this where I will begin my summary of the HPSCI actions. The Administration's proposed legislation lacks a provision for establishing a robust analytic cadre to do terrorism threat analysis. Without an all-source analytic capability to validate and make sense of threat information, the Secretary will have to rely only on Intelligence Community analysis that may be fractious, contradictory, parochial and incomplete, and will have to make critical analytical judgments in a vacuum.

Information sharing is also an issue of concern for the Intelligence Committee. The Administration's proposal leaves unclear the circumstances under which "raw" intelligence will be made available to the Department. Given that the Secretary doesn't know what he doesn't know, decisions on what DHS needs to know will be entirely left to the various agency heads at CIA and FBI, with the risk that key information will not always be shared, or not shared promptly or with enough detail. And under the Administration's current information analysis construct, it is unclear whether intelligence and law enforcement sources and methods will be adequately protected and whether certain information can be shared with the department.

It is also not clear how or whether DHS will task the Intelligence Community with collection requirements, and how conflicting requirements will be adjudicated or otherwise prioritized. Given that DHS will be the first US Government entity to do vulnerability assessments of infrastructure, there will necessarily be both analytic and collection gaps from the outset. And during a 9–11 type of national crisis, DHS will presumably play a key role, but, as currently envisioned, without the ben-

efit of a mechanism to input knowledge and requirements into the intelligence and law enforcement communities' systems.

The HPSCI recommendations to the Select Committee provide for the establishment of an all-source, collaborative Intelligence Analysis Center that will fuse intelligence and information from the Intelligence Community as well as federal, state, and local law enforcement agencies and the private sector with respect to threats of terrorist acts against the United States.

An equally important duty of the DHS Intelligence Analysis Center will be to integrate intelligence and other information to produce and disseminate strategic and tactical vulnerability assessments with respect to terrorist threats. Committee Members were concerned that DHS not simply be a Department of Counterterrorism—protecting the nation's infrastructure will require a much broader focus. For example, vulnerability assessments developed by DHS will not address the insider threat to steal secrets or other sensitive information on national resources or infrastructure. Nor has the Administration's bill specifically addressed the cyber-threat, terrorist-related or otherwise. Terrorist involvement in the proliferation of weapons of mass destruction, the financing of terrorist operations, and the relationship between narcotics trafficking and terrorism are also missing in the Administration's bill. The Committee's proposal to establish an all-source intelligence fusion center within the DHS seeks to fill these national threat and vulnerability analysis gaps.

The Intelligence Analysis Center would be charged with developing a comprehensive national plan to provide for the security of key national resources and critical infrastructures. The Intelligence Analysis Center would review and recommend improvements in law, policy, and procedure for sharing intelligence and other information within the federal government and between the federal, state, and local governments. The Intelligence Analysis Center is designed to not only support the new Department's intelligence requirements. As important, the Intelligence Analysis Center will establish requirements for the collection and coordination of information and intelligence relating to threats of terrorism against the United States.

The Committee strongly believes that the proposed Intelligence Analysis Center should be made an element of the Intelligence Community and be a funded program within the National Foreign Intelligence Program in accordance with the National Security Act of 1947. Making the Intelligence Analysis Center an NFIP element will ensure that the Secretary of DHS has full and timely access to all relevant intelligence pertaining to terrorist threats against the United States, well as to ensure proper coordination between DHS and federal intelligence and law enforcement agencies. Rather than transferring Intelligence Community agencies to DHS, the Committee has recommended that some intelligence analysts from the civilian and Defense Department components of the IC be detailed, on a reimbursable basis, to the Intelligence Analysis Center for up to two years. The specific number of detailees will be determined through cooperative agreements between the DHS Secretary and the Director of Central Intelligence, the Secretary of Defense, the Attorney General, and the Secretary of State.

During testimony before HPSCI on H.R. 5005, Governor Ridge, DCI Tenet and Director Mueller each offered their personal commitments that the new Department would have access to intelligence pertaining to terrorist threats against the United States. Although their stated willingness to share intelligence is appreciated, the Committee felt so strongly about the issue of DHS's access to intelligence that it included mandatory language to ensure the immediate provision to the DHS Secretary of all intelligence or other information that is collected by any U.S. Government agency relating to terrorism and infrastructure vulnerabilities. The HPSCI language creates a mechanism whereby the President can resolve any disputes between DHS andthe intelligence and law enforcement communities concerning timely access to intelligence.

The Intelligence Committee's proposal envisions an Intelligence Analysis Center that is agile in terms of personnel and infrastructure, appropriately flexible in terms of its authorities and its capacity to address rapidly changing threats to the United States, and unique to our government in that it incorporates the best analytical practices and capabilities found in both the government and the private sector to defend our country and our people. Our proposal integrates the traditional mission of intelligence analysis with new sources of information and sophisticated information tools. As important, our proposal views information and intelligence sharing as a two-way street—with data moving up from localities and the private sector to states and then torelevant federal authorities as well as national data flowing down to states, localities and, when necessary, to the American public.

In closing, I think that we all agree that developing effective information analysis and dissemination functions within DHS is a very complex and nuanced requirement. It is critical that timely intelligence informs our homeland security strategy

and its implementation. But establishing this new department, and the analytical center within it, will not completely solve our problem or reduce the risks. The missing component is the implementation of Intelligence Community reforms as well. I want to assure the Select Committee that the Intelligence Committee is equally focused on this urgent need to reform the civilian and defense elements of the Intelligence Community and we are in active discussions with the White House on such issues.

I appreciate the Select Committee's interest in the HPSCI's recommendations and I look forward to responding to any questions that panel members may have.

Mr. DELAY. Ms. Pelosi.

**STATEMENT OF THE HONORABLE NANCY PELOSI, RANKING MINORITY MEMBER, PERMANANT SELECT COMMITTEE ON INTELLIGENCE**

Ms. PELOSI. Thank you very much, Mr. Chairman. I am very pleased to join my distinguished chairman in our presentation to the select committee to develop legislation for a Homeland Security Department. I wanted to say at the outset that our committee always works in a bipartisan way. Particularly I want to commend Mr. Goss for the bipartisan leadership. He is always open to our suggestions.

We worked hard for our presentation to you today because there were so many different suggestions and proposals and because, frankly, we are walking on sacred ground now. This hearing takes place in the context of a joint inquiry that we are having in our Committee on Intelligence with the Senate. We will have some hearings tomorrow, we had some yesterday, and that are concurrent with these hearings.

We have a common purpose in having the product of our work give some comfort to the families who were affected on September 11th: to reduce risk to the American people and to protect our civil liberties as we protect the American people.

We began our deliberations in our joint inquiry with a moment of silence in recognition of the suffering of those families but also the gravity of the responsibility that we have there. We also in the select committee have a tremendous responsibility.

Our chairman has presented some of the provisions of our amendment which we believe improves the legislation significantly. We should have a good suggestion. We have worked on these issues for many years. I would only like to add a couple of points, more than a couple, but some points as we go along.

As you know, our committee focused on title II of the bill, which is the relevant section, and we set forth the responsibility for the Under Secretary for Information Analysis and Infrastructure Protection, the functions transferred to this Department in this area, and the Secretary's access to information, the note on which the Chairman ended his remarks, especially intelligence information. The title also describes the protection to be afforded information, including protection from unauthorized disclosure and an exception from the Freedom of Information Act for information infrastructure information provided on a voluntary basis by the private sector.

I have some disagreement on that provision, but more on that later.

After wide-ranging discussion of several options, the committee voted 17 to 1 to recommend a substitute for title II. The substitute

contains many of the provisions proposed by the President, but also establishes a distinct entity within the Department of Homeland Security to produce all-source collaborative intelligence analysis and threat assessments. The committee recommends that the entity be called the Intelligence Analysis Center, that it be an element of the Intelligence Community, and that for budget purposes it be included in the National Foreign Intelligence Program.

Importantly, the Center is intended to provide intelligence support for all of the mission areas of the Department, whether these are the prevention of terrorism, protection of infrastructure, or the functions of the various entities transferred to the Department. Thus the committee recommendation calls for the intelligence elements of the Coast Guard, the Customs Service, the Immigration and Naturalization Service, the Federal Protective Service, and the El Paso Intelligence Center of the Drug Enforcement Administration to be transferred to the Intelligence Analysis Center, as well as the infrastructure protection entities specified in section 202 in the President's bill.

I would note that a member of our committee had concern over whether there will be sufficient analytic strength within the Department of Homeland Security as originally proposed. We recognized that this Department is to have a responsibility to a new kind of strategic analysis that will build on but be different from the analysis going on elsewhere in the Federal Government. Our recommendation provides a viable framework for the creation of a new analysis entity.

Questions remain, however, beyond the scope of the Intelligence Committee's review, over whether there will be sufficient resources provided to the Department to make this Center viable and meld its various analytic entities together, to provide training for the analysts, and to make its computer systems and databases compatible. The Intelligence Committee did not accept the proposition that a new domestic intelligence service along the lines of the British or Canadian model should be created. Far-reaching proposals outside the U.S. tradition should be subjected to considerable study, and the committee and the Senate Select Committee on Intelligence embarked on an investigation of September 11th.

I believe Congress should await the findings of the joint inquiry and we shouldn't try to include significant organizational changes, for example, FBI and CIA for the Intelligence Community, in legislation establishing the Department of Homeland Security.

Finally, I have my reservations which I expressed at the Intelligence Committee meeting about the provisions in the committee's recommendation that would exempt from the Freedom of Information Act information provided voluntarily by non-Federal entities or individuals related directly to the duties of the Under Secretary for Information Analysis and Infrastructure Protection. I fear this provision may be too broad in its scope and beyond what is necessary to satisfy the concerns of the private sector with respect to proprietary information about infrastructure vulnerabilities.

I believe the select committee should ensure that whatever is done in this area is narrowly targeted and precisely constructed. I say this with complete respect for the concerns that we have about

private sector information that is given to us for our national security purposes, but I think we should define it carefully.

As I always say, I love the freedom of a tightly-knit idea. I think we can achieve our national security goals, we can respect the legitimate concerns of the private sector and, of course, continue the FOIA protection to the American people that is important to us.

With that, Mr. Chairman, I again hope that the committee will accept the recommendation of our committee. We worked very hard on it. We had nearly unanimous support, certainly overwhelming bipartisan support for the proposal, and it was not without competition of many ideas to be presented here today.

Thank you for your attention, Mr. Chairman, and members of the committee.

Chairman ARMEY. Thank you both.

[The statement of Ms. Pelosi follows:]

PREPARED STATEMENT OF HON. NANCY PELOSI, RANKING MINORITY MEMBER, PERMANANT SELECT COMMITTEE ON INTELLIGENCE

Mr. Chairman, members of the Select Committee, I appear before you today as the Ranking Democrat on the Permanent Select Committee on Intelligence to describe the Committee's recommendations to the Select Committee with respect to the Homeland Security Act of 2002.

Our committee focused on Title II of the bill. Title II sets forth the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection; the functions transferred to the Department in this area; and the Secretary's access to information, especially intelligence information. The title also describes the protection to be afforded information, including protection from unauthorized disclosure and an exception from the Freedom of Information Act for infrastructure information provided on a voluntary basis by the private sector.

After a wide-ranging discussion of several options, the Committee decided by a vote of 17 to 1 to recommend a substitute for Title II. This substitute contains many of the provisions proposed by the President, but also establishes a distinct entity within the Department of Homeland Security to produce all-source collaborative intelligence analysis and threat assessments. The Committee recommends that the entity be called the Intelligence Analysis Center, that it be an element of the intelligence community and that for budget purposes it be included in the National Foreign Intelligence Program.

Importantly, the Center is intended to provide intelligence support for all of the mission areas of the Department, whether these are the prevention of terrorism, protection of infrastructure or the functions of the various entities transferred to the Department. Thus, the Committee recommendation calls for the intelligence elements of the Coast Guard, the Customs Service, the Immigration and Naturalization Service, the Federal Protective Service and the El Paso Intelligence Center of the Drug Enforcement Administration to be transferred to the Intelligence Analysis Center, as well as the infrastructure-protection entities specified in section 202 of the President's proposal.

I should note that members of our Committee had considerable concern over whether there would be sufficient analytic strength within the Department of Homeland Security as originally proposed. We recognized that this Department is to have a responsibility to do a new kind of strategic analysis that will build on, but be different from, the analysis going on elsewhere in the federal government. Our recommendation provides a viable framework for the creation of a new intelligence analysis entity. Questions remain, however, beyond the scope of the Intelligence Committee's review over whether there will be sufficient resources provided to the Department to make this Center viable and meld its various analytic entities together, to provide training for its analysts, and to make its computer systems and databases compatible.

The Intelligence Committee did not accept the proposition that a new domestic intelligence service along the lines of the British or Canadian model should be created. Far-reaching proposals outside the U.S. tradition should be subject to considerable study. The Committee and the Senate Select Committee on Intelligence are embarked on an investigation of the intelligence community before and after September 11 that may result in recommendations for change in the community's orga-

nizational structure. I believe the Congress should await the findings of the joint inquiry and not try to include significant organizational change for the intelligence community in legislation establishing the Department of Homeland Security.

Finally, I have my reservations, which I expressed at the Intelligence Committee meeting, about the provision in the Committee's recommendations that would exempt from the Freedom of Information Act information provided voluntarily by non-Federal entities or individuals related directly to the duties of the Under Secretary for Information Analysis and Infrastructure Protection. I fear this provision may be too broad in its scope and beyond what is necessary to satisfy the concerns of the private sector with respect to proprietary information about infrastructure vulnerabilities, I believe the Select Committee should ensure that whatever is done in this area is narrowly targeted and precisely constructed.

Chairman ARMEY. The Chair recognizes the gentleman from Texas, Mr. Delay.

Mr. DELAY. I did read both your statements and I must say you did an excellent job in making an excellent presentation covering many issues that, frankly, are giving a lot of Members on both sides of the aisle, liberal to Republican—I mean liberal to conservative—very high concerns about this particular office and the Intelligence Analysis Center.

Could you explain to me—I just I worry, because we seem to be breaking down that high wall that we have built to make sure that the CIA was not involved in our private lives, and now you are proposing that we take detailees from other existing agencies, including the CIA and FBI and NSA—and I would assume even maybe DIA? Is that also suggested?

Mr. GOSS. Yes, sure.

Mr. DELAY. Is there a possibility that the Center would perform—could you make us feel better that there are enough protections in your proposal that individuals's privacy rights and civil liberties cannot be violated?

Mr. GOSS. I think I can try and give you some satisfaction on that. We are talking about an Analysis Center, and the Center itself is going to be a place where information comes in from outside, and where requests for information are going to emanate to the outside. What you are looking for is the safeguards on how that information is collected outside.

Presently in our form of government, we have excellent safeguards over our foreign intelligence collection system. Basically that is why we call it the National Foreign Intelligence Program. We do not spy on Americans.

There is a secondary part which we are wrestling with, and there is a great debate—which is not part of our presentation—we are talking about analysis, not what the analysts analyze, but the analysis capability, and that is the debate about how do we go ahead in our country and safeguard that democracy and freedom that we all care very much about, which is our hallmark; and how do we nevertheless get information that might be relevant through law enforcement personnel who are working in this country to prevent something of a terrorist nature from happening before it happens?

That is a very tricky and difficult question and probably more appropriately addressed to the Judiciary people than it is to the Intelligence people.

The Intelligence people are going to operate by the law.Now you are suggesting that perhaps that by having Intelligence Commu-

nity analysts at work in homeland security, that we would somehow be breaking down freedoms. Let me assure you that we have Intelligence Community analysts working now in a number of agencies that deal with a number of problems, domestic and foreign in the United States. That is not uncommon. It is a question of the operation against an American citizen or American spying on an American. That safeguard is still there. But if you are the object of a law enforcement search, or you have broken a law and have attracted the attention of law enforcement authorities, those are the areas where your question goes, and I think that we do not try and address that in our bill.

Ms. PELOSI. If I may, Mr. DeLay, your question is music to my ears, because I think this is the challenge that we have. We all take an oath, every single one of us in public office, to protect and defend the Constitution. Again, as we protect and defend the American people, we have to protect and defend the Constitution. So we have a higher calling than other countries might have. Some had suggested an MI-5, which is a British model, which collects on the British people. We rejected even the beginnings of something like that in our deliberation. There are some who advocate for that, no one that I know of in the administration. So we have bipartisan interest in not collecting on the American people. And most us involved in this would fight to the death on that issue.

I have said over and over, because there are shortcomings in other aspects of our intelligence gathering analysis and dissemination, we should not say the answer is to spy more on the American people. The answer is to improve our collection abroad, to improve our analysis across the board, and to improve our dissemination so people know what it is that we have.

So I look forward to working with you to make sure that we—the Attorney General has rejected that, others in the administration, I don't know if I am at liberty to say because it was in our hearings upstairs but who have rejected that, and it is not a part of our proposal here today.

Mr. DELAY. I appreciate your answers. Thank you.

Chairman ARMEY. The Chair recognizes the gentleman from Texas, Mr. Frost.

Mr. FROST. Well, you both have talked about this some, but I wish you could elaborate if you would, briefly, n the factors that the committee took into account in not bringing more of the Central Intelligence Agency and Federal Bureau of Investigation into the Department of Homeland Security. I assume you did look at this carefully, and if you could indicate the reasons why you did not recommend more of a consolidation of these functions.

Ms. PELOSI. We will take turns going first, I guess. First of all, we were addressing the homeland security legislation and the section that applied to intelligence. I think the administration, rightly so, did not go down a path in the homeland security bill that talked about incorporating CIA, FBI, broadly in the bill.

We are, as I mentioned, we are in the middle of our joint inquiry. Before September 11th even, we were in the process of restructuring of the Intelligence Community. And in our bill last year, we said this will be the last bill that looks like this because with the

restructuring next year, our bill will look different. Little did we know that September 11th, God forbid, would intervene.

The point is that when we come out of the joint inquiry, lessons learned there, there is a Scowcroft Report to the President on Restructuring that addresses some issues about the Intelligence Community. At that time, we will be better equipped to make some determinations.

I do not, just speaking myself, I do not see any situation under which we will be including the CIA and the FBI under the Homeland Security Department. But we certainly will be restructuring the Intelligence Community, improving selection analysis and dissemination of information.

Mr. GOSS. I certainly associate with those remarks, and I come to the same conclusion. I cannot foresee a time when we would be putting a whole agency into the Department of Homeland Security. There are actually some, I guess 14, depending on how you count agencies that have an intelligence component, some are 100 percent, some are a lot less than that, to make up our foreign Intelligence Community.

The CIA has a great deal more responsibility and function than just terrorism. Terrorism is obviously top of the list. That is where the war is now, that is what we are focused on now. It is highest priority. But there is a whole bunch of other stuff that is critically important to us, too; just defending our communications at the government level, those kinds of things, those kinds of chores that are routinely taken up by people that are a lot harder than you would think.

So when you take a look at the total work that needs to be done and the way the Foreign Intelligence Service works for us, it seems very appropriate that it stay outside of this Homeland Security piece, to give the reassurance that we are not spying on Americans in part, but also to take advantage of the full range of capabilities that the foreign intelligence collection and analytical capability that we have can be brought to bear on the homeland security, and still do all the rest that it is assigned to do, which is a very large amount of work on a global basis, as you know.

With regard to the FBI, I think I have just received 12 pages of reforms that are going on in the FBI. I haven't even had a chance to digest them superficially, but I believe it is fair to say as our chief Federal law enforcement agency in the country, it also has a very full menu that goes beyond prevention of terrorism. And I think it is appropriate that we not subsume all of the other activities to terrorism, but we provide that terrorism has the priority. It is the first among equals of the law enforcement challenges right now. I think that was the reasoning. And we will be looking at the architecture of the Intelligence Community once we get through with the immediate task at hand.

Ms. PELOSI. If I may add to that, Mr. Frost. Force protection—one of the primary responsibilities of the Intelligence Community writ large, not just the CIA but Intelligence, is force protection of our young men and women in uniform around the country. So there is such—the scope of the responsibilities is so broad and go well beyond homeland security, as central as that is to us in this hearing today.

Mr. FROST. Mr. Goss, if I could, there has been a lot of discussion in the press that the FBI is very good at catching people after the fact but that it has not been always very good at prevention. And I would hope that your recommendations, both as a part of this and then your later recommendations, will address that.

Mr. GOSS. Indeed, Mr. Frost, they do. And we are well aware of that, and it is not a criticism of the FBI. That was their mission. Their mission has changed and it has been reinforced. The understanding of that mission change is very clear to them. And I think they are doing their best to adapt to it. And I am satisfied that they are trying.

Mr. FROST. Thank you. Thank you.

Chairman ARMEY. The gentleman from Oklahoma.

Mr. WATTS. Thank you, Mr. Chairman. In this new Intelligence Analysis Center, Congressman DeLay mentioned civil liberties, which I think we all are concerned about. And I think not only do we have to be concerned about that, but we have to be concerned about duplication as well. And in this new Agency, given that the Center would take detailees from other agencies like CIA, FBI, NSA, is there any possibility that the Center would perform functions that duplicate some of the activities of the existing agencies?

Mr. GOSS. I think that the idea is to bring into focus the terrorist target and terrorist threat and the vulnerability and bring them all together and fuse them all together in one place. We have counterterrorist centers, as you know, in other agencies—without going too far into details in a public hearing.

And, yes, I think there is a possibility that information will come in and get analyzed in one area and then say oh, my gosh, this would be of interest to the Homeland Security people, let's channel that right down to them now. So I think you will see more than one pair of hands handling some of this. But I think that is of necessity, because I don't think anybody is suggesting that Homeland Security should be running intelligence operations overseas.

So inevitably as information comes in, goes through the analytical process, I would believe that it would get a value added from the Intelligence Community. But as a customer, it would be receiving a good piece of information that would be of particular interest to it; because people will know that if you have got something that involves terrorism or counterterrorism or the terrorist threat or the vulnerability of our infrastructure here, the customer that is interested, in addition to the President of the United States, are these folks in the Department of Homeland Security.

Our Intelligence Community is actually pretty good at understanding who their customers are and getting information timely, whether it is the Defense Department or State Department or whomever.

Ms. PELOSI. I would only add that some of us, post-September 11th, wanted to assess the performance of every agency that had any responsibility for preventing a act. And some of these agencies are well beyond what you would say—the CIA, the FBI and that. You have INS, FAA, and the rest of that. And the Office of Homeland Security and the White House, of course, will be the ultimate place which will see all. But some of this information that you are talking about and the analysis that would go on at the Department

of Homeland Security that is different from at the FBI and the CIA, is that the Secretary would be seeing it within a larger context of the other agencies under his purview. And, of course, the director at the White House, if that is the title, advisor to the President, whatever the title is, would be seeing it even in a broader context, which I think would be valuable to the American—protecting the American people.

Mr. WATTS. I yield back the balance of my time.

Chairman ARMEY. The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman. And thank you both for your work and your testimony.

I just want to focus on one element of this which I think is so crucial, and that is information sharing. And in that regard, you know, I think there is a difference—which is part of what I have tried to bring out over the various witnesses we have—between providing for information sharing and having mechanisms that guarantee information sharing.

And I would just ask, Mr. Goss, I read your statement as well as what you verbalized, and you expressed what the committee was concerned about in terms of the President's proposal, leaving unclear what raw intelligence would be made to the new Department. And I think the line that I like here the most is, "Given that the Secretary does not know what he does not know," you know, it is very telling.

Could you and Ms. Pelosi address, do you think that what the Intelligence Committee has done provides—goes beyond providing for information sharing and gives us some mechanisms or guarantees of information sharing and at what levels?

Mr. GOSS. Well, we certainly tried to take what we felt was an uncovered part in the President's proposal and reinforce it with a mandate that information will be shared; because without getting into other work that we are doing too much, we have found that information sharing—no secret to anybody—has not been our brightest success story as we have gone along.

And breaking down what in the lingo they call the "stovepipes," so that one agency really wants to get a piece of information and polish it and guard it jealously and take it up to the top and say, see what we at this agency have contributed, which quite often you get a better product for timely if you are coordinating horizontally at lower levels—that is what we have tried to do.

So the answer to your question I hope is that we have mandated sharing, but we hope in that mandate we have encouraged the opportunity for, at the working level, people to use the common sense to know that this is not about promoting our agency and sticking our logo on a piece of paper that says this is our product and you cannot have it until we get our logo on it; that people will be protective in sharing information.

Part of our problem, honestly—you have hit on a very important point—is that there has not been a lot of reward for that kind of initiative among the working people. It is high risk. You get caught doing something like that, and you risk the ire of your bosses. We have had some cases where we saw some what you will call commonsense initiatives taken by some people saying, I know a guy at

another desk in another agency who ought to know this right now, and they have gotten themselves in some difficulty.

We have to change that culture that everything has to go all the way up before it can go out. And I hope that we have tried to get some forward progress on that. But I cannot tell you that any amendment that we do or anybody else, any words that you write on a paper, is going to make that happen. That is a cultural change that is going to take leadership to make that happen. That is my view, anyway. But I think we are pushing the right way. Do you agree?

Ms. PELOSI. I agree with what the chairman has said. I also—stop me—I think that it is okay to talk about what the current law is?

Mr. GOSS. Sure.

Ms. PELOSI. The current situation is now—and perhaps one of these times we should sit down in a closed session to talk about some of this as well—but right now the President of the United States retains the power to give, for example, the Secretary of Homeland Security, when that person is sworn into office and is confirmed, raw data. Raw data.

The committee will be receiving reports, the committee—I mean the Department will be receiving reports. The committee will be doing its own analysis. And so the question is, can the committee task back out to say I need more information about this, I want you to pursue this further? Or I want the raw data that supports what this report, this finished report says?

Right now, it is the President who makes the determination. The President is obviously a busy person. I think that what we suggested strengthens the hand of the Secretary of the department who has the responsibility, who is accountable, to get access to more raw data, as is his due, rather than having to make a strong case on why he or she should have it.

Mr. MENENDEZ. In this regard, while we have often talked about the FBI and the CIA, I assume we are also talking about Defense Intelligence, NSA, the whole litany of different elements of the Federal Government that have intelligence procuring abilities? This would be part of your information sharing?

Mr. GOSS. Very much so. We have tried to create enough flexibility so that anything that is relevant to what the DHS mission is, is available to them.

Mr. MENENDEZ. And very, very briefly, Mr. Chairman, are there any penalties, is there—you talked about incentivizing and changing the culture so that people share. Are there consequences if you do not share?

Mr. GOSS. Yes. The World Trade Towers.

Mr. MENENDEZ. I understand that. In the legislation, are there consequences so that people understand, hey, if I do not share this, there is some form—.

Mr. GOSS. Not in our legislation. We have not gone that far.

Mr. MENENDEZ. Do you consider that something of value?

Mr. GOSS. I think you need to provide an incentive, you know, whether you should provide a stick. Nobody wants to suggest, in my view, that we are creating a penalty for trying to do an honest job. But I think that there are ways to, already on the books, that

if you are malfeasant or misfeasant in your job that there is a penalty for that.

So I suggest what we do is set the guidelines for the positive and let the normal guidelines or the normal standards that we have for malfeasance or misfeasance pertain. But we did not focus on that, to my knowledge.

Chairman ARMEY. The gentlewoman from Connecticut.

Ms. DELAURO. Thank you very much, Mr. Chairman. And thank you both very much again. Your years of experience at this important function are really demonstrated here today.

Let me just pick up a quick follow-on question to my colleague from New Jersey. Can the Secretary of DHS request that there be a particular kind of intelligence gathered? Or can it work in the opposite way? In other words, they are not collecting the raw data, they have access to raw data, as I understand it. But can they request FBI, CIA, to move in directions to gather intelligence in particular areas that may seem relevant to looking at national security issues?

Mr. GOSS. The answer is, under our proposals they can do that. There are obviously management controls involved in that. But the answer is, yes, we specifically do provide that the DHS can task the Intelligence Community.

Now, tasking the Intelligence Community again, without getting too far into this, the Intelligence Community is asked to provide a lot more than it can possibly do. There are lots of customers that are always asking it to do things. So DHS would become a customer. But DHS would become a specialized unique customer in the area of terrorism and terrorist threats. So my answer is yes, they would have tasking capability to the community, but that would be weighed against the other tasking requirements that the community has to deal with.

For example, if we happen to be in a war at the time, a shooting war, or there happened to be a need for a national technical means for certain other higher priorities that the administration felt—then it might be that their task wouldn't be handled immediately or would be put on a shelf or would be watered down or something else. But they have the right to get into the tasking competition. And if there is a problem there is a referee provided for.

Ms. DELAURO. They are a unique customer. But if we are talking about the uniqueness of the issue and a Department of Homeland Security, probably the single biggest issue that potentially has prompted a Department of Homeland Security is the issue of intelligence and intelligence gathering, sharing what we know when we know it, when can you respond? I am not clear about what the lines are in terms of if you were in a shooting war, is there the potential for there to be a terrorist attack accompany that kind of thing?

So I don't know ,among equals, how do these lines of management, these management controls work? What is the thought process of all of that? Help me; this is very new.

Mr. GOSS. What I am trying to tell you is that the DHS will have the unique requirement under this proposal to task the community to get more information about something of interest to them that they think is critically important. They will have that capacity.

Ms. DELAURO. Not out of frivolous interest, but this is about whether or not—.

Mr. GOSS. No, let us say that John Doe comes into their sights. They get a report that says, "John Doe was seen in an airport in country X. We would like to know more about John Doe. Was he carrying a bag? What can you tell us about John Doe? Go back to the agency that provided the report or the information and say, can you tell us more?" .

Now in order to get that information, you have to go into the operational side of things. And the people who run those operations are besieged with requests from lots of people. I would say normally if it is the subject of terrorism, you are going to get pretty good response.

Ms. DELAURO. That would be a priority, I would think.

Mr. GOSS. I would think so. But just because it is coming from DHS, everything else does not stop because that is not necessarily true.

Ms. PELOSI. The chairman gave you a straightforward answer, the reality. But I think that reality will be changed, just as Mr. Menendez questioned what is the penalty for not sharing information. I think the accountability factors will weigh in very high in responding to the Secretary of Homeland Security at his tasking request or at the sharing of information level. Because the stakes are high, the expectation is too. And there is a whole different attitude now in all of this. But the chairman was giving you the honest answer.

Mr. GOSS. The reason we wanted to put the Under Secretary for Intelligence Analysis in the National Foreign Intelligence Program is so that they have a seat at the table. They are a member of the club. And that way they will be able to coordinate more efficiently with more transparency, and they will be able to get quicker and better answers. As far as I am concerned, I think it is the right way to do it.

Ms. DELAURO. Thank you very much.

Chairman ARMEY. This chairman has the extraordinary privilege of being able to discuss these matters in more private settings with both the chairman and the ranking member, and I find my discussions with you on these matters always enlightening, and look forward to perhaps a few more very important ones before I do my drafting work throughout the night.

So I will not trouble you with questions now in this more public setting. But I do want to take a moment to thank you both for your service on this very important Intelligence Committee.

And, Ms. Pelosi, while I want to thank you generously, I am sure you would concur with me that this body, indeed this Nation, should pay Porter Goss a special tribute of appreciation.

Ms. PELOSI. This is true.

Mr. GOSS. Thank you, Mr. Chairman.

Chairman ARMEY. Nobody in this body can be said to have been willing, and to have demonstrated his willingness by action, to make a larger sacrifice for his Nation than Porter Goss when he decided to stay on the job. And, Porter, my compliments and my appreciation.

Mr. GOSS. Thank you very much, Mr. Chairman. I appreciate that.

Ms. PELOSI. Mr. Chairman, as I said at the beginning of my remarks, I commended him for the bipartisan manner in which he conducted—we are point and counterpoint, as you can imagine, on the intelligence issues. And while we may not always agree, we frequently do. But we always work together to hammer out a solution that is in the best interest of our country and is a service to the Congress. And he has been a tremendous leader. I associate myself with the remarks you made.

I do also say it is a tribute to him and his leadership on the committee that we were able to present to you a model of what we think this Department should look like. We have an agile proposal that is easily absorbed by the new Department, something that can be on line immediately in the important work of intelligence as far as protecting the American people are concerned.

So I hope that beyond the substance of our proposal, you will see it as a model for how the Department should look in its various aspects. With that, I thank the committee. And I also as a member of the committee thank the distinguished chairman.

Mr. GOSS. You caught me and made me speechless, Mr. Chairman, which is uncommon for me. But it is a pleasure working with Mrs. Pelosi. She is an extremely valuable ranking member, to put it mildly, and we have a marvelous working relationship. It is great to understand national security tops everything else when we get down to business, and Mrs. Pelosi handles it extremely, extremely well and always brings a good contribution, to put it mildly, to the table from a perspective I usually hadn't thought of, which is very helpful.

And, Mr. Chairman, I want to tell you that the work you are doing in your committee here is extremely important to this Nation, and I wish you well. And we stand by, ready to help you in any way we can. And I return the compliments that you have been a great leader as well, and we will miss you.

Chairman ARMEY. The practice of this committee is that I as chairman get in the final word. In this instance the final word should come from my grandfather: You are, sir, a gentleman, a scholar, and a poor judge of good whiskey.

We thank you.

The Chair now recognizes the chairman and ranking member of the Science Committee. And we would invite you to come to the dais. While you are approaching, let me just say that it is a practice of this Committee to put your formal statement in the record and to invite you each in your turn, under the 5-minute rule, to make your statement before the Committee after which the committee will conduct its questioning again under the 5-minute rule. With that understanding, Chairman Boehlert, it is a pleasure to see you here and we would welcome you to open with your statement.

## STATEMENT OF THE HONORABLE SHERWOOD BOEHLERT, CHAIRMAN, COMMITTEE ON SCIENCE

Mr. BOEHLERT. Thank you, Mr. Chairman, and members of the committee. It is a pleasure to appear here today. I think all of us

in the Congress are impressed with the way the Select Committee is going about its very important business, and in particular, Mr. Chairman, I wish to thank you and your staff for being so open and cooperative with ours.

Writing this bill has been a true collaborative effort, as it should be. That collaboration was part of the Science Committee's deliberations as well. The Science Committee's amendment to H.R. 5005 reflects work on both sides of the aisle and it was approved by a voice vote. I am pleased we were able to develop such a broadly supportive approach in a very short time. The Committee on Science amendment has three main components: strengthening research and development; improving cyber security; and helping firefighting. Let me discuss each briefly in turn.

The Committee on Science felt, as did several other committees, that H.R. 5005 did not pay adequate attention to research and development. The bill did not spell out the R&D responsibilities or activities of the new department, did not give them a central focus and did not designate a senior official who would be accountable for, or for that matter, have the background to run the department's research and development program. We thought that that was a recipe for failure, and we can't afford failures in this area.

As I have said before, like the Cold War, the war on terrorism will be won as much in the laboratory as on the battlefield. So following the recommendations of the National Academy of Sciences, among others, we created an Under Secretary for Science and Technology and gave that person clear responsibilities for R&D across the department. You know, Governor Ridge endorsed that approach when he appeared before you on Monday. Let me be clear, the bottom line for us is that there must be an Under Secretary for Science and Technology with clear research and development responsibilities, but we do not necessarily believe that this has to be an additional under secretary as was proposed in our bill.

If the Select Committee wanted to meld our approach with that of some other committees, and it is a daunting task I know, and rename and reorient the under secretary created in title III of H.R. 5005, that would fully accomplish our goals, assuming the appropriate language was used.

I don't have time now, nor do you, to outline all of the aspects of our R&D provisions that we consider important, but let me name a few: We believe the Congress should have a clear sense of how any transferred national labs will operate before those labs are actually transferred; we are skeptical of the need for other transactions authority; we think there needs to be an office that can act as a single point of entry for scientists and entrepreneurs with ideas to contribute to improve homeland security; and we support the creation of a homeland security institute.

We also have changed the organic statute for two agencies under our jurisdiction: the White House Office of Science and Technology Policy, and the National Institute of Standards and Technology, to add homeland security as one of their principal duties. Both already contribute to homeland security, and I think that these are noncontroversial but necessary changes.

Moving to cyber security, we also focused on gaps in H.R. 5005 that drew the attention of several committees. The basic problem

is that while cyber security is one of our Nation's greatest vulnerabilities, the bill never deals with it explicitly, so we added a new section, 205, to make the title II under secretary's cyber security duties explicit, and those include improving the security of Federal computers and working with private, state and local officials to improve the security of their systems.

We also created a volunteer corps to respond if and when security fails. For Federal computers, we drew on the approach in current law and in Ms. Morella's H.R. 1259, which the House has already passed. Under this approach the National Institute of Standards and Technology, or NIST, a Federal laboratory that is trusted by industry as an honest broker, will develop standards for Federal computers, which the new department will then promulgate and oversee. This is a sensible division of labor endorsed strongly by the high tech community. With that division of labor in mind, the Committee on Science rejected the proposal in H.R. 5005 to move NIST's computer security division to the new department.

We believe the move would be counterproductive in two ways. First, the move would sever the very useful links between the computer security division and the rest of NIST researchers on whose work the division depends. Second, the move would undermine the division's relationship with the private sector, which trusts NIST as a neutral scientific agency with no direct regulatory authority or national security responsibilities.

I know that a group of House members, like Mr. Goodlatte and high tech industry specialists are in the process of sending letters to the Committee, if you haven't already received them, backing the Committee on Science position on this matter.

Finally, let me say a brief word about the fire provisions. Our Committee believes that the U.S. Fire Administration, a unit of FEMA, needs to remain a distinct entity and have its programs maintain their separate identity to ensure that firefighters, truly the first of first responders, do not get lost in the shuffle within the new department.

Mr. Chairman, I believe the Committee on Science has taken a thoughtful, balanced, targeted, bipartisan approach to build on and strengthen the very useful foundation that has been built by the administration, and I will be happy to answer any questions you might have. Thank you, Mr. Chairman.

Chairman ARMEY. Thank you, Mr. Chairman.

[The statement of Mr. Boehlert follows:]

PREPARED STATEMENT OF HON. SHERWOOD BOEHLERT, CHAIRMAN, COMMITTEE ON SCIENCE

Mr. Chairman and Members of the Committee:

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The Science Committee amendment has three main components—strengthening research and development (R&D); improving cybersecurity; and helping firefighting. Let me discuss each in turn.

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So, following the recommendations of the National Academy of Sciences, among others, we created an Under Secretary for Science and Technology and gave that person clear responsibilities for R&D across the Department. As you know, Governor Ridge endorsed that approach when he appeared before you on Monday.

Now, let me be clear, the bottom line for us is that there must be *an* Under Secretary for Science and Technology with clear R&D responsibilities, but we do not believe this has to be an additional Under Secretary as we have proposed. If the Select Committee wanted to meld our approach with that of some other Committees, and rename and reorient the Under Secretary created in Title III of H.R. 5005, that would fully accomplish our goals—assuming the appropriate language was used.

I don't have time now to outline all the aspects of our R&D provisions that we consider important, but let me list just a few—we believe the Congress should have a clearer sense of how any transferred national labs will operate before those labs are actually transferred; we are skeptical of the need for "Other Transactions Authority;" we think there needs to be an officethat can act as a single point of entry for scientists and entrepreneurs with ideas to contribute to improve homeland security; and we support the creation of a Homeland Security Institute.

We also have changed the organic statutes for two agencies under our jurisdiction, the White House Office of Science and Technology Policy, and the National Institute of Standards and Technology, to add homeland security as one of their explicit duties. Both already contribute to homeland security, and I think these are non-controversial changes.

Moving to cybersecurity, we also focused on gaps in H.R. 5005 that drew the attention of several committees. The basic problem is that while cybersecurity is one of our nation's greatest vulnerabilities, H.R. 5005 never deals with it explicitly. So we added a new section 205 to make the Title II under secretary's cyber duties explicit, and those include improving the security of federal computers and working with private, state and local officials to improve the security of their systems. We also create a volunteer corps to respond if and when security fails.

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Mr. Chairman, I believe the Science Committee has taken a thoughtful, balanced, targeted, bipartisan approach to build on and strengthen the very useful foundation that has been built by the Administration. I would be happy to answer any questions. Thank you.

Chairman ARMEY. Mr. Hall, there is a great country western song in Texas that goes around Texas that says it is a Texas loving

night, and your presence makes this that for me and I want to welcome you tonight

**STATEMENT OF THE HONORABLE RALPH M. HALL, RANKING MINORITY MEMBER, COMMITTEE ON SCIENCE**

Mr. HALL. Mr. Chairman, members of the board, I thank you. I will remember you as a chairman. I respect you as a chairman finally, and you have come a long way since that day over at Homestead Hotel in Hot Springs when I introduced you as a new member. I think I said you were so naive you didn't know that you couldn't close some military bases.

Chairman ARMEY. I recall that word of encouragement from you at the time.

Mr. HALL. And as the new chairman you are going to need a new portrait, and a lot of us from Texas would like to be here to hang it when it takes place.

Seriously, Mr. Chairman, and members of the Select Committee, I am honored to testify before you today. Chairman Boehlert ran a very good bipartisan and constructive process in our committee. Recommendations that we present to you today comprise a consensus product that I think greatly enhances the bill and I am pleased to be present at the creation of the Department of Homeland Security. I think the President deserves a lot of credit for stepping up and accepting the idea that a new department is called for at this time, and I am particularly pleased that the Science Committee can present to you an amendment that places a clear focus in the new Department on Science and Technology.

The single most important recommendation, I think, and I think the chairman agrees with me, was the creation of an Under Secretary for Science and Technology, a recommendation that was supported by both sides of the aisle and unanimously was approved in our markup just last week. I would also note that the President's counterterrorism strategy published just yesterday cites Science and Technology as one of the homeland securit's strategic four foundations. And Science and Technology are, of course, too important to be left to chance in the new department. They need to be planned, coordinated and directed under a strong Under Secretary.

Lynn Woolsey and Mike Honda successfully offered—I want to highlight some of these changes for the Select Committee. I think Chairman Boehlert has covered them very adequately, so I will touch base on them a little bit. I quickly want to highlight Lynn Woolsey and Mike Honda, who successfully offered an amendment to create a Homeland Security Institute. The institute would be a nonprofit organization, assisting the Secretary much in the same way that the Rand Corporation and the MITRE Corporation assist the Secretary of Defense in analyzing proposals, establishing test beds, assessing defense vulnerabilities and strengths and so forth.

Also, one that the Chairman did not mention, an amendment that Representative Joe Barton offered, an amendment that would establish university-based centers to help meet the science and technology needs of the new Department of Homeland Security. The Chairman and I have probably a different approach to that and take different positions on that, and it was a hotly contested amendment, but I think America's leading research universities

represent a great resource to enhance our Nation's homeland security. It creates four university regional centers, and I encourage the select panel to retain this provision as it works its way through the legislation.

Another, Brian Baird feels it is important to include funding for research on how people cope with terrorist attacks and provide tools to help repair the psychological impact to our citizens as part of any international homeland defense strategy. Congressman Baird is a clinical psychologist. I think he gave good testimony and advice to the committee, and I think it is essential that we help him as we want to help our survivors to reduce the potentially paralyzing symptoms of terror trauma and provide mental health professionals the tools to provide effective treatment. We think that was a very good amendment.

Zoe Lofgren and Vern Ehlers led the charge in blocking the transfer of NIST Computer Division to the new department. A lot of high tech organizations have warned that this transfer could actually hurt national security by choking off productive interactions between the government and the private sector on computer security issues.

Eddie Bernice Johnson and Steve Israel successfully offered an amendment to create an advisory committee to review and make recommendations on general policy issues for the Under Secretary for Science and Technology, and Lynn Rivers and David Wu offered an amendment strengthening the channels through which creative American inventors who otherwise might not have access, could propose their ideas and technologies to appropriate government officials.

Mr. Chairman, these are just some of the reason we need to move this bill as quickly as possible, and I thank you for your time and effort on this, and I will be pleased to answer any questions.

Chairman ARMEY. Thank you. Thank you gentlemen.

[The statement of Mr. Hall follows:]

PREPARED STATEMENT OF HON. RALPH M. HALL, RANKING MINORITY MEMBER, COMMITTEE ON SCIENCE

Mr. Chairman and members of the Select Committee, I am honored to testify before you today with my Chairman and friend, Sherry Boehlert. Chairman Boehlert ran a very bipartisian and constructive process and the recommendations we present to you today comprise a consensus product that I think greatly enhances the bill.

I am pleased to be present at the creation of the Department of Homeland Security. The President deserves a lot of credit for stepping up and accepting the idea that a new department is called for at this time.

I am particularly pleased that the Science Committee can present to you an amendment that places a clear focus in the new Department on science and technology—two of our most important tools in fighting terrorism. The single most important recommendation that we made was the creation of an Under Secretary for Science and Technology, a recommendation that was supported bi-partisanly and unanimously in our markup last week. I would also note that the President's counter-terrorism strategy, published just yesterday, cites science and technology as one of the homeland security strategy's "four foundations—unique American strengths that cut across all of the mission areas, across all levels of government, and across all sectors of society". Science and technology are too important to be left to chance in the new Department—they need to be planned, coordinated, and directed under a strong Under Secretariat.

Our Committee made over a dozen constructive changes to the President's proposal in our markup last week. I will quickly highlight four of these changes for the Select Committee:

• Lynn Woolsey and Mike Honda successfully offered an amendment to create a Homeland Security Institute. The Institute would be a non-profit organization assisting the Secretary in much the same way that the RAND Corporation and the MITRE Corporation assist the Secretary of Defense in analyzing proposals, establishing test-beds, assessing defense vulnerabilities and strengths, and so forth. The creation of this Institute was the major recommendation of last month's National Research Council report on terrorism R&D.

• Zoe Lofgren and Vern Ehlers led the charge in blocking the transfer of NIST's Computer Security Division to the new Department. This Division develops information security standards, testing, and evaluation tools for use in federal agencies and in the private sector. Many high-tech organizations have warned that this transfer could actually hurt national security by choking off productive interactions between the government and the private sector on computer security issues. Reps. Goodlatte and Boucher (and a number of other Members) have sent the Select Committee letters on the importance of this matter.

• Eddie Bernice Johnson and Steve Israel successfully offered an amendment to create an advisory committee to review and make recommendations on general policy issues for the Under Secretary for Science and Technology. Most importantly, the Committee will include representatives of the users of the Department's research activities—emergency responders—and of citizen groups.

• Lynn Rivers and David Wu successfully offered an amendment strengthening the channels through which creative American inventors can propose their ideas and technologies to appropriate government officials.

Mr. Chairman, we need to move this bill as quickly as possible. Homeland security is too important a task to let politics, turf, jurisdictional concerns, or struggles over credit get in our way.

Thank you for your time and efforts on this matter. I would be pleased to answer any of your questions.

Chairman ARMEY. Ms. Pelosi, the chairman is tempted to continue with his Texas theme by recognizing Mr. Frost from Texas.

Mr. FROST. I appreciate that because actually I have a Texas question.

Ralph, I didn't have the privilege of serving in the Texas legislature. Of course, you did with great distinction, and in the Texas legislature there is a practice called Bracket law, in which you write a law that applies to only one entity or to one city. It is a city no larger than a million 115 people, no smaller than—you understand what I am talking about. And it appears that the Barton law is a classic example of Bracket law. It only applies to one school in the state of Texas.

Mr. HALL. That is the University of Texas at Arlington, I think.

Mr. FROST. No, it does not apply to the University of Texas. It only applies to Texas A&M where Mr. Barton went to school.

Mr. HALL. I was joking with you.

Mr. FROST. But it applies to Texas A&M only. Here is my question. As you know, Texas has many world class research universities; yet the amendment adopted by your Committee authored by my colleague from Texas, Joe Barton, would, for all practical purposes, exclude all of those universities, except for one, from eligibility to compete for those centers designated. Can you comment on the Barton amendment and the 17 criteria it sets forth to establish eligibility requirements? Is there a need to, in this legislation, exclude many universities from this competition including the University of Texas which is excluded from this competition?

Mr. HALL. Yes. I would be glad to. Initially the bill was drawn and many thought it alluded only to Texas A&M University, perhaps because Barton was the author of it, and his having been a graduate of there. We discussed that and Congressman Barton agreed that it should be regional and that all universities should

have a shot at it. He even offered to take those 17 criteria away, and I think this committee could do that if they wanted to. We want to pick the finest universities, the greatest universities.

I mentioned Stanford, Johns Hopkins. I mentioned a lot of others in our debate there. I think it could be any of those. I think they are great universities. I think we ought to avail ourselves of them.

Mr. FROST. I have the Barton amendment in front of me, and I would like to read you several of these 17 criteria. Number 6, strong affiliations with animal and plant diagnostic laboratories; number 7, demonstrated expertise in food safety; number 8, affiliation with Department of Agriculture laboratories or training centers. That appears to be bracket law applying only to Texas A&M. I have family that went to Texas A&M. It is a fine institution. But I think that the other institutions in our State should have the opportunity to compete and I think if this Committee were to include the Barton amendment I would hope that we would eliminate the 17 criteria which seemed to tailor this for only one institution in our home State.

Mr. HALL. I think Tarleton State University lacked that provision. I think there are probably ten other institutions that would have lacked it. But I think Congressman Barton is willing to set-aside those 17.

Mr. FROST. Where I went to school at University of Missouri, if the University of Missouri were applying for this, it would probably be eligible because Missouri does not have an A&M school. The Agriculture Department is right there on the main campus in Columbia, but I would say that the majority of the States in this country do have a separate A&M school. They may not call it A&M, but it is an agriculturally-based school, so that they would have the opportunity to compete, but in our State, this would exclude an awful lot of our institutions, and I hope we would not adopt it in its current form.

Mr. HALL. I understand that, and as I said, I think they are willing to forego the criteria they set there; however, there are other institutions in our State that I think certainly would be under consideration, including the ones you represent. I would be very pleased if it were Texas A&M or the University of Texas or my alma mater, SMU. I think they all ought to be considered and set the criteria aside. I am willing to do that.

Mr. FROST. I agree with that. They ought to all be considered. And I hope if we adopt this amendment, we will do it in a way so that they can all compete, even including the University, where our distinguished chairman taught prior to being in Congress, the University of North Texas. They should be able to compete.

Mr. BOEHLERT. Mr. Frost, may I respond that too? As you probably know, if you check the record for the Committee, I did not favor that particular amendment. I did so with sound reasoning, I think, on my part, and I thank you for the very perceptive question.

We avoided specificity in terms of designating specific types of research, and Dr. Baird's contribution was very significant but when you start outlining the number of research areas that should be considered, the list is endless. We want to leave it up to the experts in the new Department of Homeland Security. And secondly, in

terms of the number of centers, while the initial proposal by Mr. Barton zeroed in on one center, he expanded that to include four. I am not sure if they were within a radius of so many miles of Texas A&M. That is another question for another day, but the fact of the matter is we think the bill very adequately directs research to universities and we would let the experts determine where those centers should be and what disciplines they should focus on.

Chairman ARMEY. The Chair just observes that the Chair withhold judgment, until he determines whether or not a winning football team is one of the criteria. The gentleman from Texas and the gentleman from New York, the Chair will be looking at that provision.

Mr. BOEHLERT. Knowing the Chair's fondness for music comparisons, I would point out that the committee on both sides of the aisle worked very well together, and some people would say it constitutes amazing grace.

Chairman ARMEY. Thank you.

Mr. HALL. Mr. Chairman, our chairman, Mr. Boehlert, was on top of the table with us. He was opposed to the centers and took that position and it was a 17-to-15 vote. It was a close vote, and I think the very fact that he allowed some amendments and that some of the amendments that were sent up from the Democratic side of the aisle passed evidences the fairness he exhibits as a chairman and I appreciate that as we all do.

Chairman ARMEY. I appreciate both of you and recognize the gentleman from Ohio, Mr. Portman.

Mr. PORTMAN. Mr. Chairman I will be brief, first of all, to thank our colleagues for being here and giving us the wisdom on this. The Science and Technology piece of this is extremely important, and one thing we have learned over the last few weeks as we have looked at this, is there is probably nothing more important than being sure this works, both in terms of the private sector and the government sector.

I noticed you changed some of the language of the bill to strengthen the Science and Technology provisions. Particularly you changed the director, who would have been giving assistance to all the other under and assistant secretaries to an under secretary role. Maybe you, Chairman Boehlert and Mr. Hall, could address that issue, and why you think that is important structurally.

Mr. BOEHLERT. I think it's very important. It gives responsibilities with a research and development focus, it gives it accountability, it gives it intellectual heft. It makes it possible to attract the best and the brightest from wherever we can attract that individual to fill that important slot. And I would like to report that while this was not in the initial presentation from the administration, we worked very closely with Dr. Marberger, the President's science advisor. We worked very closely with Governor Ridge, and I am pleased to report that Governor Ridge, on Monday in the statement before this committee, embraced the concept of creating an under secretary for research and development. That puts the emphasis where we need to.

I am absolutely convinced, Mr. Portman, that this war on terrorism is going to be won more in the laboratory than on any battlefield. That is a very, very important aspect of modern warfare

and modern defense mechanisms, so we want the best researchers in the Nation working on this very important subject. We want to have one person in charge working with the other under secretaries and Cabinet-level officers to put focus to this very important mission.

Mr. PORTMAN. Thank you. Mr. Hall.

Mr. HALL. It is supported by both of us, it's supported by Governor Ridge, and I think that science is at the top of the list and without an under secretary—if that is what your question was, there wouldn't be anyone there with the primary mission to coordinate the science and technology functions necessary to guarantee our security. I know that there are some who have some problem with another group here in D.C. They want them out in the field and there is something to be said for that. But I think if you take the recommendation of another committee to eliminate an under secretary, you are back to four. I think this is the heart of our recommendation that if the Department is not focused on discovering, and not really focused on developing the tools necessary to defend the homeland, and all the other missions of the secretary are going to be greatly compromised. Science has to be at the top of the list.

Mr. BOEHLERT. Let me ask, Mr. Chairman, if it's permissible to submit for the record a letter from the National Academies—National Academy of Sciences, National Academy of Engineering, and The Institute of Medicine strongly endorsing this proposal.

Chairman ARMEY. The record is open. Without objection, it will be accepted. Thank you.

NATIONAL ACADEMY OF SCIENCES
THE NATIONAL ACADEMIES
*Washington, D.C. 20418, July 12, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C. 20515*
Hon. NANCY PELOSI
*Ranking Member*

Dear Chairman Armey and Chairman Pelosi:

We are writing endorse strongly the recommendation for an Undersecretary for Science and Technology in the new Department of Homeland Security. This recommendation was made in the recent National Academies report *Making the Nation Safer: The Role of Science and Technology in Countering Terrorism,* which is enclosed.

As your committee and the administration move forward in planning for the new department, we believe that you have an important opportunity to create a structure and a culture to harness America's strength in science and technology for counterterrorism. In particular, an Undersecretary for Science and Technology would provide a focal point for guiding key research and technology development programs within the new department and, very importantly, for building collaborative partnerships with the major science, engineering, and medical science departments and agencies (such as the National Science Foundation, the National Institutes of Health, the Department of Energy, the Department of Defense, the Department of Health and Human Services, and the National Aeronautics and Space Administration) that will remain outside the department. This undersecretary would work closely with the

Office of Science and Technology Policy on coordinating multi-agency projects and their linkages to related programs throughout the government. This person would have responsibility not only for developing homeland security-related technology, but also for all technical elements of the agencies that are located within the department.

Thank you for your consideration Of this input from the National Academies and of our report.

Please let us know if we can be of further assistance to you.

Sincerely,

BRUCE ALBERTS,
*President, National Academy of Sciences*
WM. A. WULF,
*President, National Academy of Engineering*
HARVEY V. FINEBERG,
*President, Institute of Medicine*

Mr. PORTMAN. I appreciate the work that you all put in, and I know going forward, your oversight will be extremely important to make sure we can meet the promise of more technology, more science. As Mr. Boehlert says, this will be as important to this battle as anything that happens on the battlefield itself. Thank you very much.

Chairman ARMEY. The Chair recognizes the gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman. And I want to thank both of you for your work and your testimony here. I want to get a sense —I asked this most of the Chairs that come before us where there have been changes made to the President's proposal. Were there different elements of your changes—were they bipartisan in terms of the votes—.

Mr. BOEHLERT. Without any question, bipartisan, every member's fingerprints are all over this product. We are proud of it.

Mr. MENENDEZ. Very good. And I know that one of those important amendments that Mr. Hall referred to, and I certainly am very concerned about, and I hope that the committee will adopt it as its own—as a matter of fact, I hope the Committee will adopt a lot of what you did in the committee in our mark here, but certainly the NIST issue, I think we choke off potentially the advances we can make with the private sector and we hurt ourselves in the context of some of what we can capture, and I am glad to see that the committee acted as it did, and I hope we will preserve it here as well.

Mr. BOEHLERT. Thank you very much. We came to the same conclusion after the same thoughtful deliberation, and I would like to submit for the record some more statements from our colleagues and the co-chairs of the high tech caucus, Mr. Boucher and Mr. Goodlatte, and also letters from the whole bunch of groups, the Business Software Alliance, American Association for the Advancement of Science, all addressing this very important issue. I think the computer security division of NIST performs exceptionally well. It's a small staff, less than 50 people. A modest budget, five to $10 million, doing an extremely important work and it has credibility in the world outside of Washington. It is trusted, it is respected, and we don't want to lose that trust and respect.

Mr. MENENDEZ. I agree and I thank you for the work. Yield back.

Chairman ARMEY. Without objection, we will receive those these letters as well. The gentlelady from Connecticut.

HOUSE OF REPRESENTATIVES,
HOUSE COMMITTEE ON SCIENCE,
*Washington, DC, July 9, 2002.*

Hon. SHERWOOD BOEHLERT
*Chairman, House Committee on Science, Rayburn House Office Building, Washington, D.C. 20515*

Dear CHAIRMAN BOEHLERT: As members who are concerned about technology Issues, we are writing regarding the Administration's proposal to move the Computer Security Division (CSD) of the National Institute of Standards and Technology (NIST) from the Department of Commerce to theproposed new Department of Homeland Security.

While we support the Administration's efforts to make our country more secure in the face of terrorist threats, we are concerned that this provision, found in Section 202 of the President's proposal, would unravel years of collaboration between the CSD and the private sector to enhance the level of confidence in computer security practices. We are concerned that this reduced collaboration would be counterproductive to the Administration's goals by reducing confidence in American-made IT systems thereby making our critical Infrastructure more vulnerable to terrorist attack.

The credibility and success of NIST's CSD depends on effective independence from and appropriate collaboration with law enforcement and national security agencies in the U.S. and abroad. We believe that this independence could not be maintained in the new Department of Homeland Security. In the past, it has proven to be a challenge for the CSD to strike this balance. We have been frustrated by past indications of inappropriate influence of law enforcement and national security in the development of standards for "sensitive, unclassified" information, which delayed the development of computer security standards. Too often, the CSD deferred to military and intelligence agency needs to the exclusion of other vital national interests.

In one example, the CSD'S lack of responsiveness to the IT community led to a proposed encryption standard that was overbroad and unduly burdensome to American companies and completely unworkable. There is a strong national interest in ensuring that strong encryption software is available to protect our critical infrastructure from attack. The widespread use of encryption promotes our national security and prevents crime by ensuring the security, confidentiality and authenticity of electronic networks, information and users. We were pleased to finally see the announcement late last year of the new much Improved Advanced Encryption Standard—the result of 4 long years of public-private partnership with the CSD, the private sector, and national security agencies.

We have serious concerns that transferring the CSD from the Commerce Department would upset the balance that we have attempted to achieve in protecting our sensitive information and critical infrastructure in a way that doesn't disadvantage American industry or limit the availability of strong encryption. Based on the demonstrated ability of NIST to work effectively with the private sector, while ensuring effective collaboration with other governmental agencies, we urge that the new Department focus on continued interagency coordination with NIST's CSD rather than taking the inevitably counterproductive step of moving this vital office into the Department of Homeland Security.

Sincerely,

BOB GOODLATTE,
*Co-Chair, Internet Caucus*
RICK BOUCHER,
*Co-Chair, Internet Caucus*

Lamar Smith

Jim Moran

J. Randy Forbes

Barney Frank

Steve Pearce

Chris Van Hollen

Tom Davis

Carolyn B. Maloney

Zoe Lofgren

Nita M. Lowey

Dan Lungren

Peter DeFazio

Jerry Weller

Stephen Horn

# ENVIRONMENT, TECHNOLOGY, AND STANDARDS SUBCOMMITTEE

HOUSE OF REPRESENTATIVES,
ENVIRONMENT, TECHNOLOGY, AND STANDARDS SUBCOMMITTEE
*Washington, DC, July 16, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, Select Committee on Homeland Security, The Capitol, Washington, D.C. 20515*
Hon. NANCY PELOSI
*Ranking Member*

Dear CHAIRMAN ARMEY and CHAIRMAN PELOSI: We are writing to ask that give careful consideration to the amendments offered by the Committee on Science, particularly the provision that strikes Section 202, paragraph (4) from H.R. 5005. Under this paragraph, the Computer Security Division of the National Institute of Standards and Technology (NIST) would be transferred to the Department of Homeland Security. We strongly oppose the proposed transfer of the Computer Security Division and request that you retain the Science Committee's position during the Select Committee's deliberations.

As Members of the Environment, Technology, and Standards Subcommittee, which has jurisdiction over NIST, we gave careful scrutiny to the provision in H.R. 5005 that would transfer the Computer Security Division to the Department of Homeland Security. Based on information gathered from meetings with the Administration and from the two hearings on homeland security held by the Committee on Science, we concluded that the Computer Security Division could more effectively support the development and adoption of stronger information security standards, and thereby the mission of homeland security, if it remained in NIST.

We do not reach this conclusion as a matter of protecting the Committee's jurisdiction, as we have carefully reviewed other proposed transfers and have not objected to them. Our interest lies in improving information security, avoiding duplication of effort, and preserving functions that have worked very well within the Federal Government. While the President's proposal does have many important aspects protecting homeland security, the proposal to move this division would undermine a successful partnership in improving information security standards that the Federal government has developed with the private sector.

One reason that Computer Security Division has been successful in developing information security standards that are widely accepted in the information technology community is because of NIST's close connection to its industrial customers. This relationship works two ways: technical experts from the private sector are involved at every step of NIST's standards development process, and the trust developed between NIST and the private sector facilitates adoption of the NIST standards.

Most of the nation's critical information infrastructure is privately owned and operated, and that which is government owned and operated relies on commercial off-the-shelf hardware and software. In short, in order to establish strong information security standards, government must work closely with the private sector. The information technology industry has been unanimous in their deep reservations about the proposed transfer of the Computer Security Division to the Department of Homeland Security. They do not believe that the relationship of trust and cooperation that they enjoy with NIST will survive the transfer of the division into the new Department. We share their reservations.

We also oppose this transfer because it will harm work done by both the Computer Security Division and NIST as a whole. This Division is deeply integrated within the Information Technology Lab at NIST. Cleaving it from the lab and moving it to the new Department would leave a gaping hole within the IT lab. Clearly, NIST would have to recreate this division if it were to carry out its mission, because computer security is integrated in NIST's information technology mission as a whole. It makes no sense to transfer this activity to the new Department, only to have NIST scramble for funding in order to recreate an integral part of the Information Technology lab. If adopted, Congress would be left funding both the Computer Security Division at the new Department, as well as its replacement at NIST.

In addition, when developing information security standards and carrying out computer security research, the Computer Security Division draws upon the technical expertise of many other NIST laboratories. For example, research on advanced encryption standards benefited from Nobel prize-winning research conducted by scientists in the Physics Laboratory at NIST. NIST's worldwide reputation for scientific excellence has an enormously positive impact on the work of the individual scientists who work there. If we sever or substantially alter this relationship, we

may be ultimately undermining our goal of improving computer security within the Federal Government.

We ask that you leave the Computer Security Division at NIST. We believe the interests of homeland security, particularly those aspects that relate to information security, will be best served by leaving the division at NIST.

We wish you all the best in your important endeavor.

Sincerely,

VERNON J. EHLERS
JAMES BARCIA
GIL GUTNECHT
LYNN RIVERS

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AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE
*July 8, 2002*

Hon. NANCY PELOSI
*Ranking Member, Select Committee on Homeland Security, The Capitol, Washington, D.C. 20515*

Dear RANKING MEMBER PELOSI: The American Association for the Advancement of Science (AAAS) has been following the current debate over the establishment of a new Department of Homeland Security with great interest. We are particularly concerned about the role and structure of counterterrorism research and development (R&D) in the new department.

As Congress begins the process of defining and shaping this department, we hope that careful consideration will be given to this issue. We agree strongly with House Science Committee Chairman Sherwood Boehlert that a "clear focus on-and locus for—research" will allow a new Department of Homeland Security to coordinate the many diverse scientific and technological areas essential to its functions. This focus would be sharpened by providing for the appointment of a single official—for example, an under secretary - with responsibility for coordination of R&D across the entire department and with other relevant agencies.

This idea is underlined by the recent National Academies report which observed that the complexity and interdisciplinary nature of the science and technology involved in fighting terrorism requires more than just parallel investments in various areas of R&D. It calls for a well—orchestrated and coordinated endeavor among the 26 agencies that currently contribute to ournation's R&D enterprise.

AAAS is the world's largest general scientific society, with over 130,000 individual members and 272 affiliated societies, representing 10 million individuals in all fields of science and engineering. Founded in 1848, AAAS is also the publisher of the journal Science, and has long been a leader in promoting science to meet our national goals.

These comments are respectfully submitted as a means for enhancing the dialogue between the executive and legislative branches on this vital issue. AAAS supports a balanced approach to protecting our national security and promoting scientific and technological advancement and stands ready to assist you in the future.

Sincerely,

ALAN I. LESHNER

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BUSINESS SOFTWARE ALLAINCE
*July 16, 2002*

Hon. RICHARD K. ARMEY
*Chairman, Select Committee on Homeland Security, The Capitol, Washington, D.C. 20515*

Dear CHAIRMAN ARMEY: The Business Software Alliance[1] (BSA) appreciates the opportunity to share with the Select Committee on Homeland Security our recommendations with regard to the committee-passed cyber security provisions of H.R. 5005 that we believe should be included in a final, consolidated Select Committee mark.

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[1] BSA members include Adobe, Apple, Autodesk, Bentley Systems, Borland, CNC Software/Mastercam, Dell, Entrust, Hewlett-Packard, IBM, Intel, Intuit, Macromedia, Microsoft, Network Associates, Novell, Sybase, Symantec and Unigraphics Solutions (an EDS company).

We commend the House of Representatives for the excellent work undertaken by numerous committees in recent days to ensure that the Department of Homeland Security is well equipped to protect and advance our nation's cyber security. In examining the recommendations of these committees as reported in their versions of H.R. 5005, several provisions stand out as critical to America's ability to ensure the cyber security of its citizenry, and we ask that you include these provisions in the consolidated legislation that the House will consider.

These provisions are as follows:

**1. Federal Government Computer Security**

*H.R. 5005 should include the Federal Information Security Management Act, as amended*

• The **Committee on Government Reform** adopted provisions to require binding minimum Federal information security standards and guidelines for government departments and agencies. These provisions (based on H.R. 3844, the Federal Information Security Management Act, introduced by Rep. Tom Davis) will substantially strengthen what are currently unacceptably low levels of computer security within the Federal Government. *Importantly, the bill adopted by the Committee on Government Reform states that these security standards and guidelines must be technology neutral and performance-based, and that they must not mandate the use of any specific hardware or software security solutions. Such flexibility is critical to the ability ofFederal agencies to respond to fast-changing computer security threats.*

*HR 5005 should create a team of public and private sector experts to provide technical expertise on agency security.*

• The **Committee on Energy and Commerce** mark calls for the creation of a Federal Information System Security Team to assist Federal agencies in hardening their systems against cyber attack. Team members would include both public and private sector technical experts, including auditors, computer scientists, and computer forensics analysts, who would analyze Federal security systems and report their findings to the Secretary and Inspector General of each Department. Strong public-private partnerships of this nature are critical in the field of cyber security, where the private sector owns and operates over 90 percent of the critical infrastructure networks in question.

**2. Structure of the Department of Homeland Security**

*H.R. 5005 should create a specific cyber security program within the Department of Homeland Security.*

• The **Committee on Energy and Commerce** included provisions to create a Cyber Security Program within the Department of Homeland Security's Office of Information Assessment and Critical Infrastructure. In so doing, the Committee seeks to ensure that cyber security functions receive sustained attention and concerted resources within the context of the Department's overall critical infrastructure protection mission. Strengthening cyber security requires analytical and technological capabilities that are related to, but also distinct from, traditional intelligence gathering and physical security functions, and we believe that these are best handled through a dedicated office or program within DHS. Further, we believe that the Department's ClO and Under Secretary for Management should advance existing efforts in key Department agencies to fund, implement and maintain the enhanced information security necessary for sensitive data and communications to be securely stored, transmitted, and disseminated within the Department.

*H.R. 5005 should create the position of Undersecretary for Science and Technology.*

• The **Committee on Science** mark creates the function of Undersecretary of Science and Technology within the Department of Homeland Security. Given the Department's wide responsibilities in this area, and the importance of sustained, focused R&D to our nation's ability to develop leading security technologies, the creation of this function is highly merited. We believe that this function should be tasked with explicitly establishing priorities for directing, funding and conducting R&D to improve cyber security, and that all such research should also be done in conjunction with private sector business partners (examining existing models of such partnerships) in order to maximize its effectiveness.

*H.R. 5005 should maintain NIST's Computer Security Division within NIST.*

• The Committee on Science included a provision to maintain NIST's Computer Security Division (CSD) within NIST, instead of moving its functions to the Department of Homeland Security, as has been proposed. We strongly support the Committee's decision in this regard. While we wholeheartedly endorse the Administration's efforts to create the greatest possible cohesion among security-related offices within the Federal Government, we believe that the CSD—a standards-setting entity—is integral to NIST's overall standards-setting mission and that its work in this area can best be achieved in the context of the Institutes itself. Further, we are concerned that moving CSD to the Department of Homeland Security—an agency that will focus primarily on law enforcement-related issues—could result in CSD failing to adequately recognize the technological and cost feasibility issues associated with cyber security topics under the Department's jurisdiction. Moreover, since the Administration has repeatedly stated that it does not desire or envision imposing cyber security technological mandates on the private sector, we do not see the need to incorporate NIST's CSD within the Department.

**3. Information Sharing**

*HR. 5005 should encourage increased information sharing about cyber security threats—The Committee on Government Reform has included provisions that would greatly facilitate the voluntary sharing of information with the government and within industry. This provision protects against the disclosure of such information through the FOIA process and ensures that the information cannot be used against those providing the information in a civil suit. The measure was adopted on a bipartisan basis by the Committee and we urge its inclusion in H.R, 5005.*

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We believe that the provisions outlined above will form the basis of a strong and effective cyber security strategy by the Department of Homeland Security and the Federal Government overall. We urge the inclusion of these provisions in the consolidated legislation that will be considered by the full House of Representatives, and we thank you for your consideration of our views in this area.

Sincerely,

ROBERT HOLLEYMAN,
*President and CEO*

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PUBLIC AND SCIENTIFIC AFFAIRS BOARD
AMERICAN SOCIETY FOR MICROBIOLOGY
*Washington, DC, July 19, 2002.*

Hon. RALPH HALL
*Ranking Minority Member, Committee on Science, The Capitol Washington, D.C. 20515*

Dear RANKING MEMBER HALL: The American Society for Microbiology (ASM) is writing concerning issues related to the proposed Department of Homeland Security (DHS) and the policy implications for the civilian biodefense and infectious disease research programs. The ASM has reviewed the Administration's Bill to establish a Department of Homeland Security and S.2452 to establish a Department of Homeland Security and a National Office for Combating Terrorism, introduced by Senator Lieberman.

The ASM is the largest life science society with over 40,000 members and its principal goal is the promotion of scientific knowledge of microbiology for the benefit of human welfare. The ASM has worked with the Administration, the Congress and federal agencies on measures to protect against biological weapons and bioterrorism. Most recently, ASM provided expert advice on provisions to expand the Biological Weapons Statute in the USA Patriot Act and on Title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which expands controls on certain dangerous biological agents and toxins. ASM members are involved in research and public health initiatives aimed at eradicating the scourge of infectious diseases, which daily end the lives of thousands of Americans and tens of thousands around the world. Infectious diseases remain the major cause of death in the world for those under the age of 45 and particularly for children. They are the third leading cause of death in the United States.

The terrorist events of September 11 and the anthrax biocrime reveal the need and complexity of homeland defense. The ASM, therefore, supports efforts to establish a Department of Homeland Security that can provide oversight, coordination and leadership for biodefense activities. Given that science and technology will play vital role in the biodefense of the nation, the ASM supports the establishment of an Office of Science and Technology as proposed in S 2452. This office will provide the necessary linkage between the Secretary of Homeland Security and all the numerous mission agencies charged with science and technology development.

It is critical that the proposed DHS build upon existing science and technology programs that hold promise in the defense against bioterrorism and in the effort against deadly infectious diseases. The ASM would like to submit the following comments to assist Congress as it deliberates how best to achieve this goal.

Biodefense research is part of the continuum of biomedical research aimed at protecting the nation and the world against infectious diseases. The capability to develop countermeasures and interventions is directly related to information generated by biomedical research on pathogenic microbes and the host response to these microbes. *Therefore, it is critical that federal research efforts related to civilian human health-related biological, biomedical, and infectious diseases should be prioritized and conducted by, and at the direction of the Department of Health and Human Services (HHS).* It is important to distinguish between oversight functions such as policy and planning guidance and coordination, which would well be served by an Office of Science and Tecimology within a Department of Homeland Security, and the responsibility and authority for the direction, control and conduct of scientific research. **ASM recommends that HHS, a public health and biomedical research agency of unparalleled success, should continue to be responsible for the conduct and direction of scientific research.**

The Administration's Bill recognizes the necessity that HHS conduct the research and development programs related to infectious diseases. Section 303(a)(1) of the Bill provides that the Secretary shall carry out responsibilities related to civilian human health-related biological, biomedical, and infectious diseases through HHS and the Public Health Service "under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements." Section 30 1(2) of the Administration's Bill, however, gives DHS primary authority and responsibility for the conduct of national scientific research including "directing, funding, and conducting research and development" related to biological threats. Additionally, at Section 303(a)(2), the Bill provides that DHS, in consultation with HHS, "shall have authority to establish the research and development program, including the setting of priorities".

The ASM understands the role envisioned for DHS is to integrate threat analysis and vulnerability assessments and identify priorities for preventive and protective steps to be taken by other federal agencies to protect the American public. The HHS, however, is best qualified to establish biomedical research and development programs and identify scientific opportunities and the research approaches for ensuring that biodefense needs are met in the best way possible. The NIAID is best able to bring together all aspects of biomedical research and the full capability of science to ensure breakthroughs and advances of high quality for biodefense. The proposed restructuring of program authorities in the Administration's bill will create unpredictability for research programs, will divert monies from research and will not be the best approach to achieving the goal of civilian biodefense, which requires the involvement of the best scientific minds and the support of excellent science based on merit review.

We have already seen the ability of HHS to respond to bioterrorism. In the months since September 11, 2001, the National Institute of Allergy and Infectious Diseases (NIAID) within the National Institutes of Health (NIH) has rapidly accelerated work to protect the nation against the threat of bioterrorism. This acceleration has occurred across the spectrum of scientific activities from basic research in microbial biology to the development of vaccines and therapeutics to research related to diagnostic systems. It is critical that this work continue to develop rapidly and efficiently without delay, disruption or loss of momentum.

ASM agrees that DHS should have an important role in developing the nation's defenses against, and responses to biological threats. The DHS can and should coordinate, review, and evaluate scientific and teclmical programs related to human, animal, and plant life. However, a scientific health agency, HHS, rather than the nonscientific, nonpublic health DHS should have the principal authority for developing and prioritizing scientific and health related programs.

Essentially, therefore, the ASM suggests reversing the responsibilities identified in Section 303(a)(2) of the Administration's Bill. HHS, in consultation and coordina-

tion with DHS, should retain responsibility for accelerated research and development programs, including prioritizing such projects.

The ASM is also concerned that we not create a separate public health system for biodefense. *Therefore, the ASM would leave primary responsibility for planning for public health emergencies arising from biological causes with the Centers for Disease Control and Prevention. At the earliest possible moment after the outbreak of a contagion, it is critical to determine the nature of the organism and to distinguish between a bioterrorism attack and a natural event. Then, public authorities must respond rapidly and appropriately to the health threat that either one would present.*

The ASM believes CDC should be charged with these tasks. Section 505(a)(2) of the Administration's Bill requires DHS to carry out these functions under agreement with HHS. Again, the ASM believes the important and appropriate role for DHS is to coordinate planning and development of programs and to lend technical assistance to the responsible agency. It is entirely appropriate for HHS to coordinate and consult with DHS. As with the direction and control of research, however, the primary duty and authority should remain with the scientific agency with the existing knowledge, experience, and expertise to fulfill the critical mission.

*Because agriculture, the food supply, and the environment along with humans are potential targets of bioterrorism, it is important to integrate and coordinate programs related to human, animal, and plant agents.* Section 302(a) of the Administration Bill transfers to DHS the select agent registration and enforcement programs of HHS. However, it does not transfer the select agent registration and enforcement programs of the Department of Agriculture to the DHS. Subtitle C of the Public Health Security and Bioterrorism Preparedness Act of 2002 mandated coordination of activities of HHS and the Secretary of Agriculture regarding "overlap agents"—that is, agents that appear on the separate lists prepared by HHS and Agriculture. Without doubt, such coordination must occur. Bioterrorism research extends and applies infectious disease and select agent research. The ASM believes that integration of the select agent registration program inevitably will assist in the creation of an efficient registration process thereby expediting registration.

The proper administration of the select agent program is key to the development of the nation's biodefense capability and response and must balance the concerns for public safety with the need to not unduly encumber legitimate scientific research and laboratory diagnostic testing. **The ASM continues to believe that HHS has the scientific and institutional knowledge and expertise related to dangerous biological agents, biosafety, and biosecurity in microbiological and biomedical laboratories and that it is best qualified to achieve the goal of protecting the public health and safety without interfering with research, and clinical and diagnostic laboratory medicine.** Transferring this program to DHS, a nonregulatory, nonscientific department, raises many questions with regard to the administration of this program which must be carefully considered by Congress, which recently enacted new legislation and additional requirements for select agents. *The ASM, therefore, requests that a review be done by an interagency group with the involvement of scientific societies to assess the advisability of removing the select agent program from HHS authority.*

*Some additional specific measures in the Administration Bill require further consideration and comment by the ASM.* The ASM continues to study the Administration Bill to evaluate the best approach to achieving expedited research that advances the defense against bioterrorism but does not dilute the continuing, critical battle against naturally occurring infectious diseases. The ASM suggests expeditious review of the appropriateness of each transfer of a facility or responsibility related to biological organisms from an existing agency.

For example, as noted above, the defense against bioterrorism must be fully integrated into the nations public health system that is led by the Centers for Disease Control and Prevention. Currently, CDC would use the national pharmaceutical stockpile in response to infectious diseaseoutbreaks—both natural and intentional. Sections 501(3)(B) and 502(6) would transfer the Strategic National Stockpile to DHS. Such transfer should be reviewed carefully during further consideration of the Bill. HHS should be responsible for developing the materials in the stockpile. Therefore, it seems appropriate for HHS to continue management of the stockpile. The ASM, however, understands the coordination and oversight function envisioned for DHS, and the final resolution of the management of the stockpile ultimately must depend upon the resolution of the scope and role of DHS responsibilities and activities.

Similarly, transfer provisions relating to programs and activities of the Department of Energy's microbial genome research appear to be proposed although ASM cannot readily discern from the Bill the portions of the genome program that would be transferred under Section 302(2)(A) of the Bill.

In closing, we reaffirm ASM's commitment to work with the Administration and Congress to achieve the most efficient and effective system in the world for research, control, and response to the threat posed by biological agents.

Sincerely,

ABIGAIL SALYERS, PH.D.,
*President, ASM*

RONALD M. ATLAS, PH.D.,
*President Elect, ASM*

GAIL CASSELL, PH.D.
*Chair, Public and Scientific Affairs Board*

KENNETH BERNS, M.D., PH. D.
*Co-Chair, Task Force on Biological Weapons Control*

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COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
*July 8, 2002*

Hon. SHERWOOD BOEHLERT
*Chairman, House Committee on Science, Rayburn House Office Building, Washington, D.C. 20515*

Dear CHARIMAN BOEHLERT: Congress and the Administration have reacted swiftly and decisively to the challenge of terror in the past year. As befits Americans in times of crisis, we have joined together to fight a commonenemy. Thanks to our collective efforts, those who would destroy our society are in disarray, and our nation—for now, at least—is secure.

Yet, for all the good we have accomplished since September 11, fundamental liberties will be at risk if we are too zealous in our pursuit of wrongdoers. We must avoid departmental incentives that compromise core agency missions or, worse traditional democratic values. We believe the proposed transfer of the Computer Security Division from the National Institute of Standards and Technology (NIST) to the proposed Department of Homeland Security is one such action, and one we strongly urge you to oppose. Such a transfer would transform NIST from a civilian agency known for assisting the private sector into one in which law-enforcement and national security concerns are dominant.

NIST has distinguished itself through its expertise in cryptography the creation of codes crucial to safeguarding business, government and personal assets from unauthorized access. NIST technicians have performed yeoman's work in establishing government security procedures, in developing cryptographic toolkits for the public and private sectors and, most recently, in sponsoring development of the Advanced Encryption Standard. The AES competition, which drew on the efforts of cryptographers around the world, is already the unchallenged benchmark for civilian codemaking excellence. Likewise, NIST's Common Criteria computer-security initiative has won enthusiastic cooperation from the private sector. All of this has taken place under the auspices of the Computer Security Act of 1987, which assures that NEST will work with business and civilian agencies alone to achieve its goals.

Not everyone agrees with the Computer Security Act, however, The National Security Agency and the FBI, for instance compromised NEST's traditional role during the 1990s. Despite clear requirements that NEST serve only civilian interests, NIST succumbed to pressure from these agencies and began promoting a series of flawed "security" initiatives. One such initiative, known as the Clipper Chip, would have given national security and law enforcement guaranteed access—a back door—to the encoded, confidential communications of US citizens as needed.

The Clipper Chip proposal was both controversial arid technologically flawed. lied it been implemented, the nation's infrastructure would have been irreparably harmed, and our networks rendered highly vulnerable to attack.

Subsequent iterations of the plan known as "key recovery"; and "message recovery" only raised more questions. Those questions, in turn, led to lengthy and critical reports from the National Academies of Science (*http://book.nap.edu/books/03090544753/html/1.html*) as well as a panel the world's most prominent cryptographers (*http://cdt.org/crypto/riks98/*).

Both groups concluded that key recovery weakened overall security. But those assertions only doubled the resolve of law enforcement. At one point, the FBI pushed hard to outlaw all cryptography that did not have such security-weakening back doors already built in.

Controversy swirled for nearly a decade over this and similar initiatives. The fight pitted business and civil-liberties groups across the political spectrum against the

NSA and FBI. The topic soon became so politically sensitive that one White House Clipper Chip proponent declared it the—"Bosnia of technology policy." The last administration ultimately abandoned its encryption-control policy more than two years ago.

Clearly, law enforcement and national-security sectors have a checkered past with regard to NIST and computer security, Their interference in NIST's mission has repeatedly compromised the private sector's confidence in the Institute and seems certain to do so in the future if repeated. We believe the last thing our nation needs now is a reprise of debates that were long ago settled.

As always, we remain eager to work with you and the Committee to help address any concerns you may have about computer security and the Department of Homeland Security.

ED BLACK
*President and CEO,*
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION

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INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA (ITAA)
*July 1, 2002.*

Hon. SHERWOOD BOEHLERT
*Chairman, House Committee on Science, Rayburn House Office Building, Washington, D.C. 20515*

Dear CHARIMAN BOEHLERT: On behalf of the 500 members of the Information Technology Association of America (ITAA), I would like to commend you for your ongoing efforts to protect our nation's critical infrastructure. Your work to bring more resources to bear to improve government information security is vitally important. The creation of the Department of Homeland Security can foster additional progress in this area, but it needs to be structured in the right way to accomplish that goal.

As the Committee reviews the Homeland Security Act of 2002 and considers possible changes to the bill, ITAA strongly encourages you and other Members of Congress to work with the Bush Administration to highlight information security in the new Department.

Towards this end, ITAA recommends creating a separate Bureau of Cyber Security headed by an Assistant Secretary for Cyber Security. Under the current proposal, the components that would be merged into DHS from other departments and agencies that focus on cyber security (e.g. NIPC, NCS, CIAO, and Cybercorps) would be included with those that focus on physical security. This melding would be a mistake. The challenges in the cyber world are sufficiently different from those in the physical world to merit a separate, focused entity headed by a Senate-confirmed public official.

ITAA also supports specific new authorization/appropriations for funds that facilitate the sharing of data across the new Department's myriad of organizational units. If new funds are not made available, then funding for the IT needed to share information will not be forthcoming as each organizational unit will strive to hold onto its existing appropriations for other priorities.

ITAA endorses four additional changes to the Homeland Security Act of 2002:

• Substitute existing language in Title II of the Act in Section 204 with current language from the "Critical Infrastructure Information Act," that U.S. Representatives Tom Davis and Jim Moran and U.S. Senator Bob Bennett and others have been working on to eliminate legal barriers to information sharing between government and industry.

• Add the Federal Information and Security Management Act (FISMA) or H.R. 3844 to the Act. FISMA strengthens, renews, and extends the Government Information Security Reform Act (GISRA), and requires all Federal agencies to implement a risk-based management approach to developing and implementing information security measures for all information and information systems.

• Increase emphasis on Research and Development issues in the new Department structure. We believe that the Department's research and development functions relating to information security should be the responsibility of the new Assistant Secretary in the cyber security bureau.

• While the Department of Homeland Security may well wish to develop its own capabilities similar to those of the Computer Security Division of the National Institute of Standards and Technology (NIST), we recommend leaving the Computer Security Division in NIST, where it is integrated with other functions of NIST's computer research operations.

We appreciate your considering our recommendations.

Sincerely yours,

HARRIS N. MILLER,
*President*

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INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA (ITAA)
*July 9, 2003*

Hon. SHERWOOD BOEHLERT
*Chairman, House Committee on Science, Rayburn House Office Building, Washington, D.C. 20515*

**RE: Comments Regarding "Amendments to H.R. 5005"**

Dear CHARIMAN BOEHLERT: On behalf of the 500 members of the Information Technology Association of America (ITAA), I would like to commend you for your ongoing efforts to protect our nation's critical infrastructure. Let me express our appreciation for the opportunity to comment on a circulation by Science Committee staff of "Amendments to ER. 5005 Offered by Mr. Boehlert." Our comments in this letter are limited to the provisions identified as "Sec. 205. Information Security," although we may have some additional comments about "Sec. 206 NETGUARD" later this week.

As you know from earlier correspondence, while the Department of Homeland Security may well wish to develop its own capabilities similar to those of the Computer Security Division of the National Institute of Standards and Technology (NIST), we strongly recommend leaving the Computer Security Division in NIST, where it is integrated with other functions of NIST's computer research operations. Our comments on Sec. 205 proceed from this assumption.

As a general matter, we fully support the role NIST plays in developing security and authentication guidelines for the Federal Sector, its role in developing quality assessment measures, and its consultative role with other Federal agencies in the field of computer security. Many of our members, however, have serious concerns with proposals for NIST to engage in conformance testing of commercial products and certification of private sector labs to test commercially available security products for their use in the Federal sector. First, widely available commercial security standards already exist without the necessity of reinventing a Federal wheel. Second, the applicability of these provisions to virtually ALL products with security features would mean a vast effort to create testing protocols and lab certifications for minor features and a substantial cost for testing with correspondingly little return in terms of the benefit to the government. These provisions simply put represent overkill that will not have the intended effect of benefiting the efficient and effective deployment of security solutions in Federal agencies. They will only add unnecessarily to the cost of government procurement of needed security solutions.

Our members continue to study these amendments arid other provisions of this important legislation and I look forward to continuing our dialogue in the coming days and weeks. Again, we deeply appreciate your commitment to leadership in the field of information security and stand ready to assist in whatever way we can with the creation of an effective, efficient and successful Department of Homeland Security.

Very truly yours,

JOSEPH TASKER, JR.
*General Counsel & Senior Vice President Government Affairs*

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SOFTWARE AND INFORMATION INDUSTRY ASSOCIATION
*June 27, 2002*

Hon. SHERWOOD BOEHLERT
*Chairman, House Committee on Science, Rayburn House Office Building, Washington, D.C. 20515*

**RE: Transfer of NIST's Computer Security Division to the new Department of Homeland Security**

Dear CHARIMAN BOEHLERT: On behalf of the Software & Information Industry Association (SIIA), the principal trade association of the software code and electronic content industry, I am writing regarding the Administration's proposal to move the Computer Security Division (CSD) of the National Institute of Standards and Technology (NIST) out of the Department of Commerce and merge it into the proposed new Department of Homeland Security. SIIA 800 member high-tech companies develop and market software and electronic content for consumers, business, education, entertainment and the Internet.

While our Association has supported and continues to support the Administration's efforts to make our country more secure in the face of terrorist threats, the particular provision found in Section 202 would, in our view, be counterproductive to the Administration's goals and undermine the long-standing work of NIST, its Information Technology Laboratory and the CSD in working with industry in a non-regulatory environment to assure greater confidence in IT systems in both the public and private sectors. In short, moving the Computer Security Division into the new Department will, in all likelihood, reduce the ability of NIST to continue its important role and provide technical expertise to promote more confidence in IT security.

NIST's CSD has played an meaningful role in working with the private sector (both for-profit and not-for-profit) in a non-law enforcement, non-regulatory setting with direct benefits for enhancing the level of confidence in computer security practices that have benefited both government and commercial IT systems. Hundreds of companies have utilized CSD's world-class testing modules and voluntary standards and protocols, and we were pleased to see the announcement late last year of the new *Advanced Encryption Standard (AES)*—the result of 4 long years of public-private partnership.

The inclusion of NIST's CSD in the Administration's proposal comes as some surprise, as it was not included in the White Paper, "The Department of Homeland Security", released earlier this month. As Section 202 requires the transfer of functions, personnel, assets, and liabilities of the following entities [including]... "(4) the Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto," we are concerned that no analysis has been provided of how the transfer of the CSD our of NIST fits into and supports the operational role that is inherent to the new Department. The work of this one unit of NIST's Information Technology Laboratory (ITL) depends on and is integral to NIST's on-going collaboration with the private sector based on science, research and innovation in promoting U.S. IT in global markets.

The credibility and success of NIST's CSD has depended on effective independence from and appropriate collaboration with law enforcement and national security agencies in the U.S. and abroad. This effectiveness has not come without substantial effort over the last 10 years. In the 1980's and early 1990's, there were indications of inappropriate influence of law enforcement and national security in the development of standards for "sensitive, unclassified" information, and this delayed the development of computer security standards.[1] In fact, in creating NIST's responsibilities for developing federal computer systems security standards and guidelines for sensitive but unclassified information, the Congress recognized that absent specific directions, these activities could favor military and intelligence agency needs to the exclusion of other vital national interests.[2] *This independence could not be maintained in the new Department of Homeland Security.*

With its $10.2 million budget—just 0.027 percent of the proposed Department's $37.45 billion in expenditures—the CSD would simply be emasculated by the larger agencies and missions that will become part of the new Department of Homeland Security. In this context, the CSD would simply become a secondary concern—which is not the situation in its current status at the Department of Commerce.

As the Administration indicated in its blueprint released earlier this month, "Homeland security will continue to require interagency coordination."[3] We completely agree with this conclusion. Based on the demonstrated ability of NIST to work effectively with the private sector, while ensuring effective collaboration with other governmental agencies, we urge that the new Department focus on continued

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[1] Whitfield Diffie and Susan Landau, *Cryptography's Role in Protecting the Information Society,* National Research Council Press, 1996, P. 139.

[2] See Conference Report, "Computer Security Act of 1987" P.L. 100–235 at p. 26.)

[3] White House Office of Homeland Security, "The Department of Homeland Security", June 2002, p. 8. Found at *http://www.whitehouse.gov/deptofhomeland/book.pdf.*

interagency coordination with NIST's CSD rather than taking the inevitably counterproductive step of folding this small, but vital, office into a new government agency.

We appreciate the opportunity to convey our views on this proposal. Please do not hesitate to contact me if I can provide additional information or answer any questions.

Sincerely,

KEN WASCH,
*President*

Ms. DELAURO. Thank you, Mr. Chairman, and thank both of you for your testimony and for your great work. I have two questions. The first question is, and help me with this, are we talking about transferring all the labs, Energy, Commerce, Ag, Defense, to a new entity?

Mr. BOEHLERT. There is not going to be a transferring of all labs. There is going to be a transferring of some portion of Lawrence Livermore and some portion of the DOE labs, but we specify in our proposal that there be a 60-day advance notification of any plan to transfer and outline in specific terms of who is going to do what under what circumstances, what is going to happen to the infrastructure, what is going to happen to the employees. In other words, we are not opposed to the transfer of laboratory responsibilities to the new Department of Homeland Security, but we want a well thought-out plan.

The administration plan is a little bit sketchy on that. I am confident that it will be well thought-out once it is presented, but we think we should have some advance notification of that so we could have an opportunity collectively—.

Ms. DELAURO. But there are different procurement system in various places and to meld all of that is seemingly—.

Mr. BOEHLERT. It is a challenge and a half, but so is this very daunting assignment.

Ms. DELAURO. Let me just ask, because I think the way you proceeded is the right way to proceed, with strong emphasis on science and technology—. This is really again, like we have talked about, the NIH and the CDC and those pieces of our health infrastructure, the whole effort in science and technology, this is truly part of our existing infrastructure and we shouldn't dissipate the ability that we currently have or give it less of an opportunity to play the role that it should play. Now, you have recommended that there be an under secretary to handle this area. Also the National Research Council, I was reading their materials, has said there ought to be an under secretary.

Let me just ask you whether or not in the final product here if a decision would be not to have a new under secretary to handle this information? What do you think is the result for Science and Technology for the future and where would that leave both of you in term of this overall proposal on the Department of homeland security?

Mr. BOEHLERT. My view is it would send exactly the wrong signal to the Congress and the American people. The American public is very sophisticated. They know the great advances that have been made possible by the proper Federal investment and in many instances a partnership with the private sector and the university-based research centers. The great wave of the past 10 years, a dec-

ade of unprecedented growth in our economy was largely made possible by our investments in research and development.

So if we downplay rather than focus proper attention on research and development, I think a lot of people will question the seriousness of our intent. Bottom line, we want to demonstrate to the American people that above everything else, homeland security is number one, and the greatest weapon we have in our arsenal to advance our cause is research and development properly directed.

Ms. DELAURO. Mr. Hall.

Mr. HALL. I think that was well said. That was the opinion of almost everyone. I think that was a voice vote—.

Mr. BOEHLERT. We didn't have any opposition to that because we thought it through and, once again, our committee, and I can only speak for our committee, but we spent a lot of time in preliminary work and discussions before we got to the actual sessions.

So Mr. Hall and every single Democrat on the committee felt they had every opportunity to present their point of view, and the Chair was not arbitrary. I lost a couple of amendments, the Barton amendment referred to by Mr. Frost, by a very narrow vote. The Chair has a lot of advantages in a hearing like this, and I don't think we are dealing with all equals. The Chair is the first among equals. I accepted that loss. I didn't agree with it, and I am appealing to the wisdom of this committee to reexamine that and not be so specific in its direction to this new department that we say this is a specific type of research you have to fund, this is a specific center, and here is the location of that center. I think we are making a big mistake if we interpose our views on this new department. I think we have got to be very supportive and give them the resources they need and the flexibility to do the job.

Ms. DELAURO. I will ask a question that Mr. Frost would usually ask in these hearings, that if the final product does not have a new under secretary, would you be offering an amendment on the floor—.

Mr. BOEHLERT. We will have to know the rules of engagement as we get to the floor, but let me tell you the final product doesn't have to represent what I agree with 100 percent or what Mr. Hall agrees with 100 percent. The final product has to give some assurance to the American people that we are serious in this effort, we are putting our best minds to the task and we have come up with something that we are probably identifying with every single member of this Congress. And the final product will not have 100 percent of what any one of us want. But it will demonstrate to the American people the seriousness of our purpose.

Ms. DELAURO. Thank you very much to both of you and for your great work.

Chairman ARMEY. Thank you. The Chair now recognizes the gentlelady from California, Ms. Pelosi.

Ms. PELOSI. Thank you, Mr. Chairman. I want to join you in thanking our distinguished witnesses for their excellent testimony and great work in approving the product that is this bill, and I hope our chairman will be receptive in his mark to your suggestions. I want to ask one question on the subject of NIST—the committee's removal of the proposed transfer of the computer science division of NIST has been discussed. Is it correct to understand

that your manager's amendment containing this provision passed unanimously?

Mr. BOEHLERT. That is correct.

Ms. PELOSI. So it was unanimous opinion of the Science Committee that this be removed?

Mr. BOEHLERT. It is.

Ms. PELOSI. I appreciate that. As you know, Congresswoman Lofgren has been our advocate—.

Mr. BOEHLERT. She provided leadership on this area and I provided followership because she had a good idea and it deserves support.

Ms. PELOSI. I think your comment just now is indicative of the testimony of both you and Mr. Hall. You have been very generous in acknowledging the work of the members of your committee. No wonder you have been so successful in putting this together. Thank you, Mr. Hall.

Chairman ARMEY. Gentlemen, let me say, first of all, that one of the actions taken by your committee I would like to applaud is the treatment of NIST. I think it is exactly the correct understanding, and I am pleased to see that it was unanimous understanding in your committee. I find that very encouraging. I have found in all my academic areas that international students, international scholars have always been a great asset to all of our universities. There is clearly now, in America today, an incentive to be, should I say, more rigorous in scrutinizing people. I can't resist pointing out Einstein came to this country as a refugee from foreign despotism. So many of our great scholars have come to this Nation seeking freedom.

Have you addressed this question of how do we manage to maintain the security of our great research institutions, while at the same time, retain the access to the world intellect that this Nation has so thoroughly well enjoyed throughout all of its existence? Have you addressed that at all in your bill? Is there some provision I should look at or is there something you might want to see me include in our mark?

Mr. BOEHLERT. Quite frankly we have met with Dr. Marburger, the President's White House science advisor and director of The Office of Science and Technology Policy, because he is chairing an effort on the part of the administration to address this very subject. Let me just say that I think this Nation has been greatly enriched by those who have come here from abroad, but under the current circumstances, we are oftentimes challenged; so that is an assignment outside the jurisdiction of our committee. We have got to be very rigorous in examining very carefully those who seek to come to the United States, but we would be making the biggest mistake ever if we denied the intellectual capital that so many of these people bring to the research and development enterprise. We have noted in our report that we think as much of the research as possible should be unclassified, but we are very sensitive, and as a member of the House Permanent Select Committee on Intelligence, I am very mindful of national security needs and those should not be ignored.

But the fact of the matter is I think we have got the right approach to this.

Chairman ARMEY. Thank you.

Mr. HALL. I think, Mr. Chairman, that the Woolsey amendment in creation of the Homeland Security Institute that gives some flexibility to us on matters of importance that perhaps no one with the Homeland Security could quite fathom themselves. It creates a flexible organization that can tap experts as they are needed to give advice on that very subject. That is one of many that they can give and it relieves the department from having full-time people, expensive people, people that really would be more needed in some other thrust and specialized fields that might be needed for only a short time, and the Woolsey amendment gives us that benefit. It is kind of a think tank to advise the under secretary in specific matters, such as the one you inquired about.

Chairman ARMEY. Thank you. I will make it a point to look at that tonight. I want to thank both of you. We will, for the next 30 days or so, perhaps be in touch with you for matters of the official record, but in the meantime, thank you for your good work in your committee. Thank you for your testimony.

Mr. BOEHLERT. Thank you, Mr. Chairman. I want to thank this Committee for taking on this important assignment. It is very demanding and time consuming, but it is very necessary.

Chairman ARMEY. The Chair recognizes both the chairman and the ranking member of the Transportation Committee, and the Chair would invite you both to come to the dais. You don't want to. I might mention as you make your way to the table that it is the practice of this committee to put your formal statements in the record and to invite you each to in your turn give your opening statement and then we would proceed by asking questions. The Chair cannot help but recognize that Chairman Young is always the contrarian, has rearranged the seating order. And the Chair recognizes Chairman Young.

**STATEMENT OF THE HONORABLE DON YOUNG, CHAIRMAN, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

Mr. YOUNG of Alaska. Thank you, Mr. Chairman and Madam Chairman. I can tell you, I am to the right and my good ranking member is to the left, but we are in this together and I want everybody to understand that on the committee. On July 11, as directed by leadership we passed out of the committee by unanimous vote our recommendations to this committee. We did recommend that we transfer TSA, and I believe the government buildings to the new homeland security. We did not recommend, however, we transfer the Coast Guard and FEMA. We sent you a lengthy report. I hope you had time and will have time, your staff has time, to read it, for the reasons stated, we did not believe that is a wise thing to do and we very frankly think that you have great responsibility. We also have a responsibility.

I have spoken to you personally, Mr. Armey about the time schedule, what we want to get done, can we do it and should we do it right. I think we should do it right and can we do it in that short period of time? That is yet to be seen. I am concerned in my own way, about especially the Coast Guard and FEMA as I mentioned, and what will happen to them if they are transferred over to a new department. What will be their direction? So con-

sequently, what we recommended to you because these two agencies are actually the only two agencies to interface with constituencies, yours and mine, 365 days of the year, 24 hours a day.

More so than the Army, the Navy, the Air Force or Marine Corps or the FBI, the CIA or anything else, these two agencies are there on demand, on call every hour of the day. Be it an earthquake, a flood, forest fire, some other catastrophe, even a terrorist attack. That is FEMA. It is the Coast Guard, it is search and rescue, a lost sailor, fisherman, boater, child, wife, husband and uncle, grandma and grandpa. They are on demand there immediately.

Maybe it is interceding with foreign fleets that invade our waters and take our fish and destroy our environment. They are there immediately. Maybe it is navigational aids that make our ships avoid the catastrophe that happened in my State in an oil spill. They are there immediately putting those navigational aids in. Maybe they are there to not only prevent the oil spill but to clean it up. They have the responsibility to do that today.

Maybe it is the smuggling of drugs that enter the coast of California, Florida, Texas, Alaska or any other State that has oceans on it's shores, or maybe it just might be interdiction of those refugees that are coming in illegally, but they are there all the time. They are there all the time and they have done that job outstandingly without the money that we should have been giving them.

And I will give the President credit. This is the first year that the Coast Guard has been funded adequately, even before 9-11, and we saw the response in the New York Harbor. As I told the President, and you were there Mr. Armey, and I will tell the public, I believe that the responsibility of the Coast Guard should be maintained as a unit. That if they continue those missions which we have drafted in this legislation as we proposed to you, and in the report, we still give the President the flexibility financially. You have a chart in front of you, I think you have it, but for the major missions we, in fact, keep the funding at that level. Yet 50 percent of the money he can redirect, do what he wants to do, because 22 percent of that 50 percent is already in port security. So what I am asking this committee as you structure your bill is, to consider the words I have given you about FEMA and about the Coast Guard and about the immediate interfacing.

I understand why the President has been asked to do this and what you have been charged to do, and that is to try to make this run more efficiently. And I hope that will be the result. If I can sound a little bit of a warning, Mr. Oberstar and I passed TSA with great intentions, and we had some estimates and thoughts, and every time you turn around, it gets bigger and bigger and less efficient and less efficient, and that concerns me a great deal. We don't want that to happen in Homeland Security.

But if we do create this agency, if we do have a department, a cabinet member, a secretary, if we do, and I think it is correct if we do have to, and I don't recommend it in my legislation, to transfer either one of the agencies of Coast Guard or FEMA, that their mission is left intact and is not diminished in any way, shape or form.

That is what I am asking this committee to do. If you don't do it, then we have some long discussions ahead of us, because I be-

lieve I am absolutely on target for what I have just said, not because of me, but because the action that has taken place in my State by both of these agencies and what they do and how they do it, the professionalism, the results they give us. All I ask you to do as you listen carefully as you meditate and draw this bill together, heed some of the words I have just given you. Thank you very much.

[The statement of Mr. Young follows:]

PREPARED STATEMENT OF HON. DON YOUNG, CHAIRMAN, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

On July 11, 2002, the Committee on Transportation and Infrastructure met to consider H.R. 5005, the Homeland Security Act. The Committee by voice vote adopted a bipartisan amendment that recommends the transfer of the Transportation Security Administration (TSA) and the Federal Protective Service to the Homeland Security Department. Both of these transfers were requested by the President and we have honored that request.

However, the Committee recommended against transferring the Coast Guard and the Federal Emergency Management Agency (FEAM). The Committee has sent to you a lengthy report to accompany their legislative recommendation which details the very good reasons for our recommendation.

There is no doubt that after the events of September 11th, the President must be given the resources to protect this country from all attacks, whether terrorist or otherwise. However, my committee has expressed its collective view that the bill as introduced simply goes too far and covers too many agencies.

There is a tremendous concern that the bill as introduced will create a great deal of bureaucratic chaos and inaction. There is also some concern that the bill gives the Secretary of Homeland Security unprecedented power with few checks and balances.

I want to make it clear that we do not object to the creation of a Department of Homeland Security however, the bill as introduced raises many concerns which this Congress has a responsibility to address.

The Transportation Committee agrees that it is appropriate to transfer the TSA and the Federal Protective Services to the Department of Homeland Security because both of those agencies have as their primary mission securing against acts of terrorism or violence. They are both security agencies. However, both the Coast Guard and FEMA provide a broad array of services to average citizens and have had limited responsibility in the area of security. While maritime security is an extremely important function of the Coast Guard which should never be minimized, they have other functions which are also vital to the wellbeing of the American people.

The Coast Guard also provides for search and rescue of boaters, they keep our waterways open to navigation through their ice breaking efforts and they maintain critical aids to navigation. They protect our environment and fisheries resources, they keep passengers safe on commercial vessels of all types, and interdict both drugs and illegal immigrants.

We've given the Coast Guard a great deal of work to do and they have always carried out their duties with distinction.

The same can be said of FEMA which responds to both natural and man made disasters. FEAM has many other responsibilities as well. They are important not only in responding to disasters but in preventing and preparing for disasters of all types. They play a key role in training fire fighters. They prepare flood plain maps and operate the flood insurance program.

If the Secretary of Homeland Security wants to commit his entire effort to preventing terrorist attacks, under the bill as introduced, he can reduce the resources of the Coast Guard and FEMA for these other missions and direct those resources entirely to security.

I have grave concerns about giving the secretary that kind of power. If the Select Committee overrules our 75 member committee, I would strongly recommend that at a minimum, the missions of the Coast Guard and FEMA be mandated to insure they are funded and carried out consistent with the will of Congress.

Our Committee also made recommendations with regard to the manner in which the new department will acquire land and office space. We believe that the GSA is the proper agency to act on behalf of the department to acquire and manage any

space needed for offices. It will be a massive job to develop the headquarters space and office space for all the many agencies affected by this bill.

The Agencies identified by the Administration to be consolidated in the new department occupy roughly 4.9 million square feet of GSA assigned space in either leased or owned buildings. If the new Department of Homeland Security were consolidated in the Washington, DC area, it would require a building almost the size of The Pentagon, which is at least 5 million square feet of space.

GSA has the experience and expertise to serve the new department's real estate needs. We have included provisions in the bill to expedite the acquisition of a new headquarters for the DHS.

Our committee worked on a bipartisan basis to develop our recommendations. We believe they are the best recommendations we can make within such a short time period.

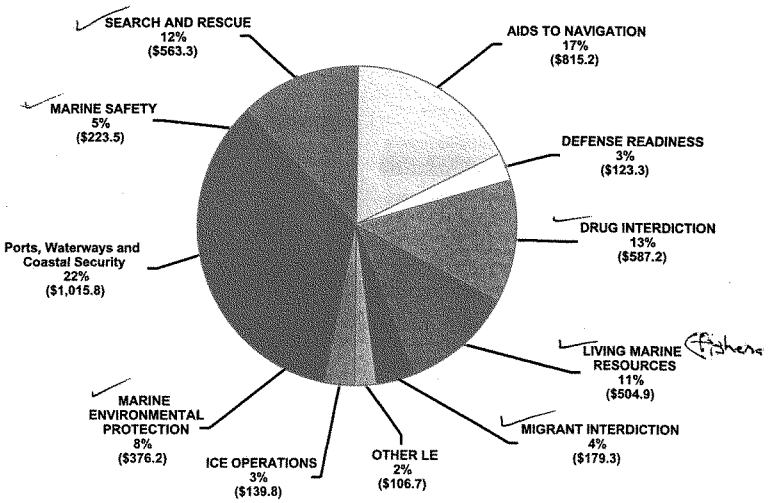
I would urge you to give great deference to the committee that has the longest history of dealing with these issues and understands the impacts of transferring these agencies.

When this bill is signed into law by the president, I hope that we can all be sure that the Department of Homeland Security can indeed keep our country secure from terrorist attacks, while preserving all the important missions that these many agencies carry out each day.

## *Operating Expenses Budget by Major Programs—FY2003*

50% 50%

Operating Expenses Budget by Major Programs - FY 2003
(Dollars in Millions)



**Treasury, Postal Service, and General Government**
**Transfer Authority**

| Agency | Transfer Authority | Description |
|---|---|---|
| **Title I – Department of the Treasury**<br><br>Departmental Offices | For necessary expenses of the Departmental Offices ….. : Provided further, That of these amounts ____ shall be for the Treasury-wide Financial Statement Audit Program, of which such amounts as may be necessary my be transferred to accounts of the Department's offices and bureaus to conduct audits: Provided further, That this transfer authority shall be in addition to any other provided in this Act. | Provides transfer authority for Treasury-wide financial Statement audits within the Department. |
| Department-Wide Systems and Capital Investments Programs | For development and acquisition of automatic data processing equipment, software, and services ….. : Provided, That these funds shall be transferred to accounts and in amounts as necessary to satisfy the requirements of the Department's offices, bureaus, and other organizations: Provided further, That this transfer authority shall be in addition to any other transfer authority provided in this Act: Provided further, That none of the funds appropriated shall be used to support or supplement the Internal Revenue Service appropriations for Information Systems. | Provides transfer authority for certain Department-wide systems and capital investments with the Department. |
| Expanded Access to Financial Services | To develop and implement programs to expand access to financial services for low- and moderate-income individuals ….. : Provided, That of these funds, such sums as may be necessary may be transferred to accounts of the Department's offices, bureaus, and other organizations: Provided further, That this transfer authority shall be in addition to any other transfer authority provided in this | Provides transfer authority within the Department for expanded access to financial services funding. |

| | Act ..... | |
|---|---|---|
| Harbor Maintenance Fee | For administrative expenses related to the collection of the Harbor Maintenance Fee, pursuant to Public Law 103-182, ____, to be derived from the Harbor Maintenance Trust Fund and to be transferred to and merged with the Customs ``Salaries and Expenses" account for such purposes. | Provides transfer authority for harbor maintenance fees to the U.S. Customs Service. |
| Internal Revenue Service – General Provisions | Sec. ___ . Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations. | Provides transfers authority among Internal Revenue Service accounts with Committee approval. |
| Treasury Department - General Provisions | Sec. ___. Not to exceed 2 percent of any appropriations in this Act made available to the Federal Law Enforcement Training Center, Financial Crimes Enforcement Network, Bureau of Alcohol, Tobacco and Firearms, United States Customs Service, Interagency Crime and Drug Enforcement, and United States Secret Service may be transferred between such appropriations upon the advance approval of the Committees on Appropriations. No transfer may increase or decrease any such appropriation by more than 2 percent. | Provides transfer authority for up to 2 percent between law enforcement appropriations of the Department under certain circumstances. |
| | Sec. ___. Not to exceed 2 percent of any appropriations in this Act made available to the Departmental Offices, Office of Inspector General, Treasury Inspector General for Tax Administration, Financial Management Service, and Bureau of the Public Debt, may be transferred between such appropriations upon the advance approval of the Committees on Appropriations. No transfer may increase or decrease any such appropriation by more than 2 percent. | Provides transfer authority for up to 2 percent between fiscal and management appropriations of the Department under certain circumstances. |
| | Sec. ___. Not to exceed 2 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to the Treasury Inspector General for Tax Administration's appropriation upon the advance approval of the | Provides transfer authority for up to 2 percent between the Treasury Inspector General for Tax Administration and Internal Revenue Service appropriations of the Department under certain circumstances. |

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| | Committees on Appropriations. No transfer may increase or decrease any such appropriation by more than 2 percent.<br><br>Sec. ___. The Secretary of the Treasury may transfer funds from ``Salaries and Expenses", Financial Management Service, to the Debt Services Account as necessary to cover the costs of debt collection: Provided, That such amounts shall be reimbursed to such Salaries and Expenses account from debt collections received in the Debt Services Account. | Provides transfer authority for Financial Management Service funds to the Debt Collection Account with reimbursement. |
| **Title II - United States Postal Service** | Does not have any statutory transfer authority. | |
| **Title III - Executive Office of the President and Funds Appropriated to the President** | | |
| White House Operations | Does not have any statutory transfer authority. | |
| Office of Management and Budget | Does not have any statutory transfer authority. | |
| Office of National Drug Control Policy | "the Director may—<br>(8) transfer funds made available to a National Drug Control Program agency for National Drug Control Strategy programs and activities to another account within such agency or to another National Drug Control Program agency for National Drug Control Strategy programs and activities, except that-<br>(A) the authority under this paragraph may be limited in an annual appropriations Act or other provision of Federal law;<br>(B) the Director may exercise the authority under this paragraph only with the concurrence of the head of | Provides transfer authority of up to 3 percent of program funds to other agencies in order to carry out ONDCP programs. |

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| | each affected agency;<br>(C) in the case of an interagency transfer, the total amount of transfers under this paragraph may not exceed 3 percent of the total amount of funds made available for National Drug Control Strategy programs and activities to the agency from which those funds are to be transferred;<br>(D) funds transferred to an agency under this paragraph may only be used to increase the funding for programs or activities (1) have been authorized by Congress; and<br>(E) the Director shall-<br>(i) submit to Congress, including to the Committees on Appropriations of the Senate and the House of Representatives, the authorizing committees for the Office, and any other applicable committees of jurisdiction, a reprogramming or transfer request in advance of any transfer under this paragraph in accordance with the regulations of the affected agency or agencies;<br>(ii) annually submit to Congress a report describing the effect of all transfers of funds made pursuant to this paragraph or subsection (c) (4) of this section during the 12-month period preceding the date on which the report is submitted;" | |
| **Title IV**<br><br>Committee for Purchase From People Who Are Blind or Severely Disabled | Does not have any statutory transfer authority. | |
| Federal Election Commission | Does not have any statutory transfer authority. | |

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| Federal Labor Relations Authority | Does not have any statutory transfer authority. | |
| General Services Administration | (b) When other functions are transferred to the General Services Administration from any Federal agency, under section 201(a)(2) or (8), or otherwise under this Act, there shall be transferred such records, property, personnel, appropriations, allocations, and other funds of such agency to the General Services Administration as the Director of the Bureau of Budget (OMB) shall determine to relate primarily to the functions so transferred. (40 USC Sec. 755) | Provides transfer authority for appropriations associated with functions that are transferred to GSA. |
| General Services Administration – Federal Buildings Fund | Notwithstanding any other provision of law, the Administrator of General Services is hereafter authorized to transfer from the resources of the Federal Buildings Fund, in accordance with such rules and procedures as may be established by the Office of Management and Budget and the Department of the Treasury, such amounts as are necessary to repay the principal amount of General Services Administration borrowings from the Federal Financing Bank when such borrowings are legal obligations of the Fund. (Section 7, P.L. 101-136; reference in annual appropriations). | Provides transfer authority for payments to the Federal finance Bank for installment agreements. |
| General Services Administration – Former Presidents | … Provided, That the Administrator of General Services shall transfer to the Secretary of the Treasury such sums as may be necessary to carry out the provisions of such Acts. (annual appropriations). | Provides transfer authority to the Secretary of the Treasury for pension payments to former Presidents. |
| Merit Systems Protection Board | The Civil Service Retirement and Disability Fund Act at 5 U.S.C. 8348 (a)(3) states the following:<br>"(a) There is a Civil Service Retirement and Disability Fund. The fund—<br>(3) is made available, subject to such annual limitations as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this title." | Provides for transfer from the Civil Service Retirement and Disability Fund for reimbursement of the Merit Systems Protection Board for adjudication of appeals concerning retirement and disability benefits. |
| National Archives and Records | Does not have any statutory transfer authority. | |

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| Administration | | |
| Office of Government Ethics | Does not have any statutory transfer authority. | |
| Office of Personnel Management | Does not have any statutory transfer authority. | |
| Office of Special Counsel | Does not have any statutory transfer authority. | |
| United States Tax Court | Does not have any statutory transfer authority. | |

Chairman ARMEY. Mr. Oberstar.

**STATEMENT OF THE HONORABLE JAMES L. OBERSTAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA**

Mr. OBERSTAR. Thank you, Mr. Chairman. Chairman Young has stated the case on the Coast Guard with great feeling and passion, and I hope persuasiveness, certainly persuasive to me and to the 73 other members of our Committee on Transportation and Infrastructure. We come to you with more than a half century of experience in transportation between the two of us, and for myself, I would say I have served this body both as a member and previously as a staff member for my predecessor John Blatnik, who chaired the subcommittee that created the Department of Transportation. I participated in that staff work from January 24, 1966, until its enactment, its signature into law, by President Johnson on October 15 of that same year. We spent ten months working in very close cooperation with the White House, the White House staff, weekly meetings and sometimes daily meetings, with total cooperation between the executive branch and the legislative branch, which has not been the case with this proposal for Homeland Security.

As Chairman Young suggested, look carefully at our committee report on the agencies under the responsibility of our committee or the jurisdiction of our committee. We have authority over 56 percent of the personnel and nearly an equal amount of the budget that will be the basis of this new Homeland Security Department. Coast Guard, Federal Emergency Management Administration, FEMA, the Transportation Security Administration, and the Federal Protective Service. This is a huge undertaking that you are charged with and that the President has set forth—22 agencies, 169,000 staffing, and some $38 billion in funding. But our objective, as we proceeded to undertake our role in this, was not to look at shifting boxes, but to look at achieving the mission, and as the chairman said, we want to get that mission right. We want to get those issues of transportation security right.

And I want to address the matter of the Transportation Security Administration. That was the major concern of this entire country, of the President and of this Congress immediately after the attack on September 11. First was to make New York whole and address the other needs of security in this country with an immediate appropriation. The next was to strengthen aviation security and security in other modes of transportation might be vulnerable. I was the author in 1990 of the first Aviation Security Act in the aftermath of Pan Am 103. It was at the request of then President Bush that I crafted the legislation to establish a commission, the President's Commission on Aviation Security and Terrorism, and I served on that Commission along with John Paul Hammerschmidt from the House, and Senators D'Amato and Lautenberg in the other body and three public members.

We spent ten months inquiring into the tragedy of Pan Am 103, and we set forth recommendations that were crafted into legislation, signed into the law by the President, but regrettably not fully implemented. Airlines resisted, airports resisted, other forces re-

sisted the full implementation of those provisions. Now we have a law that goes even further than, the Aviation Security Act of 1990, with tough deadlines, strong provisions, and I don't want to see any of those undermined.

Never again do I want to stand at an abyss as we did in Lockerbee and look into a hole that was 14 feet deep, 150 feet long, a trench filled with water where an apartment building had stood and where the fuselage of Pan Am 103 exploded and incinerated people. We vowed that never again will this happen. But it did happen because we weren't vigilant enough because the patience of the public wore thin; because the forces who lobbied against criminal background checks for airport security screeners prevailed rather than the provisions of law. I don't want to see that happen with the Transportation Security Administration that we have crafted and that the Congress passed by an overwhelming vote once again.

We have said in this legislation that the Transportation Security Administration may well indeed be transferred to the new department of homeland security provided certain steps are taken first, that the key positions are filled. The Secretary, the Secretary for Homeland Security, the Under Secretary for Border and Transportation Security, the Assistant Secretaries for Transportation Security are filled, that the Secretary of Transportation has certified that explosive detection systems are deployed at all U.S. Airports as we provided for in this law and that these systems are, in fact, operating to screen all checked luggage, that the Secretary of Transportation has certified that there are a sufficient number of Federal screeners, security managers, security personnel, and law enforcement officers deployed at all airports where screening is required under the law.

If you don't do that, if, in fact, this agency is transferred to the new Department and is then subject to the endless bureaucratic wrangling and tangling that will happen, and believe me it will happen, I know, I've seen it, then we will have undermined the very cornerstone of aviation security and of transportation security.

So leave it as it is. Secretary Mineta said we will meet all those deadlines. He said we are going to meet all those deadlines. What we are offering you in this bill that we have reported from Committee is an insurance policy against the failure of the transfers and of the deadlines to be met. And those deadlines were not afterthoughts. They were not slipped into the bill undercover of darkness. They were openly debated in committee, on the floor, in conference. The American public said we want this done, we want it done yesterday. People weren't boarding airplanes because the fares were too high. They weren't boarding airplanes because their anxiety level was too high and they wanted these tougher measures of security.

We have provided it. This Department of Transportation under Secretary Mineta and Deputy Secretary Jackson and Under Secretary Magaw couldn't work hard, couldn't be working faster to achieve those goals. Norm Mineta is putting 17 hours a day and Michael Jackson is putting in 18-hour days, 7 days a week, but those deadlines have to be met and if you do anything to disrupt it and something happens, that would be terrible.

We have, for example, asked now the administration for information. We couldn't get it. We got no responses to our requests from both sides of the aisle together for basic factual information, are explosive detection systems being purchased with facilities and equipment funding, from airport and airways trust fund, or from what other fund? Is the civil penalty authority of DOT going to be transferred to the new department, or will it remain with the existing Department of Transportation?

Will Homeland Security agencies that are now in leased or government-owned space going to be transferred in those same conditions or will they be government-owned space? What will be the condition? We couldn't get answers to those simple factual questions. So we moved ahead with legislation.

There is also wrangling over deadlines and I have heard that there may be a measure to stretch out the deadline for compliance with the security provisions of the Transportation Security Act. I urge you not to put any such extraneous language in this Homeland Security Department. Stick with the law. There is flexibility in the law to meet those deadlines, but don't try to undermine the law.

Chairman ARMEY. Thank you.

[The statement of Mr. Oberstar follows:]

PREPARED STATEMENT OF HON. JAMES L. OBERSTAR, RANKING MINORITY MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. Chairman, Congresswoman Pelosi, and Members of the Committee, thank you for the opportunity to testify before the Select Committee on the bipartisan homeland security recommendations of the Transportation and Infrastructure Committee. Our Committee has worked on transportation security and safety issues for decades and, between us, Chairman Young and I come to you with more than a half-century of experience in transportation issues. As you develop your recommendations, I urge you to consider our Committee's expertise in determining how the Coast Guard, the Federal Emergency Management Agency, the Transportation Security Administration (TSA), and the Federal Protective Service best fit within a plan for homeland security and how they can best contribute to the welfare of this Nation.

As we consider this issue, we all must appreciate the magnitude of what we are considering—a proposal that, as Norm Ornstein points out, is arguably the largest governmental reorganization in history. The President's proposal envisions consolidating parts of 22 different agencies—including more than 100 governmental entities with more than 169,000 employees that are employed in 4.8 million square feet of space all across this Nation—with many different missions, cultures, and histories. As we create a Department of Homeland Security, we cannot focus on shifting boxes; we must focus on achieving the mission—to prevent terrorist attacks, reduce vulnerabilities, and, in the tragic event of an attack, to minimize damage and begin the process of recovery. Moreover, we must ensure that we get it right!

Today, I would like to focus on our Committee's bipartisan recommendation to getting transportation security right. Like the Administration's bill, the Committee-reported bill authorizes the transfer of the TSA to the Department of Homeland Security but, unlike the Administration's bill, the Committee makes clear that the transfer will not jeopardize TSA's security mandate. Under the Committee-reported bill, no transfer will occur until:

- key positions are filled, including the Secretary of Homeland Security, as well as the Under Secretary for Border and Transportation Security, and the Assistant Secretary for Transportation Security;
- the Secretary of Transportation certifies that explosive detection systems are deployed at all U.S. airports required under the Aviation and Transportation Security Act and that these systems are screening all checked baggage; and
- the Secretary of Transportation has certified that a sufficient number of federal screeners, security managers, security personnel and law enforcement officers have been deployed at all airports where screening is required under the Aviation and Transportation Security Act.

Achieving these security mandates prior to transferring TSA is essential because, again, the purpose of this legislation is to prevent terrorist attacks, not move agencies. TSA must not be distracted by the uncertainties of an organization change while it is fully occupied with the demanding tasks of hiring tens of thousands of employees, and purchasing and installing several thousand pieces of explosive detection equipment. Moreover, at yesterday's Select Committee hearing, Secretary of Transportation Norm Mineta made crystal clear that the Administration will meet all statutorily mandated deadlines included in the Aviation Security Act. Given the Administration's commitment, the President will be able to transfer TSA on January 1, 2003, as his proposal provides. Our provision is a simple insurance policy.

I would also like to comment on the aviation security deadlines imposed by Congress last November in the Aviation Security Act, which the House adopted by a vote of 410-9. During our Committee consideration of the Homeland Security bill, Congressman Mica offered and withdrew an amendment to extend the December 31, 2002 deadline for airports to deploy explosive detection systems and ensure that these airports are screening all checked baggage. There have been press reports that there will be efforts to include an extension in the bill you are considering. I, and many of my colleagues, would strongly oppose an extension at this time. Yesterday, in testimony before you, the Administration made very clear that it will meet the deadline. It would be wholly inappropriate for Congress to weaken this requirement when the Administration has made clear that the mandate is within reach. Moreover, the idea that the "Homeland Security" bill would include a provision that would enable a terrorist to more easily get a bomb on a plane is directly contrary to everything we are trying to do here today.

Finally, I would like to express my sincere hope that Congress will develop a bipartisan homeland security proposal, working hand-in-hand with the Administration. To date, I have been deeply disappointed in the appalling lack of cooperation from the Administration on this legislation. The White House has muzzled the agencies and insisted that all contact with Congress be cleared through it. As a result, our Committee did not receive responses to bipartisan requests for basic, factual information—such as whether explosive detection systems are purchased with Facilities and Equipment funding from the Airport and Airways Trust Fund; whether the DOT's civil penalty authority transferred to the new department; or whether the proposed Department of Homeland Security agencies are currently located in leased or government-owned space—until after the Committee reported the bill. I am hopeful that as we move forward the Administration will stop stonewalling and expecting a rubber stamp, and begin to work with us to try to create the Department that best achieves our common goal.

Mr. Chairman, I am also hopeful that the House Republican Leadership will bring this bill to the Floor under an open rule. These issues of homeland security, and protecting our constituents, are too important to each and every Member of this Body to limit an opportunity for a free and open debate of these issues. Let the "House of the People" work its will.

Chairman ARMEY. The Chair will advise you I am being advised that we may expect votes on the floor within the next 15 minutes. So with that in mind, and out of respect for this panel's patience getting to the dais, let us try to proceed with dispatch, and the Chair recognizes the gentleman from Ohio.

Mr. PORTMAN. I thank the Chair and I want to thank my colleagues for their testimony, but more important, for the work they put into this, not just over the last couple of weeks but over the last several years. And you are right, you have got about 56 percent of the people and about 56 percent of the budget of the proposed transfer, and obviously your continued oversight is going to be critical if this is ever going to work, the issue provided for the Transportation Security Administration.

I have a couple of questions. One is with regard to the Coast Guard, and Chairman Young, I know you feel very strongly about this agency and have worked closely with them over the years. My question is if—and you may not want to answer hypotheticals—but if the Coast Guard were to have its so-called homeland security functions transferred over to this new Homeland Security Depart-

ment, and the other functions were to be left behind, would that be preferable to you as opposed to keeping the Coast Guard intact and moving it over to the Department of Homeland Security?

Mr. YOUNG of Alaska. No. In my testimony, Mr. Portman, I believe I said that the Coast Guard has to remain intact, and I will stress. It is my preference it stays where it is at, but if it has to be moved, it has to be moved intact. I would also like to suggest, and I say this as a constructive suggestion, (It is not in my testimony). I was deeply concerned about the flow chart the President sent to us. No way will I support the Coast Guard reporting to the Under Secretary of Border Patrol. I don't know where that came from. If anything, they cannot be diminished. They have right now the right and the duty to report to the Secretary straight on, the commandant does, and at the least that has to occur. And I would also suggest that as I have said, and I will say again, what we have done in this legislation is to write the mission, and that is really what, and my ranking member I hope will agree with me, has to be a crucial part of your legislation.

Again, if you will look at this chart I gave you, the funding aspect of it is just for the operating part, not for capital improvement. We retain search and rescue, which is 12 percent of the budget and Marine safety which is 5 percent. We retain drug interdiction, which is huge. We retain living marine resources and make migrant interception and marine environmental protection. Search and rescue as I mentioned. But we also leave ports, waterways and coastal security, which is part of their job and we leave defense readiness which is part of their job. So if we move something, it has to be moved intact. I am a realist. I have said before I think it is wrong, but if you decide to do so, at least recognize what I am asking—mission definition written by myself and other people that know the Coast Guard and then making sure that the missions they are historically involved in are fully funded and they can still interface with their constituency and my constituency.

Mr. PORTMAN. I appreciate that. You indicated earlier that you take some comfort in the fact that this President has increased funding for the Coast Guard. For the first time in a long time, the Coast Guard is getting the kind of resources it needs. I am sure you would like to see them get even more, but there is a substantial increase in funding, and I think everything we are hearing from the White House is that they understand the importance of this role.

Mr. Menendez and others have talked a lot about the maintenance of existing nonhomeland security functions, and I think having that mission laid out is extremely important to being sure that in this legislation we aren't giving short shrift to any of the existing functions, whether it is cleaning up oil spills or search and rescue efforts.

So I appreciate the time you have put into this and the help you have given us to be able to get to a point where this can work well together with other border and port authorities.

Mr. Oberstar on TSA, I know you have spent an enormous amount of time on this, you have laid out your strong view that we ought to be sure these deadlines are met first before we move so we don't have any disruption in what is already a very difficult

process. Some have argued that maybe we should, in this legislation, alter some of these deadlines. They have said, for instance, that the technology coming on board to be able to screen baggage that would be in the belly of a plane is going to improve in the next couple of years: and many airports, in any case, even if we had better technology, can't meet the deadlines.

You testified this afternoon that you believe that is inaccurate, that we need to keep their feet to the fire, keep these deadlines in place. Can you expand on that a little bit in response, specifically to the suggestion that perhaps if we did postpone some of these deadlines, new technology will become available, smaller and more accurate machines, for instance, can be installed—.

Chairman ARMEY. May I encourage Mr.Oberstar to do so succinctly because we have others who would like to get the questions in before we must vote.

Mr. OBERSTAR. I would like to, first of all, support Chairman Young's statement about the position of Under Secretary for the Coast Guard, that is this critically important to the operation and communication. Secondly, on deadlines, there is authority in existing law for alternative means to be used if explosive detection systems cannot be deployed in time to meet the December 31, 2002, deadline or in the event that explosive trace detection systems cannot be certified to meet the standard of detecting all types of explosives.

Furthermore, as to the question of extending deadlines to wait for new technology, let me just give you my experience as Chair of the Aviation Subcommittee, when we were proposing that the FAA by rule adopt the TCAS, the collision avoidance systems for aircraft aloft, the FAA resisted, the airlines resisted, wait for TCAS II, wait for TCAS III, it is a better system. TCAS II will give you only vertical authority, TCAS III will give you information to move laterally in response to an aircraft entering your five hundred foot space.

Mr. OBERSTAR. They waited and they delayed and, you know, three mid-air collisions resulted, killing hundreds of people. This Congress enacted legislation requiring the establishment of a rule to adopt TCAS II, with authority to move on and adopt better technology as it comes along. But let us not let the perfect be the enemy of the good.

Mr. PORTMAN. Thank you.

Chairman ARMEY. Thank you, gentlemen.

The gentlelady from California. We have just about adopted you to our home State in Texas.

Ms. PELOSI. Well, three grandchildren I have in Texas. Thank the chairman.

I thank the distinguished witnesses for their wonderful testimony, their great leadership for our country and their wonderful proposal to this committee which I know in your mark you will take under great consideration. I am now speaking for him, right?

Anyway, here is what I would like to say, because I know the hour is late and you have been patient in waiting and you have made such a comprehensive presentation. I did want to just call to the attention of the committee a document that Mr. Oberstar related to me in our joint inquiry, and that is the report on the Avia-

tion Commission in relationship to the Aviation Act of 1989, and I think if the members read that they would see how prescient it was. It really laid out the steps that we should take to protect our aviation system and our airports specifically in relationship to terrorism.

Of course, I have been lobbying for strengthening the Office of Homeland Security in the White House to making it statutory instead of just existing under executive order; and I would hope that that adviser to the President would have the FAA strongly under his or her—in the jurisdiction that that person coordinates in the interest of fighting terrorism.

I will share my copy, but if you have more, Mr. Oberstar, I think it would be very instructive as we go into the markup to see some of the documentation that you provide. It was useful to me in the joint inquiry. I thank you for it.

Mr. Young, I thank you for your always convincing and spoken-with-conviction testimony, and thank you both.

I have no questions. Thank you, Mr. Chairman.

Mr. OBERSTAR. I will be happy to provide that section of the report for all of the members. It relates to a recommendation the Commission made that there be established within the intelligence community of the United States a single unit whose role would be to gather information from all U.S. and foreign intelligence sources and to be prospective, to enter into the mind of the terrorist, to think ahead rather than simply react to the last terrorist action. It was strong recommendation by all of the members of the President's commission that such a unit be established within the intelligence community of the United States to be anticipatory rather than reactive. That was never done.

Ms. PELOSI. If I may, Mr. Chairman, just to continue on that, and we didn't go into that in our comments here, but you have hit the nail on the head. Plans and intentions, we can do all of the mitigation and protecting all the rest that we want, and that is very important to reduce risk, but until we can get into the minds of and understand the plans and intentions, we cannot give any guarantees to the American people. Thank you for making that point.

Chairman ARMEY. Thank you.

The gentleman from New Jersey.

Mr. MENENDEZ. Thank you, Mr. Chairman.

As a member of the Transportation Committee, it has been privilege to work with both of these gentlemen and, notwithstanding Mr. Young's wild Alaskan wilderness reputation, it has really been a pleasure. The committee has continued to act in its tradition with what I consider our treasure trove of transportation information, Mr. Oberstar, in a bipartisan way, and I want to salute them.

Just as I have asked every other Chair and ranking Democrat, the votes that were taken in the committee were bipartisan on what you reported out?

Mr. OBERSTAR. A voice vote.

Mr. Young. Voice vote. No discussion. No dissent. It was well done.

Mr. MENENDEZ. In reference to the Coast Guard, the Commandant appeared and said that about 80-some-odd percent of the

Coast Guard's missions were nonsecurity related. Secretary Mineta came here and said it was about 60 percent. In either case, it is well over 50 percent of their missions are nonsecurity related.

Chairman Young, how do you see—if this committee does put the Coast Guard as an entity into Homeland Security, how do you see the nonsecurity missions that you so eloquently spoke about being preserved?

Mr. Young. I would like to have, with your cooperation, the chairman, the committee— a role in writing the mission and have it in the law so there is no question about what the mission is. I mention in the chart, again, they are involved in a great deal of security already. I believe it is about—you know, I would say nonhome security is closer to 85 percent, but we even cut the slack in the sense, because the White House requested it, that we took care of those nonsecurity missions and tried to make them whole.

I would like to suggest that what this committee should do also—and it doesn't deter from the home security aspect of it. In fact, it probably will add to it. It gives them some flexibility, but it will not take away from those things that are so crucial to our commerce and to our people. And I know people have told me this—we will do. In all due respect, my friends, I would prefer it in the law so there is no question that what they will be able to do in the past, they will be able to do in the future, and they will be funded for it.

Mr. OBERSTAR. And that latter point is absolutely critical. Over the last 20 years, the Congress has designated 19 new missions for the U.S. Coast Guard to carry out but has never provided adequate funding for those new missions. So the Coast Guard has continued from the time I was elected to Congress in 1974 with 39,000 personnel, and there are only a thousand or two above that today.

They have added—we have added all these missions, kept them at the same level. Their budget has not increased. In fact, the Coast Guard interdicts drugs whose street value is greater than the budget of the Coast Guard.

So if you are going to ignore the recommendation of our committee, then be sure in transferring that you increase the personnel to handle whatever the homeland security role is envisioned to be for the Coast Guard and recommend an increased budget to handle that additional role as well. If they are going to board merchant vessels 24 hours before they arrive at the U.S. port because they are vessels of concern, that they need additional people to do that, because the Coast Guard shifted about a third of it people from search and rescue where they save 3,000 lives a year to boarding vessels and monitoring vessels of concern.

Mr. MENENDEZ. I think, Mr. Oberstar, you and the chairman give us some insights into the concerns of the committee. This is not about turf that some would like to suggest that it is. This is about some very serious missions that already have suffered because of the nature of the obligations the Coast Guard has now more significantly undertaken.

Secretary Mineta sat here before us. I asked him a yes-or-no question. Has the Coast Guard been doing a bad job of securing the United States in the territorial war? He said, no. I said has he been doing a good job? He said, yes.

So it is been doing the job, but it is clearly diminished in terms of its capacity, considering all of the functions. I think that is what the committee's significant concern is about.

Lastly, before my time runs out, Mr. Oberstar, TSA, as I understand the committee's amendment, it basically says we are not stopping the transfer of TSA. We are trying to ensure that TSA, as an infant agency, will succeed by making sure that the senior leadership of this new homeland department exists in place, that in fact screeners are deployed and, lastly, that the detection devices are employed.

I asked Secretary Mineta, well, why would the administration not accept that, because it—and he said they are going to meet all the deadlines, period, was his point. Without reservation. If that is true, can you see any reason why this committee should not accept the amendment of the Transportation Committee as it relates to the transfer of TSA?

Mr. OBERSTAR. You have understood the legislation of our committee brilliantly.

Chairman ARMEY. The chairman must call the gentleman from New Jersey and—.

Mr. Young. If I could make one comment, Mr. Menendez.

Chairman ARMEY. One short comment.

Mr. Young. One of the other things I mentioned in my statement, I still suggest under the President's chart to make sure that those missions can be accomplished, that the Commandant reports directly to the new Secretary if it is to be transferred and not to the Under Secretary of Border Patrol.

Chairman ARMEY. Thank you.

The gentlelady from Connecticut.

Ms. DELAURO. Thank you very much, Mr. Chairman.

Let me say thank you to my colleagues for your vast knowledge in this area and your thoughtful process in going through this. Mr. Oberstar, your historical perspective is always awesome; and, Mr. Young, I have had the opportunity just recently, as you know, to visit the wildlands of Alaska and your state is truly beautiful.

Let me ask a question with regard to FEMA. You have recommended keeping FEMA as a separate agency but it would coordinate with DHS in the event of a terrorist attack. How do you think that moving FEMA into the Department of Homeland Security would affect our ability to respond to hurricanes, and other natural disasters, and how do you envision the FEMA-DHS coordination being carried out?

Mr. Young. Well, it is our opinion FEMA is very parallel to the Coast Guard. They have a lot of characteristics as far as their mission, and if the mission is properly spelled out in law, I don't think there will be that much difficulty and I do think they will cooperate. FEMA has responded immensely well in the last 8 months to floods and actually the World Trade Towers, et cetera.

I just worry again about them being absorbed into a new agency and being swallowed in and redirected into supposedly what is the mission of the homeland security and not what we originally intended them to do. I do think they can coordinate. I do think they will cooperate, and I still think they could be able to respond immediately to the disasters that occur every day. If they are not able

to do that and they are redirected over here to watch out for bole weevils coming out of some other country close by that has been imported by a terrorist, then I think we have got some problems.

Mr. OBERSTAR. If I might supplement the chairman's splendid response, FEMA started out as the Civil Defense Agency and then moved into—as the Cold War wound down, assuming a broader responsibility as our Nation's premiere disaster assistance and response agency. To move it into this new Department of Homeland Security without a clearly defined homeland security role is, in my judgment, a mistake.

We have not seen a delineation of what is homeland security compared to response to floods, hurricane, blizzards, earthquakes, tornados. You know, when your home is under water up to the eaves, are you going to wonder, where is FEMA? Are they on some mission looking for terrorists, or are they going to be on a mission looking for your lost children and rescuing you from the rooftop of your home?

Ms. DELAURO. Let me ask two very quick questions. With regard to TSA, if they did meet all of their deadlines, are you confident that moving TSA to the new Department will enhance our homeland security?

Last question is, if your recommendations are not included in the bill that is reported out, would you expect to have the opportunity to amend this legislation on the floor?

Mr. Young. I am hoping that this committee does what I think is correct and listen to every chairman and draw a bill that we can all possibly support. I have told people publicly and privately that if what we suggest is not in the bill, then we expect to be able to offer amendments to make that part of—and I would suggest respectfully my leadership knows this, that I do not take this task lightly, nor do you. We are going to try to do what I think is right for homeland security but also make sure that we are able to be involved all of the way through the construction of this legislation, especially in the definitions and writing of the mission.

Mr. Chairman, before I finish, I would like to suggest one other thing. In my written testimony, please remember about the purchasing of property and setting up property for this agency. Under our recommendation, GSA, we believe, is the proper agency to do so, but it is transferred over to Homeland Security. But right now you don't have a place to put this agency. There is a recommendation Mr. Oberstar has. I believe it is St. Elizabeth property there. But don't let this get bogged down, and if this becomes a reality—it was a part of the testimony I didn't—.

Mr. OBERSTAR. I concur with the chairman. We ought to be able to offer an amendment. The amendment should be made in order under the rule if you do not concur in our committee's recommendations to offer an amendment on the floor to propose and let the House work its will on our proposal.

Secondly, you do have to have a place for these agencies. You can't have them under a tent on the mall somewhere, and one-third of the cost of establishing a new department is the land cost. The government already owns the St. Elizabeth's land which already has the appropriate setbacks, 131 acres, and you can easily establish the new facility right there.

Ms. DELAURO. If it meets the deadline for TSA.

Mr. OBERSTAR. And it is already in Federal ownership, in GSA's ownership.

Ms. DELAURO. The last part of my question was, if TSA meets all of its deadlines, should—in your view, will moving that agency to the new Department enhance our security?

Mr. OBERSTAR. Well, I don't know if it is going to enhance security. Let us hope it won't—.

Ms. DELAURO. Suppose if the corporations can plead the fifth—.

Chairman ARMEY. Let me recognize myself, and let me just advise the committee we will soon complete our work with this panel, and the committee will recess until 5 minutes following the close of the last vote in a series of votes. It is the hope and the intention of the chairman that we would complete our work with all of our witnesses invited for this day before we conclude tonight. So we will come back and hope to drive to a conclusion.

Now, having made that point, let us, gentlemen, see if there are a few things we have, I believe, universal agreement on.

Irrespective of whether the Coast Guard stays where it is or is moved, we all agree that Coast Guard should not be broken up. There is no question in anybody's mind. All of the functions carried out by the Coast Guard are carried out by personnel and materiel specifically trained and designed for the versatility that is required for it to fulfill all its missions, oftentimes by just moving smoothly and seamlessly from one assignment to another as the need arises, and we all agree on that.

I think we have fairly clear agreement that we should respect the enormous opportunity, especially where real property is concerned, to use the services, the expertise of the GSA. I think there is universal agreement.

The other points that I would make would be points that relate to a debate between us regarding our differences, and I am confident there will be ample time to have that debate, a better opportunity for that debate. So why don't I just defer now and look forward to that greater opportunity to debate these fine points where we can all display our rhetorical and debate skills at a time when indeed it makes the difference.

Mr. Young. I thank the chairman, Madam Chairman.

Chairman ARMEY. The committee stands adjourned until 5 minutes following the close of the last vote in a series of votes on the floor. Without objection.

[Recess.]

Chairman ARMEY. The committee will come to order.

The chairman sees the distinguished chairman of Ways and Means, and I have been advised that the ranking member, Mr. Rangel, will be unable to be here today. So, Mr. Chairman, without objection, Mr. Rangel's statement will be included in the record.

Chairman ARMEY. We will open with your statement. We will put your formal statement in the record, and whatever comments you would like to make before the committee, and then we will follow that with questioning under the 5-minute rule.

**STATEMENT OF THE HONORABLE WILLIAM THOMAS, CHAIRMAN, COMMITTEE ON WAYS AND MEANS**

Mr. THOMAS. I thank you very much, Mr. Chairman.

It is true the change in the homeland security provision that is in the jurisdiction of the Ways and Means Committee passed the committee 34 to 3; and given the lateness of the hour and the other commitments, Mr. Rangel indicated to me that he was perfectly satisfied with me representing the committee on this question.

One of the things that the Ways and Means Committee attempted to do in looking at those provisions of homeland security under our jurisdiction is to take note of the fact that only the Ways and Means Committee has the initiating capability on the question of revenue; and to underscore how long the Ways and Means has been dealing with Customs, we had before us presented by the Library of Congress the fifth bill ever passed by the first Congress. That was to create the Customs Bureau. The fifth bill creating the Customs Bureau implemented the first bill ever passed by the United States Congress, the Tariff Bill of 1789. Since that time, the line of control and jurisdiction has been in the Treasury Department to the Committee on Ways and Means.

Oftentimes people are not aware of the level of activity and the relationship between the Ways and Means Committee and Customs. In the 107th Congress, for example, up to this time more than 578 bills dealing with Customs have been introduced.

We understand the importance of creating a seamless presentation at the border, one of the fundamental goals of the homeland security approach. We understand the difficulty with the myriad jobs associated with the border.

My previous committee assignment when I first came to Congress was on the Agriculture Committee. As a member from California, I spent a great deal of time working with the Animal Plant Health Inspection Service, It is a monumental task.

The Ways and Means Committee does not want to be an obstacle in making sure that to the best of our ability we can create a seamless organization. We do, however, feel very strongly about not moving the entire Customs structure—because we are willing to move the entire Customs structure, and should, into Homeland Security—but for that portion which is about 25 percent of the current total number in Customs who deal directly with trade and revenue, a very specialized niche, if you will, we would very much like to see those, as our legislation indicates, still tied to the Treasury Department.

That the Commissioner of Customs be Senate approved, but, understanding the difficulty in dealing with that, we did in the legislation say that Treasury could delegate to Homeland Security the coordination of that, about 25 percent of the staff, to create that larger seamless structure.

So what we did was say, yes, the entire Customs Service can be transferred. We identified those only very narrowly dealing with trade and revenue, the jurisdictional scope of the Ways and Means Committee, to maintain that traditional tie through Treasury, but we did say that Treasury could delegate significant work-related or other aspects to Homeland Security.

And that one final provision, since we are down the road in a long and difficult process of creating a computerized system that will maximize our commercial commerce capabilities, a computer system called ACE, in which the Customs merchandising and processing fee would be directed to paying for that system.

I understand the difficulty in creating a system which blends all of the Homeland Security Departments in place, but this has been a project that is very near completion. It is a quality program. It has been paid for by private sector dollars, and we believe in a bipartisan way it would be a shame try to move in a different direction. So that was one area we wanted to see a completion of the funding process over; and in testimony not in front of the committee but in discussions with Governor Ridge on a bipartisan basis, they indicated that it was likely that the cornerstone of the new Department's architecture on computers would, in fact, be the ACE system.

That is the sum and substance of the modifications we propose to make, maintain a historical and important relationship in the area of trade and revenue.

Chairman ARMEY. I want to thank the chairman.

[The statement of Mr. Thomas follows:]

PREPARED STATEMENT OF HON. BILL THOMAS, CHAIRMAN, COMMITTEE ON WAYS AND MEANS

Mr. Chairman, thank you for the opportunity to testify before you and the Select Committee today. Let me begin by recognizing the work of President Bush and the importance of this legislation to the safety of the American public.

For more than 200 years, the U.S. Customs Service has been on the frontline supporting and defending our nation. The requirement to generate revenue for this country through Customs duties, which was the very first Act of Congress, was the primary reason Customs was established in the fifth Act of Congress as the first Federal agency of the new Republic. This function is still important today as demonstrated by the fact that Customs collects over $20 billion of revenue.

Today, under the authority of the Department of the Treasury, Customs enforces well over 400 provisions of law for at least 40 agencies. In addition to collecting revenue, Customs safeguards American agriculture, business, public health, and consumer safety and ensures that all imports and exports comply with U.S. laws and regulations. Unlike other agencies that are being transferred, the Customs Service has several unique characteristics:

1. The Customs Service is a revenue-collecting agency with significant trade facilitation functions—the only revenue collector proposed by the Administration to be moved to the new Department.
2. A significant portion of the Customs Service's budget is funded from user fees paid by importers that by domestic and international law must be used only for specific commercial operations.
3. Substantial portions of the Customs Service's trade work are very technical. The work requires professionals with legal and regulatory skills that are unlike border security skills.

For these reasons, the Ways and Means Committee, by a strong bipartisan vote of 34–3, recommends that the Select Committee on Homeland Security recognize the unique mission of the Customs Service and adopt its amendment to H,R, 5005. The Ways and Means Committee agrees with the fundamental basis of the President's proposal to transfer Customs assets and personnel in their entirety to the new Department and rejects the option of carving up the Customs Service into commercial and non-commercial elements. Instead the Committee seeks to identify and prevent further reorganization or reductions in a closely defined core group that performs trade facilitation and revenue-collection functions. The overarching goal of the Committee is to give the new Department the tools it needs to protect our borders while at the same time ensure that revenue continues to be collected and that goods keep moving across the border with little delay. The Ways and Means Committee is confident that the proposed changes do not interfere with the new Department's missions but will enhance its effectiveness, Our bipartisan amendment:

1. Transfers the Customs Service in its entirety to the Department of Homeland Security Division for Border and Transportation Security.
2. Identifies revenue-related offices and functions within Customs (about 25% of the agency) and prohibits reorganization or decrease in their funding or staff or reductions to Title V pay and benefits levels.
3. Requires that adequate staffing of customs revenue services be maintained, and requires notice to Congress of actions that would reduce such service.
4. Maintains the Commissioner of Customs as Senate-confirmed.
5. Transfers all authority exercised by Customs to Homeland Security with the exception of revenue collecting authority, which would remain at the Treasury Department. Treasury may delegate this authority to Homeland Security.
6. Specifies that a portion of the Customs Merchandise Processing Fee must go to build the new Customs computer, which Governor Ridge has told us will likely be the cornerstone of the new Department's architecture.

Chairman ARMEY. At this time, the Chair recognizes the gentleman from Ohio.

Mr. PORTMAN. Thank you, Mr. Chairman.

It is like deja view all over again since we have been through this already in a very thoughtful and I think appropriate process through the Ways and Means Committee where we brought the Customs Service in, brought Treasury in, and talked to people from the outside.

I appreciate, Mr. Chairman, working with David Kavanaugh, who has been great, and your other staff to come up with what I think is a good way to combine these two needs. One is to assure that we have the most effective border security possible which must, in my view, include the Customs Service working seamlessly with these other agencies we have talked about earlier today, but, second, respecting and acknowledging the unique function of Customs to collect revenue and to ensure that we have efficient trade flow which is important to our economy.

So I think the solution works, and I would really not have any questions for the chairman, except to commend him for working through this and spending the time necessary to come up with what I think is a good solution.

Mr. THOMAS. I thank the gentleman.

Chairman ARMEY. The gentlelady from Connecticut.

Ms. DELAURO. Thank you very much, Mr. Chairman.

Thank you very much, Mr. Thomas and Mr. Chairman, for being here.

My understanding is that what the committee has agreed to is to take Customs to the new Department. Treasury would retain a statutory authority over collecting revenue and Trade Act enforcement. Also my understanding—and correct me if I am wrong—currently, Customs is only able to screen than 2 to 3 percent of the large cargo containers that enter the United States, and that leaves us vulnerable to the importation of a number of threats from abroad.

Is it your view that moving Customs into the new Department will improve performance, and do you think that Customs has adequate resources to inspect products coming into the United States? And, if not, what further recommendations would you make to help Customs execute their mission?

Mr. THOMAS. There is always a question of do you have adequate resources to do the job. The problem is that over the years in defin-

ing these various jobs, because they have been in separate areas, there is a significant degree of duplication.

If I told you there were Customs officers in airplanes flying over Peru for interdiction of drugs, you would say, wait a minute, that is not Customs. But in fact there are folk who do that, so I do think there is this synergy that is very positive by pulling together in this new agency all of these border activities.

As we said, 75 percent of the employees aren't directly involved in the narrow area that we are most concerned about. Our hope is that, as we preserve the hours and wages, title V aspects of these particular individuals and we get the computer up and running, we can be far more productive in what we have been doing, but that it will always be a fight, frankly, to get adequate revenue to do a good job at our ports.

It is one of those areas I am sure the gentlewoman from Connecticut is familiar with, in which as long as nothing happens they are invisible, and the only time they really get publicized is when there is a mistake.

It is hard to keep attention on how important that trade aspect is. For example, on September 11th, very few people realized the volume of, quote, unquote, just-in-time automobile parts that come from Canada to the United States until they shut the bridge down. And our concern is that those trade and revenue functions are maintained harmoniously with the security, and that if you place security over those, security would trump trade every time.

We always need more resources. We are continuing to fight, but one of the ways you can get more with the same amount or slightly more is to integrate, be more productive. That is what we are really advocating. Move it over there, but give them the modern computerized capability of not slogging through paperwork but by structuring it in a way that we can use modern computers to do more.

Ms. DELAURO. Let me just quote, if I might, Mr. Chairman, Protecting the American Homeland. This was a recent study that was done by the Brookings Institution.

They are concerned with the high-risk containers and the Customs inability to screen more than 2 to 3 percent of large cargo containers, and they took the threats seriously enough to warn—and this is a quote—"a doomsday scenario attack on the maritime industry using nuclear devices concealed in a shipping container could cause damage and destruction costing the economy as much as $1 trillion."

Let me just get your, impressions of that and your response to that effort.

Mr. THOMAS. One of the things we can do by integrating certain portions of Customs with Homeland Security is to focus on security. Now here I have just—sounds like I am contradicting myself, so let me finish the statement.

By focusing on security, you would be able to get money that you wouldn't be able to get if you were focusing on trade only. But what we have, for example, new devices coming along which allow us on these large cargo containers, trucks and others to take an x-ray—not just an old-fashioned x-ray but a very detailed x-ray in which, for example, some of the models that I saw showed that behind the

cargo, when you opened the back of the doors, it looked like cargo. Up front there was a stolen car. But not only from this quick scanning could you see there was a car. You could see what was in the trunk of the car, which was additional stolen items that had been loaded conveniently in the car.

The capability of screening these rapidly for security reasons allows us also to facilitate much more effectively the trade aspect. So, in that area, we want full utilization. But, as I said, 578 bills in this Congress alone dealing with tariffs, trade and that narrow group who have the expertise to assess, in our opinion, really does need to have that continued tie to Treasury, notwithstanding the delegation at the border.

So those of us who have been fighting to get some money for Customs and others actually like the idea that we are now using security, because people will lay a dollar on the table to create an x-ray machine for security purposes they would never do for trade. So I do think there is some positive synergy by putting these together. We are only asking that you do it in a thoughtful and understanding way for that small group of specialists who do hang onto the trade and revenue function.

Ms. DELAURO. Thank you very much, Mr. Chairman.

Chairman ARMEY. Thank you.

The chairman is taking great pleasure in realizing, having had an earlier Texas moment for the committee, we should now have a California moment by recognizing Ms. Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman.

Thank you, Mr. Chairman, for being here and for your testimony.

When the Secretary of the Treasury was here and we were talking about the cost of establishing this Department, he thought it didn't have to cost too much. He said, for example, in terms of the Customs, there is no reason I could not still be Custom's landlord and just change the sign on the door, or words to that effect. Do you agree with that? Do you think that that is sufficient in terms of bringing Customs under the jurisdiction of the committee?

Mr. THOMAS. I do, and let me say that I do enjoy this California moment. Given the makeup of the Select Committee, we can only do it very seldom, as opposed to how many times you can share a Texas moment.

Ms. PELOSI. Oh. I am surrounded with Mr. DeLay, Mr. Frost, and then we have Mr. Hall.

Mr. THOMAS. Because we are only talking about roughly currently one-quarter of the personnel who are involved in what we believe to be these critical areas, we have asked that the pay and the work conditions that we have outlined under title V be carried with these folk. There is no reason to jerk them around on the pay scale structure or anything else.

It is the core function of Customs, but because so much has been expanded, it in part even is ignored under the current structure.

Another thing is our desire to have the Customs Commissioner approved by the Senate. That gives them some ability when there is this inevitable decision between security and trade to have standing to be able to make the argument that there should be doubt.

Since they are already doing it anyway and we are moving all of those other functions over to Homeland Security and they would be assigned under the Homeland Security, all they are doing is changing dotted lines on a flowchart; and whatever that cost is, basically, what it is that we would be doing, because we do retain that authority that has been there since the beginning of the Republic in 1789.

So I agree completely with the Secretary. There shouldn't be any real costs involved. There may be some physical moving costs, but those go on all the time.

Ms. PELOSI. Since you brought up the subject, I want to pursue your distinction between the 25 percent of the Customs workers and others.

When the Secretary was here, he couldn't stay very long, so we had to submit some questions for the record. One of the ones that I did was to say that you all, the Ways and Means Committee, reported out a bill that protected the pay and benefits of a select group of Customs employees—revenue experts, attorneys, et cetera. These employees represent about 25 percent—I assume it is the 25 percent you are talking about—of Customs workers. But the select Customs employees' benefits still do not enjoy assurances that their title V rights and protections—the right to bargain collectively, whistle-blower, anti-discrimination, pensions—will continue. Can you clarify on that, Mr. Chairman? Are they included under—.

Mr. THOMAS. What we tried to do on the Ways and Means Committee was stay within the committee's jurisdiction. We found that we are very pleased with our jurisdiction, and if everybody stays within their jurisdiction, we will stay pleased. If we try to go outside our jurisdiction, others then will try to go outside their jurisdiction. And although we were borderline in getting outside of our jurisdiction on the pay conditions that we outlined that are under title V, had we gone on and added collective bargaining and all of those other areas, not to say that we didn't kind of by implication say that maybe they should be left alone, but we clearly would have been outside our jurisdiction, and we could have been called down by other committees quite properly.

So what we tried to do was to convey the idea that the 25 percent that we think ties to trade and revenue should be retained, and not just the personnel but the working conditions and the environment that they find themselves in today should be retained as well. But had we—repeat myself. Had we moved to the title V point by point, we clearly would have exceeded our jurisdiction.

One of the things that I think gave us a 34 to 3 vote in the committee was basically that we decided to be very prudent, very cautious and deal with solving our problem and not throwing ourselves around and saying this is as good as anything and it should be moved over wholesale. If all the committees did that, what you would have would be a compartmentalized new Department that would never provide the kinds of seamless structure we are looking for. But we felt strongly enough in this particular area.

Ms. PELOSI. Well, I appreciate your doing that in your bill; and your testimony here today then is to infer from your remarks, that the conditions and climate in which they worked would have included title V benefits.

Mr. THOMAS. Well, we included those that we thought were appropriate, and obviously the committee is going to make that decision. It seems to me if we want to keep these people preserved as much as possible that we should leave them as they are as much as possible.

Ms. PELOSI. Further, the remaining 75 percent of Customs employees do not have any assurances that their pay benefits, rights and protections that they currently enjoy will remain with them. Can you speak to that point?

Mr. THOMAS. Had we done that, what we would have been saying was, okay, you can move Customs from Treasury to Homeland, but you can't rearrange, restructure or do anything with them. And that really then I think defeats the purpose of what we are trying to do, because there are many of those Customs officials—I don't know if you were here when I responded, that there are people who do jobs you would never guess they are in Customs.

Ms. PELOSI. I was.

Mr. THOMAS. Based on the core of what we do and for us to say that those people can't reasonably be integrated into a new structure I believe, one, it is not true because I think they can, given the jobs they are doing; and then, two, if we said you can't touch them in any way on any reorganization, we are defeating the purpose of what we are trying to do.

So to strengthen the committee's ability—and we had this discussion in committee, and I think the 34 to 3 vote—you need to know that nothing has ever passed unanimously out of Ways and Means. So I keep emphasizing 34 to 3, and people say, gee, there were three dissents. That is very, very good for us.

The point that I am making is, to maximize the chance to do what we think was most essential, we had to narrow the scope of the kind of dictatorial legislation that we would send to this committee.

Now, if you ask me, do I think they are hard-working people who ought to retain their current privileges? Yes, I think they should. But as you create this new structure, other people are coming from other areas of the government who have a lot of those title V or all of the title V protections as well, and you are going to get a restructuring for those employees. It isn't that we want to dump all that out. We just didn't think in dictating that we would have made a stronger message about how important we believe it is to keep those core functions together.

Ms. PELOSI. I appreciate that. My time has expired. I will just say that we are talking here not about their job responsibilities but their pay, benefits, rights and protections and—.

Mr. THOMAS. I agree with you that all of that should be looked at, but were we to make those statements about those people we didn't include as the core, I think we would have been making a statement that would have been less defensible than the one I am making to you now.

Ms. PELOSI. Thank you very much, Mr. Chairman.

Thank you, Mr. Chairman.

Chairman ARMEY. I thank the gentlelady.

The Chair recognizes—I guess the Chair recognizes himself. The gentlelady from Ohio was here a minute ago.

Mr. Chairman, it is my understanding that you and the Secretary of Treasury, working in consultation with the White House, have come to a fairly complete agreement on this and that that agreement was pretty much endorsed by your committee, as you said, with a near unanimous vote.

Mr. THOMAS. There are some areas where the administration would prefer that we approach our solution differently. We continue to work with them.

For example, they don't believe that the Customs Commissioner should retain Senate approval. If they simply become a line officer, notwithstanding the tie to Treasury, they don't have the ability to point out the ability—the reasonableness of treating trade equally with security in particular areas. We think that is important.

In other areas, for example, we currently have a requirement where changes are made that we retain oversight. If you are going to have the ability, you need oversight.

They want to shrink the 180 days to 30 days and only deal with permanent changes. If in fact you have nonpermanent and permanent, you know as well as I do that there will be no permanent changes. There will only be nonpermanent changes. And if they shrink the review period to 30 days, all we are doing is being told what changes are being made.

If you are serious in trying to retain this 200-plus-year relationship, you need to have the oversight capability. We want to retain the 180 days on not permanent and permanent so we can carry out our oversight function.

Those are the kinds of discussions that we continue to have. It seems to me those are on the margin, and they become, to a certain extent, stylistic. If the core structure is agreed to, i.e., trade and revenue retaining its relationship with Treasury, we feel quite strongly on a bipartisan basis.

Just let me say one area that also would be complicated if you didn't do that, it has to do with committee jurisdiction. It wasn't the reason we did it, but it could cause real problems if you simply moved it over. It is hard enough with one committee having the revenue jurisdiction. If you create two or three committees that now believe they have a pot that they can legislate in for revenue purposes, that is something that will be very hard to put back in the bottle.

Chairman ARMEY. I appreciate the gentleman's point there and the tradition, the constitutional requirements regarding revenues raised—and origin of such measures in the House is something that this House protects, and this committee will honor that need to protect that constitutional requirement.

Mr. THOMAS. In the House, it is the Ways and Means Committee that has had it for 200-plus years, and we would just kind of like you to continue the comment of continuing the—.

Chairman ARMEY. The—.

Ms. PELOSI. Will the gentleman yield?

Chairman ARMEY. Oh, sure, be happy to.

Ms. PELOSI. I am reminded of a question. Chairman Tauzin and Ranking Member Dingell spent a good deal of their time on a regulatory provision that they recommended that they had in their committee report to us, and basically I think of it as sort of like

Amendment 10 of the Constitution in terms of any regulatory functions that are not specifically moved with their encompassing duties to the Homeland Security Department are retained by the original Department. Is that something—.

Mr. THOMAS. I don't feel as strongly about that as perhaps they did. Because in our careful analysis of how we would deal with what were the core functions of Customs, we feel fairly comfortable that in the bipartisan analysis, the way we have structured it, we are content with moving everything else. If we retain the structure that we have asked for—now if you alter that structure, we would have to go back and reexamine, but we are looking only at the narrow technical trade and revenue tie, keep it to Treasury.

Treasury can delegate to Homeland Security where there seems to be a potential conflict—the Customs Commissioner approved by the Senate—and that that tie is through Treasury to the Ways and Means Committee.

The other 75 percent can very easily be merged with clearly their rights and responsibilities as employees under the Federal Government into a much better, seamless structure and not cost that much more, if any at all, in the benefits gained by doing that.

Ms. PELOSI. I am sure the chairman will be pleased to know that they only made this recommendation for those agencies under the jurisdiction of their committee but said we might suggest it for others, but they were only speaking to those under their jurisdiction.

Mr. THOMAS. I appreciate the gentlewoman, but that means there is, without fully understanding it, some commitment of a vestigial tie that you are not quite clear of, that when you try and do something it comes up and bites you, because somebody says, remember the reserve clause, and that is, if we didn't mention it specifically, it is prohibited. I think oftentimes in these kinds of line-item relationships, we shouldn't use the constitutional model. That is, if it isn't mentioned, it isn't covered. I prefer the other one, that if you don't mention it, it is covered the other way, because otherwise you have an endless list that you have to make sure you find. So to make a choice, I prefer the Ways and Means model.

Ms. PELOSI. That was not their analogy. That was mine. So don't let me mischaracterize the thrust of that. I will take that admonition as my own and not theirs.

Thank you, Mr. Chairman.

Thank you, Mr. Chairman.

Chairman ARMEY. Mr. Chairman, we want to thank you again. Thank your committee for your good work. Outstanding as usual for your committee.

And this committee is happy to dismiss the witness.

Mr. THOMAS. Thank you very much, and all we ask is that, if you look at what we offered, we believe it was appropriate, reasonably circumscribed and that it in fact does enhance the overall ability of the new agency to function without diminishing the historical and important ties that we have in this area.

Chairman ARMEY. Thank you. Very well put.

Mr. THOMAS. Thank you very much.

Chairman ARMEY. The Chair recognizes the Comptroller, Mr. David Walker, Comptroller General.

Mr. Walker, without any objection by the committee, we would put your written statement in the record. We would invite you, Mr. Walker, to give your statement to the committee; and then we would proceed to questions under the 5-minute rule.

I might just say, Mr. Walker, every good team knows that it saves its best hitter for cleanup; and we are here to welcome you here tonight as our cleanup hitter.

**STATEMENT OF THE HONORABLE DAVID WALKER, COMPTROLLER GENERAL OF THE UNITED STATES, GENERAL ACCOUNTING OFFICE**

Mr. WALKER. Mr. Chairman, Ranking Member Pelosi, Mr. Portman and other members of the committee, thank you for the opportunity. I realize that I am the cleanup hitter, and I am probably standing between you and dinner, so I am going to try to summarize this in about 5 minutes and then open it up for Q and A, if that is all right.

It really is a pleasure to be here to talk about this incredibly important topic at this time in our country. We at GAO believe that in creating any new department, special attention needs to be given to the strategy, criteria and priorities that are critical to this Nation's efforts to defend and protect against terrorism.

As you know, Mr. Chairman, the President's national homeland security strategy does provide for a proposed definition of homeland security, which should help the government to more effectively administer, fund and coordinate activities both inside and outside the new Department and to assure that all parties are focused on the same goals and objectives. We believe it is critically important that the Congress and the administration, reach agreement on an appropriate definition for homeland security, because that is fundamental to everything else that will have to be done in this area.

Congress may want to provide also a statutory basis for the Office of Homeland Security in order to effectively coordinate activities beyond the scope of the proposed Department of Homeland Security and to assure that reasonable congressional oversight can be conducted.

Often, as it has in prior years when the government has consolidated a number of areas, it has taken years to ultimately achieve the objective. As you know, Mr. Chairman, when the Defense Department was created in 1947, the Congress subsequently in 1949, 1953, 1958 and 1986 made a number of adjustments to that statute in order to make necessary improvements over time.

At the same point in time, we all recognize when you are creating a department of this size, you try to get it as good as you can coming out but it won't be perfect. You may have to make adjustments down the road, but it is going to be a major undertaking and it may take years to effectively achieve. In fact, over 50 years after the Department of Defense was created, DOD has 8 of 24 high-risk areas on GAO's high-risk list.

So we believe it is important for you to try to balance, which I know you are trying to do, the urge to do it quickly and the related sense of urgency with the need to do it right.

In that regard, GAO has developed a framework that hopefully will help this committee and the Congress to be able to make the

decisions about what should be in, what should be out, but, more importantly, whatever you decide to be part of this new Department of Homeland Security, how to effectively implement it. The key to success will be the leadership and effective implementation.

On Page 7 of my statement we outline the major criteria and I am not going to cover them here, Mr. Chairman. The ultimate effectiveness of the new Department will be dependent upon successfully addressing a range of key implementation and transition issues. Clearly, the right leadership will be key, and it is not only leadership from a policy standpoint. It is operational and management leadership as well. The transformation and transition challenges associated with this new Department will be huge, and we cannot ignore, the key management challenges.

My experience in the public and private sector, Mr. Chairman, has shown, that to effectuate a major merger, transition and transformation will take, on average, to make it work and to get it to stick, 5 to 10 years. Therefore, we believe it is critically important that Congress consider creating a Deputy for Management, a chief operating officer who would have the primary responsibility for focusing on those critical transition and transformation efforts that are important irrespective of who the President is, irrespective of who the Secretary is, and irrespective of who the other key policymakers are.

I note that the Government Reform Committee has suggested the elevation of what the administration proposed as an Under Secretary of Management to the Deputy Secretary for Management. In other words, there would be two deputies. We would respectfully suggest that, in addition to that, the Congress would want to consider making that position a term appointment for 5 to 7 years because of this need for continuity and consistency; and, in addition, you may want to consider subjecting that individual to a performance contract to try to achieve specific results. This is a concept that has been used in other countries such as New Zealand with some success, and we think it may have particular application here.

We also suggest Congress may want to make sure that the new department is subject to the basic management reforms, such as the Government Performance and Results Act, and the CFO Act. I know, Mr. Chairman, you championed a number of these acts; and I think it is important that the new department be subject to these as a baseline of accountability and transparency for the Congress and for the American people.

The President's proposal does include a set of human capital and management flexibilities for the new Department. GAO does believe that it is reasonable for certain flexibility to be granted to the new Department in such areas as human capital, provided that they are accompanied by adequate transparency and accountability mechanisms to safeguard against abuse.

In that regard, Congress in some cases may not decide to provide all of the flexibilities that the administration seeks. We believe that some are appropriate, but if Congress decides not for some reason to provide some of these flexibilities, Congress may want to consider a mechanism by which it would give expedited consideration

to flexibilities that the administration may seek in the future if you don't provide them up front.

The administration has suggested that it needs a special grant of budget flexibility for the Department of Homeland Security. GAO believes the Congress should be careful to distinguish between those flexibilities that will solely enhance the operations of DHS versus those that might simultaneously raise other concerns, including concerns about constitutional responsibilities and prerogatives of the legislative branch.

The creation of this Department will clearly be the largest reorganization that has been undertaken in over 50 years. A comprehensive transition plan is critical. We need a plan of action to be able to guide this. That is critically important; and we need to be able to use that as a basis for Congress to engage in periodic oversight, because Congress will have a critically important role to play in order to help to assure the success and the successful implementation of this effort.

Clearly, there will be some increased cost that we believe will be incurred as a result of this transition and transformation. As Secretary O'Neil has testified, over time I think it is clearly reasonable to expect that there will be economies, efficiencies and effectiveness enhancements that will and should be achieved through this merger, through this consolidation, through this transformation. But, realistically, that is going to take time; and there will be incremental costs and risks that will be incurred in order to make this a reality.

In summary, Mr. Chairman, as I discussed, this is a major undertaking of critical importance to our country. The single most important element for successful reorganization is the sustained commitment of top leaders at the top and to make sure that we focus on the people strategy. People are the key to successful transformation. We need to have modern, effective, and credible human capital strategies, reasonable flexibilities with the appropriate safeguards. That will make the difference between success and failure, because, in the end, it is implementation that counts.

Thank you, Mr. Chairman.

Chairman ARMEY. Thank you, Mr. Comptroller general.

[The statement of Mr. Walker follows:]

PREPARED STATEMENT OF HON. DAVID A. WALKER, COMPTROLLER GENERAL OF THE UNITED STATES, GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Select Committee:

Thank you for the opportunity to appear before this Select Committee today to discuss one of the most important issues of our time, the reorganization of government agencies and the reorientation of their missions to improve our nation's ability to better protect our homeland. It is important to recognize that this transition to a more effective homeland security approach is part of a larger transformation effort that our government must make to address emerging security, economic, demographic, scientific, technological, fiscal and other challenges of the 21st century and to meet the expectations of the American people for timely, quality and cost-effective public services.

In the months since the horrible events of September 11th, the President and the Congress have responded with important and aggressive actions to protect the nation, including creating an Office of Homeland Security (OHS), passing new laws such as the USA Patriot Act and an initial emergency supplemental spending bill, establishing a new agency to improve transportation security, and working with unprecedented collaboration with federal, state, and local governments, private sector entities, non-governmental organizations, and other countries to prevent future terrorist acts and to bring to justice those individuals responsible for such terrible acts.

More recently, the Congress and the President have sought to remedy long-standing issues and concerns in the government's homeland security functions by proposing greater consolidation and coordination of various agencies and activities. On June 6th, the President announced a proposal to establish a Department of Homeland Security (DHS) and on June 18th he transmitted draft legislation to the Congress for its consideration. Both the House and the Senate have worked diligently on these issues and this Select Committee is now deliberating on a variety of proposals and issues raised by House committees and subcommittees.

In my testimony today, I will focus on two major issues that we believe the Congress should consider in its deliberations on creating a new cabinet department principally dedicated to homeland security: (1) the national strategy and criteria needed to guide any reorganization of homeland security activities and to help evaluate which agencies and missions should be included in or left out of the new DHS; and (2) key issues related to the successful implementation of, and transition to, a new department, including leadership, cost and phasing, and other management challenges. Our testimony is based largely on our previous and ongoing work on national preparedness issues[1], as well as a review of the proposed legislation.

In response to global challenges the government faces in the coming years, we have a unique opportunity to create an extremely effective and performance-based organization that can strengthen the nation's ability to protect its borders and citizens against terrorism. There is likely to be considerable benefit over time from restructuring some of the homeland security functions, including reducing risk and improving the economy, efficiency, and effectiveness of these consolidated agencies and programs. Sorting out those programs and agencies that would most benefit from consolidation versus those in which dual missions must be balanced in order to achieve a more effective fit in DHS is a difficult but critical task. Moreover, the magnitude of the challenges that the new department faces will clearly require substantial time and effort, and will take institutional continuity and additional resources to make it fully effective. Numerous complicated issues will need to be resolved in the short term, including a harmonization of the communication systems, information technology systems, human capital systems, the physical location of people and other assets, and many other factors. Implementation of the new department will be an extremely complex task and will ultimately take years to achieve. Given the magnitude of the endeavor, not everything can be achieved at the same time and a deliberate phasing of some operations will be necessary. As a result, it will be important for the new department to focus on: articulating a clear overarching mission and core values; establishing a short list of initial critical priorities; assuring effective communication and information systems; and developing an overall implementation plan for the new national strategy and related reorganization. Further, effective performance and risk management systems must be established, and work must be completed on threat and vulnerability assessments.

## HOMELAND SECURITY STRATEGY, CRITERIA AND REORGANIZATION

Congress, in its deliberations on creating a new department, should pay special attention to strategy, criteria and priorities for reorganization critical to the nation's efforts to protect the nation from terrorism.

### *Homeland Security Strategy*

In recent testimony before the Congress, GAO urged that the proposal for establishing DHS should not be considered a substitute for, nor should it supplant, the timely issuance of a national homeland security strategy.[2] Based on our prior work, GAO believes that the consolidation of some homeland security functions makes sense and will, if properly organized and implemented, over time lead to more efficient, effective, and coordinated programs; better intelligence sharing; and a more robust protection of our people, borders, and critical infrastructure. At the same time, the proposed cabinet department, even with its multiple missions, will still be just one of many players with important roles and responsibilities for ensuring homeland security. At the federal level, homeland security missions will require the involvement of the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), the U.S. Marshals Service, the Department of Defense (DOD), and a myriad of other agencies. In addition, state and local governments, including law enforcement and first responder personnel, and the private sector also have critical roles to play.

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[1] See "Related GAO Products" at the end of this testimony.

[2] U.S. General Accounting Office, *Homeland Security: Proposal for Cabinet Agency Has Merit, But Implementation Will Be Pivotal to Success*, GAO-02-886T (Washington, D.C.: June 25, 2002).

If anything, the multiplicity of players only reinforces the recommendations that GAO has made in the past regarding the urgent need for a comprehensive threat, risk, and vulnerability assessment and a national homeland security strategy that can provide direction and utility at all levels of government and across all sectors of the country.[3]

We are pleased that the Administration has just released the national homeland security strategy and GAO stands ready to work with the Congress and the Administration to ensure that a sound and strong strategy can be effectively implemented to protect the country against terrorism. Although GAO has not had time to thoroughly analyze the strategy yet, we previously suggested that certain key elements be incorporated in the homeland security strategy.[4] We have indicated that a national homeland security strategy should: 1) clearly define and establish the need for homeland security and its operational components, 2) clarify the appropriate roles and responsibilities of federal, state, and local entities and build a framework for partnerships for coordination, communication, and collaboration, and 3) create specific expectations for performance and accountability, including establishing goals and performance indicators. In addition, GAO has said the national strategy development and implementation should include 1) a regular update of a national-level threat and risk assessment effort, 2) formulate realistic budget and resource plans to eliminate gaps, avoid duplicate effort, avoid "hitchhiker" spending, and protect against federal funds being used to substitute for funding that would have occurred anyway, 3) coordinate the strategy for combating terrorism with efforts to prevent, detect, and respond to computer-based attacks, 4) coordinate agency implementation by reviewing agency and interagency programs to accomplish the national strategy, and 5) carefully choose the most appropriate policy tools of government to best implement the national strategy and achieve national goals.

Based on our preliminary review, some of these elements have been addressed in the national strategy. In the past, the absence of a broad-based homeland security definition or the ad hoc creation of a definition by individual government departments suggest that a consistent and transparent definition be applied to help create a more integrated approach and unified purpose. The President's national homeland security strategy does provide for a proposed definition of homeland security, which should help the government to more effectively administer, fund and coordinate activities both inside and outside a new department and to ensure that all parties are focused on the same goals and objectives, results and outcomes. It is critically important that the Congress and the Administration agree on a definition since it serves as the foundation for a number of key organizational, operational and funding decisions. Finally, I would also note that, in the past, we have suggested that a central focal point such as OHS be established statutorily in order to coordinate and oversee homeland security policy within a national framework.[5] Today, we reemphasize the need for OHS to be established statutorily in order to effectively coordinate activities beyond the scope of the proposed DHS and to assure reasonable congressional oversight.

*Need for Criteria and Reorganization*

Often it has taken years for the consolidated functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management challenges for decades. It is instructive to note that the 1947 legislation creating DOD was further changed by the Congress in 1949, 1953, 1958, and 1986. Despite these and other changes made by DOD, GAO has consistently reported over the years that the department—more than 50 years after the reorganization—continues to face a number of serious management challenges. In fact, DOD has 8 of 23 high-risk areas based on GAO's latest list.[6] This note of caution is not intended to dissuade the Congress from seeking logical and important consolidations in government agencies and programs in order to improve homeland security missions. Rather, it is meant to suggest that reorganizations of government agencies frequently encounter start-up problems and unanticipated consequences that result from the consolidations are unlikely to fully overcome obstacles and chal-

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[3] U.S. General Accounting Office, *Combating Terrorism: Selected Challenges and Recommendations*, GAO-01-822 (Washington, D.C.: Septemeber 20, 2001).

[4] GAO-02-886T

[5] U.S. General Accounting Office, *Homeland Security: Responsibility and Accountability For Achieving National Goals*, GAO-02-627T (Washington, D.C.: April 11, 2002).

[6] U.S. General Accounting Office, *High-Risk Series: An Update*, GAO-01-263 (Washington, D.C.: January 2001).

lenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism.[7]

The Congress faces a challenging and complex job in its consideration of DHS. On the one hand, there exists a certain urgency to move rapidly in order to remedy known problems relating to intelligence and information sharing and leveraging like activities that have in the past and even today prevent the United States from exercising as strong a homeland defense as emerging and potential threats warrant. Simultaneously, that same urgency of purpose would suggest that the Congress be extremely careful and deliberate in how it creates a new department for defending the country against terrorism. The urge to "do it quickly" must be balanced by an equal need to "do it right." This is necessary to ensure a consensus on identified problems and needs, and to be sure that the solutions our government legislates and implements can effectively remedy the problems we face in a timely manner. It is clear that fixing the wrong problems, or even worse, fixing the right problems poorly, could cause more harm than good in our efforts to defend our country against terrorism.

GAO has previously suggested that reorganizations should emphasize an integrated approach; that reorganization plans should be designed to achieve specific, identifiable goals; and that careful attention to fundamental public sector management practices and principles, such as strong financial, technology, and human capital management, are critical to the successful implementation of government reorganizations.[8] Similarly, GAO has also suggested that reorganizations may be warranted based on the significance of the problems requiring resolution, as well as the extent and level of coordination and interaction necessary with other entities in order to resolve problems or achieve overall objectives.[9]

GAO, based on its own work as well as a review of other applicable studies of approaches to the organization and structure of entities, has concluded that the Congress should consider utilizing specific criteria as a guide to creating and implementing the new department. Specifically, GAO has developed a framework that will help the Congress and the Administration create and implement a strong and effective new cabinet department by establishing criteria to be considered for constructing the department itself, determining which agencies should be included and excluded, and leveraging numerous key management and policy elements that, after completion of the revised organizational structure, will be critical to the department's success. Figure 1 depicts the proposed framework:

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[7] U.S. General Accounting Office, *Implementation: The Missing Link In Planning Reorganizations*, GGD-81-57 (Washington, D.C.: March 20, 1981).

[8] U.S. General Accounting Office, *Government Reorganization: Issues and Principles*, GAO/T-GGD/AIMD-95-166 (Washington, D.C.: May 17, 1995).

[9] U.S. General Accounting Office, *Environmental Protection: Observations on Elevating the Environmental Protection Agency to Cabinet Status*, GAO-02-552T (Washington, D.C.: March 21, 2002).

**Figure 1: Organization and Accountability Criteria for the Department of Homeland Security**

**Organization and Accountability Criteria**
**For the Department of Homeland Security**

The New Department
- Definition
- Statutory Basis
- Clear Mission
- Performance-based Organization

Agency Transition: Inclusion/Exclusion
- Mission Relevancy
- Similar Goals and Objectives
- Leverage Effectiveness
- Gains Through Consolidation
- Integrated Information Sharing/Coordination
- Compatible Cultures
- Impact on Excluded Agencies

Cultural Transformation: Implementation and Success Factors
- Strategic Planning
- Organizational Alignment
- Communications
- Building Partnerships
- Performance Management
- Human Capital Strategy
- Information Management and Technology
- Knowledge Management
- Financial Management
- Acquisition Management
- Risk Management
- Change Management

With respect to criteria that the Congress should consider for constructing the department itself, the following questions about the overall purpose and structure of the organization should be evaluated:

• Definition: Is there a clear and consistently applied definition of homeland security that will be used as a basis for organizing and managing the new department?

• Statutory Basis: Are the authorities of the new department clear and complete in how they articulate roles and responsibilities and do they sufficiently describe the department's relationship with other parties?

• Clear Mission: What will the primary missions of the new DHS be and how will it define success?

• Performance-based Organization: Does the new department have the structure (e.g., Chief Operating Officer (COO), etc.) and statutory authorities (e.g., human capital, sourcing) necessary to meet performance expectations, be held accountable for results, and leverage effective management approaches for achieving its mission on a national basis?

Congress should also consider several very specific criteria in its evaluation of whether individual agencies or programs should be included or excluded from the proposed department. Those criteria include the following:

• Mission Relevancy: Is homeland security a major part of the agency or program mission? Is it the primary mission of the agency or program?

• Similar Goals and Objectives: Does the agency or program being considered for the new department share primary goals and objectives with the other agencies or programs being consolidated?

• Leverage Effectiveness: Does the agency or program being considered for the new department create synergy and help to leverage the effectiveness of other agencies and programs or the new department as a whole? In other words, is the whole greater than the sum of the parts?

• Gains Through Consolidation: Does the agency or program being considered for the new department improve the efficiency and effectiveness of homeland security missions through eliminating duplications and overlaps, closing gaps, and aligning or merging common roles and responsibilities?

• Integrated Information Sharing/Coordination: Does the agency or program being considered for the new department contribute to or leverage the ability of the new department to enhance the sharing of critical information or otherwise improve the coordination of missions and activities related to homeland security?

• Compatible Cultures: Can the organizational culture of the agency or program being considered for the new department effectively meld with the other entities that will be consolidated? Field structures and approaches to achieving missions vary considerably between agencies.

• Impact on Excluded Agencies: What is the impact on departments losing components to DHS? What is the impact on agencies with homeland security missions left out of DHS?

In addition to the above criteria that the Congress should consider when evaluating what to include and exclude from the proposed DHS, there are certain critical success factors the new department should emphasize in its initial implementation phase. Over the years, GAO has made observations and recommendations about many of these success factors, based on effective management of people, technology, financial, and other issues, especially in its biannual Performance and Accountability Series on major government departments.[10] These factors include the following:

• Strategic Planning: Leading results-oriented organizations focus on the process of strategic planning that includes involvement of stakeholders, assessment of internal and external environments, and an alignment of activities, core processes and resources to support mission-related outcomes.

• Organizational Alignment: The organization of the new department should be aligned to be consistent with the goals and objectives established in the strategic plan.

• Communication: Effective communication strategies are key to any major consolidation or transformation effort.

• Building Partnerships: One of the key challenges of this new department will be the development and maintenance of homeland security partners at all levels of the government and the private sector, both in the United States and overseas.

• Performance Management: An effective performance management system fosters institutional, unit and individual accountability.

• Human Capital Strategy: The new department must ensure that its homeland security missions are not adversely impacted by the government's pending human capital crisis, and that it can recruit, retain, and reward a talented and motivated workforce, which has required core competencies, to achieve its mission and objectives. The people factor is a critical element in any major consolidation or transformation.

• Information Management and Technology: The new department should leverage state-of-the art enabling technology to enhance its ability to transform capabilities and capacities to share and act upon timely, quality information about terrorist threats.

• Knowledge Management: The new department must ensure it makes maximum use of the collective body of knowledge that will be brought together in the consolidation.

• Financial Management: The new department has a stewardship obligation to prevent fraud, waste and abuse; to use tax dollars appropriately; and to ensure financial accountability to the President, the Congress, and the American people.

• Acquisition Management: Anticipated as one of the largest federal departments, the proposed DHS will potentially have some of the most extensive acquisition government needs. Early attention to strong systems and controls for acquisition and related business processes will be critical both to ensuring success and maintaining integrity and accountability.

• Risk Management: The new department must be able to maintain and enhance current states of homeland security readiness while transitioning and transforming itself into a more effective and efficient structural unit. The proposed DHS will also

[10] U.S. General Accounting Office, *Major Management Challenges and Program Risks: A Governmentwide Perspective*, GAO-01-241 (Washington, D.C.: January 2001).

need to immediately improve the government's overall ability to perform risk management activities that can help to prevent, defend against, and respond to terrorist acts.

• Change Management: Assembling a new organization out of separate pieces and reorienting all of its processes and assets to deliver the desired results while managing related risks will take an organized, systematic approach to change. The new department will require both an executive and operational capability to encourage and manage change.

*Homeland Security Reorganization and Missions*

The President's proposal for the new department indicates that DHS, in addition to its homeland security responsibilities, will also be responsible for carrying out all other functions of the agencies and programs that are transferred to it. In fact, quite a number of the agencies proposed to be transferred to DHS have multiple functions. Agencies or programs that balance multiple missions present the Congress with significant issues that must be evaluated in order to determine how best to achieve all of the goals and objectives for which the entity was created. While we have not found any missions that would appear to be in fundamental conflict with the department's primary mission of homeland security, as presented in the President's proposal, the Congress will need to consider whether many of the non-homeland security missions of those agencies transferred to DHS will receive adequate funding, attention, visibility, and support when subsumed into a department that will be under tremendous pressure to succeed in its primary mission. As important and vital as the homeland security mission is to our nation's future, the other non-homeland security missions transferred to DHS for the most part are not small or trivial responsibilities. Rather, they represent extremely important functions executed by the federal government that, absent sufficient attention, could have serious implications for their effective delivery and consequences for sectors of our economy, health and safety, research programs and other significant government functions. Some of these responsibilities include:

• maritime safety and drug interdiction by the Coast Guard,
• collection of commercial tariffs by the Customs Service,
• public health research by the Department of Health and Human Services,
• advanced energy and environmental research by the Lawrence Livermore and Environmental Measurements labs,
• responding to floods and other natural disasters by the Federal Emergency Management Agency (FEMA), and
• authority over processing visas by the State Department's consular officers.

These examples reveal that many non-homeland security missions could be integrated into a cabinet department overwhelmingly dedicated to protecting the nation from terrorism. Congress may wish to consider whether the new department, as proposed, will dedicate sufficient management capacity and accountability to ensure the execution of non-homeland security missions, as well as consider potential alternatives to the current framework for handling these important functions. One alternative might be to create a special accountability track that ensures that non-homeland security functions are well supported and executed in DHS, including milestones for monitoring performance. Conversely, the Congress might separate out some of these functions. In doing so, the Congress will still need to hold agencies accountable for the homeland security missions that are not incorporated in the new department. In making these decisions, Congress should consider the criteria presented earlier in my testimony, especially those related to agency transitions, such as mission relevancy, similar goals and objectives, leveraging effectiveness, and creating gains through consolidation. There are clearly advantages and disadvantages to all of the decisions about placing agencies or programs with multiple missions in DHS and Congress must carefully weigh numerous important factors related to performance and accountability in crafting the legislation.

For example, we have indicated in recent testimony that DHS could serve to improve biomedical research and development coordination because of the current fragmented state of disparate activities. Yet, we remain concerned that the proposed transfer of control and priority setting for research from the organizations where the research would be conducted could be disruptive to dual-purpose programs, which have important synergies for public health programs that need to be maintained.[11] Similarly, we have testified that the President's proposal, in tasking the new department with developing national policy for and coordinating the federal government's

[11] U.S. General Accounting Office, *Homeland Security: New Department Could Improve Biomedical R&D Coordination but May Disrupt Dual-Purpose Efforts*, GAO-02-924T (Washington, D.C.: July 9, 2002).

research and development efforts for responding to chemical, biological, radiological, and nuclear weapons threats, also transfers some of the civilian research programs of the Department of Energy.[12] Again, there may be implications for research synergy.

Congress may also craft compromises that strengthen homeland security while reducing concerns of program disruption or unanticipated consequences. One such example is seen in recent deliberations about the appropriate location for visa processing. Congressional debate has focused on two of our criteria, mission relevancy and gains through consolidation. The visa function attempts to facilitate legitimate travel while at the same time denying entry to the United States of certain individuals, including potential terrorists. Some have argued that the mission of the visa function is primarily related to homeland security and that therefore the function should be located within the proposed department. Others have advocated that the Department of State (State) should retain the visa function because they believe that there would be no gains from consolidation. They point out that State has an established field structure and that it may be impractical to create a similar field structure in the proposed department. The compromise position of several committees has been to transfer responsibility for visa policy to the proposed department, while retaining the cadre of overseas visa officers within State.

As part of these deliberations, the Congress should consider not only the mission and role that agencies fulfill today, but the mission and role that they should fulfill in the coming years. Thus, while it may be accurate that large portions of the missions engaged in by the Coast Guard or FEMA today do not relate primarily to homeland security, it is wholly appropriate for Congress to determine whether the future missions of such agencies should focus principally on homeland security. Such decisions, of course, would require the Congress to determine the best approach for carrying out a range of the government's missions and operations, in order to see that non-homeland security activities of these departments are still achieved. In fact, given the key trends identified in GAO's recent strategic plan for supporting the Congress and our long range fiscal challenges, it is appropriate to ask three key questions: (1) what should the federal government do in the 21st century? (2) how should the federal government do business in the 21st century? and (3) who should do the federal government's business in the 21st century? These questions are relevant for DHS and every other federal agency and activity.

As the proposal to create DHS demonstrates, the terrorist events of last fall have provided an impetus for the government to look at the larger picture of how it provides homeland security and how it can best accomplish associated missions. Yet, even for those agencies that are not being integrated into DHS, there remains a very real need and possibly a unique opportunity to rethink approaches and priorities to enable them to better target their resources to address our most urgent needs. In some cases, the new emphasis on homeland security has prompted attention to long-standing problems that have suddenly become more pressing. For example, we've mentioned in previous testimony the overlapping and duplicative food safety programs in the federal government.[13] While such overlap and duplication has been responsible for poor coordination and inefficient allocation of resources, these issues assume a new, and potentially more foreboding, meaning after September 11th given the threat from bio-terrorism. In another example, we have recommended combining the Department of Justice's Office For Domestic Preparedness with FEMA to improve coordination.[14] A consolidated approach to many of these issues can facilitate a concerted and effective response to new threats and mission performance.

Similarly, we have conducted a number of reviews of State's visa function over the years and, based on our work, we believe that there are a number of areas in which the visa function can be strengthened. For example, the U.S. government needs to ensure that there are sufficient staff at overseas posts with the right training and experience to make good decisions about who should and who should not receive a visa. In addition, we are currently looking at ways that the visa function can be strengthened as a screen against potential terrorists and we expect to make recommendations later this fiscal year. These recommendations will apply regardless of decisions about the respective roles of the State Department and the proposed Department of Homeland Security regarding visa functions.

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[12] U.S. General Accounting Office, *Homeland Security: Title III of the Homeland Security Act of 2002*, GAO-02-927T (Washington, D.C.: July 9, 2002).

[13] U.S. General Accounting Office, *Food Safety and Security: Fundamental Changes Needed to Ensure Safe Food*, GAO-02-47T (Washington, D.C.: October 10, 2001).

[14] GAO-01-822.

The ultimate effectiveness of the new department will be dependent on successfully addressing implementation and transition issues. Picking the right leadership for these critical positions in the new department will be crucial to its success. If you don't have the right leadership team in key policy, operational and management positions, the department will be at risk. In addition providing the new department with some reasoned and reasonable, human capital, management and budget flexibilities combined with appropriate safeguards to protect the Congress' constitutional authorities and to prevent abuse can also help contribute to a successful transition. Both the Congress and the Executive Branch have critical roles to play in achieving desired outcomes for the American people.

*Key Success Factors, Leadership and Accountability*

Among the most important elements for effectively implementing the new cabinet department will be close adherence to the key success factors. Strategic planning, building partnerships, human capital strategies, financial management and other critical factors will make the difference between a department that can quickly rise to the challenge of its mission and one that might otherwise become mired in major problems and obstacles that hamper efforts to protect the nation from terrorism.

The quality and continuity of the new department's leadership is critical to building and sustaining the long-term effectiveness of DHS and homeland security goals and objectives. The experiences of organizations that have undertaken transformational change efforts along the lines that will be necessary for the new department to be fully effective suggest that this process can take up to 5 to 10 years to provide meaningful and sustainable results. Given the scope and nature of challenges facing the new department, the critical question is how can we ensure that the essential transformation and management issues receive the sustained, top-level attention that they require. The nation can ill-afford to have the secretary or deputy secretary being side-tracked by administrative and operational details—the mission of the department requires their undivided attention.

As a result, it is important for the Congress to give serious consideration to creating a deputy secretary for management/chief operating officer (COO) position within the department to provide the sustained management attention essential for addressing key infrastructure and stewardship issues while helping to facilitate the transition and transformation process. Recent legislative language adopted by the House Committee on Government Reform suggests elevating the undersecretary for management to a deputy secretary, equivalent to the deputy position provided for in the Administration's proposal. We believe that is an important first step to ensuring that transformation and management issues receive the top-level attention they require. Raising the organizational profile of transformation and management issues is important to ensure that the individual has the authority needed to successfully lead department-wide initiatives. We are not convinced that an under secretary for management, on par with the other under secretaries, would necessarily have sufficient authority.

To provide further leadership and accountability for management, Congress may wish to consider several points:

• First, Congress should consider making the deputy secretary for management/COO a term appointment of up to 7 years, subject to Senate confirmation. A term appointment would provide continuity that spans the tenure of the political leadership and thereby help to ensure that long-term stewardship issues are addressed and change management initiatives are successfully completed.

• Second, to further clarify accountability, the COO should be subject to a clearly defined, results-oriented performance contract with appropriate incentive, reward and accountability mechanisms. The COO would be selected without regard to political affiliation based on (1) demonstrated leadership skills in managing large and complex organizations, and (2) experience achieving results in connection with "good government" responsibilities and initiatives. Requiring that both the performance contract and the subsequent performance evaluation be made available to the Congress would provide additional accountability and transparency.

In addition to providing top-level leadership and accountability, the department will need to develop employee performance management systems that can serve as a key tool for aligning institutional, unit, and employee performance; achieving results; accelerating change; managing the organization on a day-to-day basis; and facilitating communication throughout the year so that discussions about individual

and organizational performance are integrated and ongoing.[15] A cascading set of results-oriented performance agreements is one mechanism in a performance management system that creates a "line of sight" showing how individual employees can contribute to overall organizational goals.[16]

Further accountability can be achieved by ensuring that all relevant management laws are applied to the new department (e.g, Government Performance and Results Act (GPRA), Chief Financial Officers Act, Clinger-Cohen Act, etc.). These laws provide a foundation for the management structure of the new department and a basis for ensuring appropriate transparency and accountability.

*Request for Increased Human Capital and Management Flexibilities*

The President's proposal includes a set of human capital and management flexibilities for the new department. GAO believes that it is reasonable for certain flexibilities to be granted to the new department in such areas as human capital, provided that they are accompanied by adequate transparency and accountability safeguards designed to prevent abuse. Human capital and management flexibility will help the new department to reorganize, realign and transform itself to achieve its important missions. Appropriate safeguards can help to prevent abuse of federal employees and provide adequate monitoring mechanisms to gauge performance. For instance, the Congress may wish to provide the new department with "early out" and "buy out" authority in order to help quickly realign the component entities and provide for future flexibility. DHS might consider new scientific and technical personnel tracks to encourage recruitment, retention and rewarding of individuals with critical knowledge, or Congress may wish to provide the new department with some limited term appointment authority. These and other suggested flexibilities for DHS should be viewed in the context of how similar flexibilities have been exercised by other agencies with similar missions, such as the Transportation Security Administration (TSA), the DOD, the FBI, and the CIA. Congress should also note that, as GAO has indicated in the past, agencies are already accorded in law significant flexibilities, especially with respect to human capital issues, but for a variety of reasons they do not always take advantage of them.[17] DHS should use these existing flexibilities and be given others in areas where Congress has done so with other agencies (e.g., TSA, Internal Revenue Service, DOD).

In requesting human capital flexibilities, questions have been raised about whether they would result in eroding merit principles, veterans' preferences, whistleblower protections, collective bargaining and other basic civil service provisions. Recent testimony to the Congress by Governor Ridge has clarified the Administration's commitment to these provisions.[18] The final legislation should clearly reflect the applicability of these tenets to the new department.

Other flexibilities, such as ones for acquisitions and contracting, are included in the President's proposal. Careful analysis is needed to determine the need for additional flexibilities. Congress may want to consider not expressly providing certain flexibilities in the initial legislation, but rather providing a mechanism for expedited consideration of flexibilities should the new department request them in the future. For example, the Congress might wish to agree on rules specifying procedures for consideration of proposed changes, time limits on debate, or requirements that any amendments to future legislation be strictly related to DHS. This would not be the blanket grant of authority envisioned in the original Freedom to Manage proposal, but it would permit both the executive branch and the Congress to feel confident that proposed changes would receive timely consideration.

*Request for Increased Budget Flexibility*

The Administration has suggested that it needs a special grant of budget flexibility for the Department of Homeland Security. GAO believes that Congress should be careful to distinguish between those flexibilities that will solely enhance the operations of DHS and those that might simultaneously raise other concerns, including concerns about the constitutional responsibilities and prerogatives of the legislative branch. For instance, the President's proposal permits the Secretary to allocate funds as he sees fit, without regard to the original purpose of the appropriations.

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[15] U.S. General Accounting Office, *Human Capital: Key Principles From Nine Private Sector Organizations*, GAO/GGD-00-28 (Washington, D.C.: Jan. 31, 2000).

[16] U.S. General Accounting Office, *Managing for Results: Emerging Benefits From Selected Agencies' Use of Performance Agreements*, GAO-01-115 (Washington, D.C.: Oct. 30, 2000).

[17] U.S. General Accounting Office, *Managing For Results: Using Strategic Human Capital Management to Drive Transformational Change*, GAO-02-940T (Washington, D.C.: July 15, 2002).

[18] Statement of Governor Tom Ridge on the Department of Homeland Security to the House Select Committee on Homeland Security, July 15, 2002.

Moreover, there must be a system to identify homeland security funds across the wide range of existing budget accounts and program activities. This is necessary not only for the budget resolution and appropriations process, but also for tracking budget execution and for accountability to Congress. The Congress, through its appropriations subcommittees, has proven quite adept at creating and granting the kind of flexibility it sees as appropriate to any given agency. Congress gives agencies flexibility over the timing of spending by varying the period of fund availability: agencies may receive one-year, multi-year and no-year [permanent] funds. Congress has granted agencies varying degrees of transfer or reprogramming authority. These flexibilities are generally provided as part of the appropriations process and consider the balance between accountability and flexibility to ensure that Congress is a partner in the spending of taxpayer funds.

Over the longer term the creation of the new Department may also be an opportune time to review the account structure of the Department's component entities. Should the orientation of budget accounts be shifted toward the strategic goals defined in plans? Such a reorientation might facilitate the process of linking resource allocation to results consistent with GPRA. Efforts designed to rationalize the number of budget accounts within the new department can serve to provide flexibility while ensuring accountability.

*DHS Transition Issues*

The creation of the Department of Homeland Security will be one of the largest reorganizations ever undertaken and the difficulty of this task should not be underestimated. Under the President's proposal, 22 existing agencies and programs and 170,000 people would be integrated into the new department in order to strengthen the country's defense against terrorism. With an estimated budget authority of the component parts of the new department of $37.45 billion, successfully transitioning the government in an endeavor of this scale will take considerable time and money.[19] Careful and thorough planning will be critical to the successful creation of the new department. While national needs suggest a rapid reorganization of homeland security functions, the transition of agencies and programs into the new department is likely to take time to achieve. At the same time, the need for speed to get the new department up and running must be balanced with the need to maintain readiness for new and existing threats during the transition period. Moreover, the organizational transition of the various components will simply be the starting point—as implementation challenges beyond the first year should be expected in building a fully integrated department. As I stated earlier, it could take 5 to 10 years to fully implement this reorganization in an effective and sustainable manner.

A comprehensive transition plan needs to be developed. The transition plan should establish a time table for the orderly migration of each component agency or program to the new department, identify key objectives to be achieved during the first year following the transfer, and describe the strategy for achieving an orderly transition and sustaining mission performance. More detailed implementation plans also will be necessary to address business system, processes, and resource issues. The President has taken an important first step by establishing a transition office within the Office of Management and Budget.

Congress has an important oversight role to play in helping to ensure the effective implementation of the new department. In addition to the transition plans, Congress should consider requiring DHS to submit regular progress reports on implementation from the department and should also conduct periodic oversight hearings to assess progress and performance. In this regard, GAO stands ready to assist the Congress in conducting its oversight role.

Increased cost must also be considered with regard to the President's proposal. It is likely that over time consolidation of functions within DHS may reduce costs below what otherwise would have been the case if these functions continued to operate separately. This, however, is unlikely to happen quickly. Moreover, we should expect that any reorganization would incur start up costs as well as require some funding for redundant activities to maintain continuity of effort during the transition period. The Congressional Budget Office (CBO) has estimated that the costs of implementing the new department would be about $3 billion over the next five years with an annual estimate of $150 million in FY2003 and $225 million thereafter. However, there are other transition costs that CBO acknowledges are not included in their estimates beyond the cost to hire, house, and equip key personnel. The CBO estimate assumes continuation of the existing multi-pay and retirement systems—however unlikely— and does not address the potential need to cross-train existing

[19] The President's proposal entitled The Department of Homeland Security, President George W. Bush, June 2002.

personnel. Although the purchase of new computer equipment, supplies and compatible information management systems are included, no estimates are provided for the cost to correct existing computer system deficiencies nor the resources to support some system redundancy for a period of time. Finally, CBO did not attempt to price the relocation of personnel to a central location.

The Administration has argued that CBO's estimates are inflated. In fact, CBO estimates that 1 percent of the total annual spending will be for administrative costs, but that a proportionate share of the costs to currently administer these agencies will be transferred. Depending on the decision to co-locate personnel and the flexibilities ultimately provided to the Administration in legislation—in particular a broad grant of transfer authority and the ability to staff through non-reimbursable agreements with other agencies— these estimates may well change. More important than a precise cost estimate of the transition, however, is the recognition that there will be short-term transition costs and that these costs need to be made transparent. To fully recognize the transition costs, in fact, Congress should consider appropriating for them separately.

In summary, I have discussed the reorganization of homeland security functions and some critical factors for success. However, the single most important element of a successful reorganization is the sustained commitment of top leaders to modern, effective and credible human capital strategies and to setting clear goals and appropriate accountability mechanisms. Top leadership involvement and clear lines of accountability for making management improvements are critical to overcoming an organization's natural resistance to change, marshalling the resources needed to improve management, and building and maintaining organization-wide commitment to new ways of doing business. Organizational cultures will not be transformed, and new visions and ways of doing business will not take root without strong and sustained leadership. Strong and visionary leadership will be vital to creating a unified, focused organization, as opposed to a group of separate units under a single roof. Modern human capital strategies, including implementing a credible, effective and equitable performance management system that links institutional, unit, team and individual performance measurement and reward systems to the department's strategic plan, core values and desired outcomes will be critical to success.

Mr. Chairman, this concludes my written testimony. I would be pleased to respond to any questions that you or members of the Select Committee may have at this time.

## RELATED GAO PRODUCTS

*Homeland Security*

Homeland Security: New Department Could Improve Coordination but Transferring Control of Certain Public Health Programs Raises Concerns (GAO-02-954T, July 16, 2002).

Homeland Security: New Department Could Improve Biomedical R&D Coordination but May Disrupt Dual-Purpose Efforts (GAO-02-924T, July 9, 2002).

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Homeland Security: New Department Could Improve Coordination but May Complicate Priority Setting (GAO-02-893T, June 28, 2002).

Homeland Security: New Department Could Improve Coordination but May Complicate Public Health Priority Setting (GAO-02-883T, June 25, 2002).

Homeland Security: Proposal for Cabinet Agency Has Merit, But Implementation Will be Pivotal to Success (GAO-02-886T, June 25, 2002).

Homeland Security: Key Elements to Unify Efforts Are Underway but Uncertainty Remains (GAO-02-610, June 7, 2002).

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Combating Terrorism: Observations on Options to Improve the Federal Response (GAO-01-660T, April 24, 2001).

Combating Terrorism: Comments on Counterterrorism Leadership and National Strategy (GAO-01-556T, March 27, 2001).

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Aviation Security (GAO-01-1166T, September 20, 2001).

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*Reorganization*

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Chairman ARMEY. Let me just say, the quality of your presentation is an object lesson in the points you have just made.

I want to compliment the GAO on the outstanding work that they have done. Now we have had the pleasure of working together on so many occasions, and I have always found the quality of the work good. I now see the reason why, and I want to thank you for that.

Mr. WALKER. Thank you, Mr. Chairman. We have outstanding people, and a lot of them are with me today. Thank you.

Chairman ARMEY. But at this point I would like to recognize the gentlelady from Ohio.

Ms. PRYCE. Thank you very much, Mr. Chairman; and thank you, Mr. Walker. Your testimony is very enlightening and very helpful as well.

The GAO has said in its reports all along that utilization of grants and tax incentives can help strengthen this whole homeland security endeavor by encouraging certain types of behavior and ac-

tivities. That has already intrigued me, and I wonder if you can give us some examples of how that might work. What types of things were they referring to?

Mr. WALKER. Well, there are a number of areas where potentially they could have application. Obviously, to the extent you are dealing with homeland security, it is clearly not just a Federal responsibility. It is a national endeavor, and therefore you need to engage the cooperation of State and local government agencies. There would be opportunities and appropriate mechanisms to consider grants in that regard.

Over 70 percent of the critical infrastructure in this Nation is owned by the private sector. Obviously, we are not going to typically give grants to the private sector, but you could provide certain types of incentives potentially for them to be able to take certain actions, in addition to possibly mandating that they have to take certain types of actions that are in the best interest of the public.

So those would be a couple of examples that I would give.

Ms. PRYCE. Thank you very much. I will yield back.

Chairman ARMEY. Thank you.

Let me recognize the gentleman from New Jersey.

Mr. MENENDEZ. Well, thank you, Mr. Chairman; and thank you, Mr. Walker. I have been reading throughout the day your testimony. So I was not here for your oral presentation. I have been reading this. Let me ask you some questions.

The comments you make on page 2 of your written submission are I think of great importance, where you said, toward the end of that page, it will be important for the new Department to focus on: articulating a clear overarching mission and core values; establishing a short list of initial critical priorities; assuring effective communication and information systems; developing an overall implementation plan for the new national strategy.

In that regard, I had hoped that the President's strategy document would have been available earlier in this process. Because it would seem to me to be the process by which we dictate how do we respond to that strategy which is, in essence, what this committee is doing in part through the creation of this Department.

Have you had an opportunity to look at that strategy document and reflect upon it as it relates to your observations here how the Department will have to focus? Do you think that it provides the right risk assessment and then response?

Mr. WALKER. We are still in the process of reviewing the strategy, as you might imagine, as it was just issued yesterday. I agree ideally it would have been nice to have that first and then the proposal afterwards.

I will note and my testimony contains some information that we had made a number of recommendations to the White House on elements that should be considered as part of a strategy. We are in the process of looking to determine whether and to what extent they adopted those recommendations. Based upon our preliminary review, it appears as if they did adopt a number of them, but, again, we are in the early stages; and I will be happy when we are completed with that review to provide it to you and this committee.

Mr. MENENDEZ. Have you, during the course of the committees of jurisdictions' work, had your people review what they have done? Do you have any sense of that at all?

Mr. WALKER. Review—.

Mr. MENENDEZ. The committee reviews that made amendments to the President's proposal, have you had an opportunity to look at those?

Mr. WALKER. I am familiar with some of them, and we have reviewed some of them, yes.

Mr. MENENDEZ. Do you have any conclusions as it relates to any of those amendments made by those committees?

Mr. WALKER. As you might imagine, Mr. Menendez, I have no hesitation to be able to be specific and to make recommendations when you are dealing with operational issues, but many of these recommendations deal with inherently policy issues that I think only elected officials can—address.

Mr. MENENDEZ. Well, let me deal with one of the operational issues, then; and that is, how do you guarantee in a newly created department that has agencies transferred to it with multiple functions, some of which are not security related, that those other functions will be preserved and enhanced?

Mr. WALKER. I think there are several ways that the Congress historically has looked at that. One of the ways that the Congress has looked at it is to try to make sure that, in critically important areas, that you might have a presidential appointee with Senate confirmation responsible for the function, who you can call up to testify before the House and the Senate.

In addition to that, from time to time there can be things done through the appropriations process whereby there is some kind of guidance that is given to make sure that at least a certain amount of funds are spent for certain types of activities.

So there are ways the Congress historically has been able to do that.

I also believe that it is can be done through making this new Department subject to the Government Performance and Results Act, through making sure that it has a strategic plan, that it has performance goals, that it is reporting annually on its results that these reports are is made available to the Congress and the American people. It is something that is important to make sure they are doing what they should be doing.

I would strongly recommend that you consider using GAO to periodically review the implementation efforts and to assess whether or not this is having an adverse effect on any particular missions that the Congress is concerned about.

So I think there are a lot of ways where you can—.

Mr. MENENDEZ. So you believe that we can have some mechanisms—do you believe that some mechanisms should be established in the legislation to try to ensure that those functions that are nonsecurity continue to be preserved?

Mr. WALKER. I think one of the ways to do that is to make sure that they are subject to the basic management provisions such as the Government Performance and Results Act. I think another way to do that is to make sure that GAO conducts a periodic review and reports back to the Congress with regard to this implementation

plan and particular areas where Congress may have a concern to make sure that there is not an inappropriate diminution of emphasis or activities. I think those types of approaches might help—.

Mr. MENENDEZ. Lastly, in your—at the same time, on Page 3, you say, at the same time that this Department is created, even with its multiple missions, it will still be just one of many players with important roles. In that context, do you not believe it is important to have a White House structure that is still coordinating all of these functions? And if so, do you have any opinion on how the nature of that structure should take place?

Mr. WALKER. As you probably recall, the GAO recommended the establishment of the Office of Homeland Security and, in fact, consideration of a Department of Homeland Security before September 11th of last year; and the President acted on it very quickly in the case of the Office of Homeland Security. Clearly, you are going to need to have something there. There are over a hundred departments and agencies involved in, quote, unquote, homeland security. The President is proposing to consolidate about 22. That leaves a number which will require, coordination and planning.

There is going to be a need and the President recognizes there is going to be a need for an overall coordinator. We think the Congress needs to consider whether or not that overall coordinator is provided on a statutory basis in order to make sure that you have the ability to conduct reasonable oversight in areas that aren't going to be included within the Department of Homeland Security.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Chairman ARMEY. The Chair would like to advise the committee and our witness that I anticipate being called to the floor for final votes of the evening within the next 5 minutes. So, that being the case, we would have approximately 15 to 20 minutes to complete our work, if we were to complete and not have to return. So I would just advise you and hope that we can meet that deadline so we could all go to dinner after these votes.

In that regard, I believe, Mr. Portman, the Chair recognizes you.

Mr. PORTMAN. I think Nancy and I can do this in 20 minutes.

I did wish we had that much time, because this is a very important part of the overall project here, and that is making sure that we have the performance measurements in place and the 21st century kind of approach to government ought to include that. You have been great in working with us on the Internal Revenue Service and on other management challenges that we have had, Mr. Walker, and your team at GAO; and we appreciate that.

You are going to be needed in terms of follow-up. No matter what happens out of this process in Congress, there will need to be oversight by Congress; and your reports and, frankly, the pressure that GAO applies by going through the analysis helps to keep it on track.

I do have a couple of questions for you. One is on page 10 of your written statement. You talk about the people factor being so critical, and you restated that in your oral testimony too, being sure that it can recruit, retrain and reward a talented and motivated work force which has the core confidences required to achieve the mission. I think that is our biggest single challenge, and this is why I believe strongly in some flexibility.

Can you talk a little more about what you mean by flexibility? Are you talking about pay banding so that you could have some sort of performance pay or are you talking about specific performance bonuses that are tied to a performance measurement of some kind? We obviously need to provide again in this new modern agency some kind of flexibility to be able to attract and reattract and retain the best people.

Mr. WALKER. Several ideas, Mr. Portman. First, I know the Congress has already provided certain flexibility to various departments and agencies in the past, whether it be the Internal Revenue Service, whether it be the new Transportation Security Administration or whether it be the GAO, and so this is not something that the Congress has not done before. Areas that you may want to consider would be areas such as the ability to hire a certain number of people for term appointments without having to go through the competitive process, again term appointments, a limited number, having a specialist and scientific career track, having broad banding authority, not only for classification but pay. Having realignment authority, having the ability to offer voluntary early outs and voluntary buyouts side in order to be able to realign the work force rather than to downsize the work force. Moving towards a structure whereby individuals are getting compensated more based upon their skills, knowledge and performance rather than the passage of time and rate of inflation.

These would be a few examples that I would give.

Mr. PORTMAN. I think it is very important and we have talked a lot with Kay James, the Office of Personal Management Director who was here yesterday, about some of these issues and the administration proposed initially some very general language, basically asking us to allow them to put together a personnel policy which would provide for some of that flexibility, and I think we have gotten to the point where probably that language is too general and we need to specify further and if you could work with us in the next 24 hours to help with that it would be helpful because I think some members on both sides of the aisle are interested in being sure that this is again a 21st century approach to personnel management, but that we retain some of the basic civil service protections. I think, I know we can do both. I know we must if we are going to achieve the results we all want.

Why is it not subject to GPRA anyway? You mentioned it should be subject to Government Performance Results Act. I assume that GPRA would cover—.

Mr. WALKER. I think it needs to be express. It wasn't express in the President's proposal. I am not aware he was trying to circumvent that. It just wasn't express. But clearly this is going to be one of the top five agencies in government. I believe third in number of personnel and fourth or fifth in budget dollars.

Chairman ARMEY. If I might interject, it is difficult for me to imagine that the chairman of this committee would forget that.

Mr. WALKER. I think it would be.

Mr. PORTMAN. I think it would be covered anyway because the chairman will be sure it is covered. As for a second Deputy Secretary, I understand what you are getting at. We need to focus on management and some of these, too, but I have a concern because

I think it is to have that the Deputy Secretary, provided, in the proposal and I think the Committee on Government Reform also suggested a Deputy Secretary should have that function; in other words, rather than having a Secretary and a Deputy Secretary who functions more on the program side and not on management, it seems to me that deputy from management might be left out of some of the crucial decisions and rather you want it to be aligned with the leadership of the department. How do you feel about that?

Mr. WALKER. I think this is critically important. I have run three agencies in the Federal Government, two in the executive branch, one in the legislative branch, and in every agency I have run I have found that having a triumvirate at the top was critically important and I got it done on my own. It wasn't a statutory requirement. I got it done on my own and basically what I found was you have the agency head, which is the CEO and therefore is focused more externally, more on policy, more on trying to do what the President wants, and obviously they have their own agenda consistent with the President's. You have the Deputy Secretary, the traditional Deputy Secretary who tends to be more policy oriented, who tends to serve more as the alter ego of the Secretary, who tends to be focused appropriately on getting the President's agenda adopted, typically more policy and operational mission oriented, and getting the Secretary's agenda adopted. The problem is that many of the Deputy Secretaries don't necessarily have a management background, they are not necessarily familiar with a lot of these important issues that are the key between success and failure.

The other thing is that when you are dealing with strategic planning, financial management, information technology, human capital strategy, knowledge management, change management, those are inherently good government issues, they are not partisan issues, they take years to get it right and they are critical parts of a department's basic infrastructure that you have to get done. My experience has been those don't get handled adequately, and the result of that is it inures to the detriment of achieving success and inures to the detriment of every administration, Republican or Democrat, because of failure to adequately address those issues.

Mr. PORTMAN. My time has expired and I appreciate the indulgence, Mr. Chairman. I would hope that the Deputy would focus on that. This is a relatively less political agency and if we could in our legislation, I think, express that, I think it would be appropriate just to say that we would hope the Deputy would be someone who would focus on change management and information technology and managing the operation, and with that I yield back.

Mr. WALKER. One last thing, I would just respectfully suggest that given the huge undertaking this is going to take, you are going to need a deputy for policy/operations and a deputy for management. I really believe that. This is a huge undertaking, and I believe if you don't have both you will significantly increase the risk.

Chairman ARMEY. Thank you for that point. The gentlelady from California.

Ms. PELOSI. Thank you very much, Mr. Chairman, I have many questions for you, Mr. Walker, so we are going to whip right

through them. I am referencing many of the things you have said in your presentation, and I agree with the chairman, you managed your presentation very well and it was very clear and it raised some questions.

You talked in here—you spoke about the importance of congressional oversight to this new department and all and I have found, and maybe it is from my perspective as an appropriator, that one of the most eloquent forms of oversight is from the standpoint of the purse strings. One of the concerns we have here, expressed very well by the chairman and the ranking member of the Appropriations Committee this morning, was that there was an abdication of the congressional purse string weighing in in this legislation that the President presented to the point of upsetting the balance of power and separation, checks and balances and separation of power that our Founding Fathers intended. That it was indeed, to quote the chairman of the committee—I don't know if I have it right here, but he said if we were to diminish, he talked about two things, if we were to take away our constitutional balance we are almost as bad as those who would take them away by terrorism. That was Chairman Young, a slight paraphrase but almost an exact quote. Could you comment on that briefly?

Mr. WALKER. First, make it very clear I am in the legislative branch so I come down on Congress' side on separation of powers. Secondly, I do think that you need to make sure you don't do anything that undercuts your constitutional prerogatives. I think there are opportunities to work through the appropriations process, and Congress has done that, to determine what is the nature of the accounts that you ought to have, what are the number of accounts you ought to have, to what extent you want to provide no year money, to what extent might you want to consider other things. That has been done and I think some flexibility ought to be provided, but I think you ought to be careful not to undercut your constitutional prerogatives.

Ms. PELOSI. I appreciate that and that was similar to what the distinguished chairman had documented for us earlier today. I was concerned about some of the references you made about some of the laws that would apply here that our distinguished chairman had participated in supporting.

For example, Clinger-Cohen Act, the President's bill creates a CIO but does not apply the Clinger-Cohen Act, so none of the information management requirements of that law such as assuring the security of information system would apply.

Similarly, the President's bill creates a Chief Financial Officer but does not apply the provisions of the Chief Financial Officer Act. As a result, the CFO would not be Senate confirmed and none of the financial management requirements of that law such as annual independent audits would apply to the new department. Section 904 of the committee print applies the CFO act. That is a recommendation. Can you—.

Mr. WALKER. I would hope that was an unintended omission because I think it is important that these major acts do apply to this department. It will be the third largest department in terms of personnel and top five in terms of budget dollars.

Ms. PELOSI. Well, I hope that you are right and that they are unintended omissions that our distinguished chairman would intentionally include back into the legislation. I appreciate your discussion of how the increased cost for this was going to evolve in and your admonition against moving too quickly rather than doing it right, and we hope we are not acting with haste as we try to act with speed because this is an emergency. We have to reduce risk. It is not like any other consolidation of government before in the 5 to 10 years—is almost scary to hear you say that but you are the voice of reality and I appreciate what you are saying. But for those reasons I would have liked to have seen a much leaner—my colleagues are tired of hearing me say this—a very strong Office in the White House of Homeland Security with statutory authority rather than just by executive order, a much leaner operation here because it's going to take 5 to 10 years to implement our goal to reduce risk, to protect the American people best is not served by something that is effective 10 years down the road. So leaner to start and then let it grow if we decide that it needs to grow. It will take its own direction.

Could you comment on that?

Mr. WALKER. I think you need to pursue a phased implementation. You need to decide which entities need to be in this. The separate issue is, is it all or part of them? In what order do you end up implementing them? So when I talk about the 5 to 10 years, what I mean is by the time you get all the parts together, by the time you end up harmonizing the many different systems that you have to harmonize, the financial management systems, the human capital systems, the information technology systems, the communication systems, and the performance management systems, by the time you design it, implement it, to get it to the point where it will stick beyond whoever the current leader is, that takes 5 to 10 years. It is hard work.

Ms. PELOSI. If the chairman would indulge me, therefore I am hoping that the distinguished chairman will include in his mark a strong Office of Homeland Security in the White House, which I think is necessary anyway, but certainly to tide us over, an office that oversees all of the agencies of government, not only those addressed in this department, and to give it statutory basis rather than just its existence springing from an executive order.

Thank you, Mr. Chairman. Thank you, Mr. Walker.

Chairman ARMEY. Thank you, Mr. Walker, and thank the committee. If I may make a couple of observations. First of all, I want to thank the committee and the committee's staff for a very long, hard day. I want to thank the witness and the witnesses' staff for your patience and again, as I have come to expect, the thoroughness and quality of your work and your presentation was outstanding.

If I might make the observation, we will work and produce a chairman's mark on this legislation. It will be distributed to the members of this committee by, as early as possible, perhaps I can say with some certainty no later than the beginning of business tomorrow morning, earlier if possible, and we will of course be marking that on Friday. Now, between Friday and next Wednesday we will be going to the floor.

Ms. PELOSI. Chairman, may I seek clarification? Could you repeat that timetable because I think it is a little different from my understanding? Perhaps I misunderstood.

Chairman ARMEY. What I have been saying is as soon as possible at the conclusion of these hearings, but certainly by 8 o'clock in the morning.

Ms. PELOSI. So there is no need to wait around this evening for a mark.

Chairman ARMEY. I would have your staff check with my staff. The best way for us is to continue to stay in touch.

Ms. PELOSI. Then when we would meet again?

Chairman ARMEY. We want to get it in your hands as quickly as we can.

Ms. PELOSI. Would we just meet 9:30 the next morning or—.

Chairman ARMEY. We might get a chance to talk together tomorrow evening.

This of course is committee business, Mr. Walker. You don't necessarily need to be here, but Mr. Walker—.

Mr. WALKER. I don't need to make a point. I would just say that I am more than willing to provide whatever assistance GAO canthat could be of help to this committee.

Chairman ARMEY. If I may complete my thought, Mr. Walker, clearly by Wednesday of next week insofar as we as the committee find errors or omissions, things that we cannot correct in our own markup on Friday, we would have an opportunity, I would presume, under the rule for a manager's amendment and I should just like to advise you that this committee would probably feel very comforted to know that we could draw on you for any assistance we might have, especially with respect to some of these very important aspects such as the performance results statement and things of this nature for technical drafting assistance.

Ms. PELOSI. I just want to thank you, Mr. Chairman. We look forward to receiving the mark and getting down to work and—.

Mr. MENENDEZ. If I may, I thought—.

Chairman ARMEY. If I may, we can certainly give Mr. Walker his leave. But go ahead.

Mr. MENENDEZ. Inquiry as to the process for Friday. The chairman has said that at some point early tomorrow he will have this mark. What is the chairman's intention as to process on Friday in terms of the markup itself? Are amendments going to be in order by title? Is the bill going to be open as a whole? Are we going to proceed under the 5-minute rule for amendments that are offered? I am just trying to get a sense of—.

Chairman ARMEY. I appreciate that. Let me just say it is the chairman's intention to follow such procedure that will be as inviting and as inclusive as is possible for members from both sides of the aisle. We are caught between the constraint of not wanting to start putting final details and completeness to the mark until we have had the benefit of today's hearings, which I think were well worth our time with respect to all the hearings of the day, and the desire to have it in our hands as members of committee in time to massage it with respect to our desire to amend it. So the chairman will be in no hurry on Friday to rush us through our day's work, will invite full participation. I believe I would intend to follow the

5-minute rule as closely as we can so that we have the opportunity to fully discuss amendments that would be presented and to see to it that every member has a chance to have every opportunity for amendment.

Mr. MENENDEZ. I thank the chairman for his response, and I would just hope tomorrow in addition to—and I know this is the chairman's intent to proceed in such a fashion as he has proceeded in these hearings, and I want to commend him in that regard, that whatever process you finalize in your mind the sooner we know so that we can be prepared. If you are going to do it by title I want to be here—I intend to be here for all of it, but I want to make sure I have a title here that is open to amendment and if it is going to be open as a whole that is fine, but whatever your process you decide we would like to know it as soon as possible.

Chairman ARMEY. Let me say to the gentleman your point is well taken. I will be sorting through that tonight. My guiding interest in determining the process that I will recommend we follow would be the two points, as inviting and as inclusive as possible. We will all be wanting Friday to finish our work with whatever dispatch we can, but we will not sacrifice thoroughness and respect for one another to that end.

Ms. PELOSI. If the chairman would yield, I believe there is a good deal of interest on the part of the chairs and the ranking members, as they suggested today, that if the mark did not contain what they had that they sort of have at it again to see if they could have their moment. Obviously the amendment process through the committee is the way to do that, but I think that as soon as we get that mark tomorrow morning, 8 o'clock, there is going to be a great deal of interest in it beyond the nine of us.

Chairman ARMEY. Again, it is my desire to get it to you as soon as I can, but I don't want to over promise.

The gentlelady from Connecticut.

Ms. DELAURO. I have one question. May I ask one question?

Chairman ARMEY. Of the witness.

Ms. DELAURO. Of the witness.

Chairman ARMEY. The witness has made himself available—.

Ms. DELAURO. I will be brief and I apologize to my—.

Chairman ARMEY. And I promised to unchain, and then I promise to unchain you from your desk again. Go ahead, the gentlelady from Connecticut.

Ms. DELAURO. This is about the transfer of the CDC's public health activities. Your testimony at GAO where there was concern expressed that the transferring of these programs, and I will quote, "had the potential to disrupt some programs that are critical to basic public health responsibilities." let me just say that your concern is shared at the local level.

Dr. Bob England, Director of the Milford, Connecticut Public Health Department, he wrote to me saying, quote, "The system needed to identify a bioterrorist attack is the very, very same one already employed by the public health system.".

My question, couldn't we get the job done simply by strengthening the tools we already have in place in our public health system and by ensuring coordination between DHS, the Department of Homeland Security, and CDC ?

Mr. WALKER. I assume you are referring to a report or testimony?

Ms. DELAURO. Right, the GAO report on this issue and on health and about—.

Mr. WALKER. I will be honest to tell you I am not personally familiar with that report, but I will tell you this: Whatever we said in that report you can take it to the bank, we stand behind it.

Ms. DELAURO. This is, by the way, and quite honestly if there is somebody—.

Mr. WALKER. It is the testimony from Jan Heinrich, and one of the things we talked about was our concern about a potential loss of synergy that could be associated with splitting these entities. Now, there are ways to address that, some that we have laid out, but we do think it needs to be addressed in order to make sure that it does not have an unintended consequence, which I think is what Mr. Menendez was talking about when he was talking about certain functions, how are they going to be handled if they are transferred out.

Ms. DELAURO. If there is any further information on that or Jan Heinrich has any information, obviously immediately we need to move on it. That would be helpful.

Thank you, Mr. Chairman. Thank you, my colleagues.

Chairman ARMEY. Thank you again, Mr. Walker, and your staff for their patience. Thank you, ladies and gentlemen. This committee is now adjourned.

[The following material was submitted for the record:]

STATEMENT OF THE HONORABLE MICHAEL G. OXLEY, CHAIRMAN, COMMITTEE ON FINANCIAL SERVICES

Chairman Armey, Ranking Member Pelosi and Members of the Select Committee on Homeland Security, thank you for the opportunity to testify before this panel on the President's Homeland Security proposal. I am a co-sponsor of this legislation and believe that it is critical that Congress work quickly to ensure that the President has the tools necessary to protect our citizens from the evil acts perpetrated by terrorist who hate our free and open society. While the Financial Services Committee waived its referral of H.R. 5005, I believe that it is important to highlight for the Members the critical role this Committee has played and will continue to play in the war against terrorism.

Within one month of the terrorist attacks in New York, Washington and Pennsylvania, the Financial Services Committee reported three bills critical to the protection of our homeland and the stability of our capital markets. The Financial Anti-Terrorism Act of 2001, H.R. 3004, the Terrorist Risk Protection Act, H.R. 3210, and the Emergency Securities Response Act, H.R. 3060 were the first comprehensive legislative actions taken by this Congress to combat the threat of terrorism.

The Financial Anti-Terrorism Act provided banks, businesses and federal law enforcement agencies with sweeping powers to detect and disrupt terrorist funding and combat financial crimes. This provision was eventually incorporated into the USA PATRIOT Act and was signed into law by President Bush in October of 2001. The Committee plans to closely monitor the enforcement of this legislation in hearings over the next several months.

The Committee also crafted and approved the Terrorist Risk Protection Act, H.R. 3210, in mid October of last year. This measure, which was passed by the House, provides a federal backstop in order to guarantee that commercial terrorism insurance is available to individuals and businesses in the event of a terrorist attack, while at the same time ensuring that the U.S. taxpayers are not left with the bill. It is critical that insurance against terrorist attacks be available in order to maintain economic stability and promote development. I hope that the House and Senate will resolve their differences over this legislation soon so that we can protect the property of millions of Americans from and future catastrophic losses.

The Emergency Securities Response Act, the Committee empowered the Securities and Exchange Commission to extend some emergency orders for up to 90 days and

widened the scope of emergency relief to all federal securities laws. This provision granted the markets the ability to recover quickly from the attacks on the U.S. financial infrastructure.

The President's proposal to create a Department of Homeland Security is a logical and necessary one. As you know, there are over 100 different federal agencies which are charged with protection of our borders. It makes sense to consolidate them into one agency in order to eliminate duplication of efforts and conserve resources.

The Financial Services Committee has jurisdiction over three programs within the Federal Emergency Management Agency that would become the responsibility of the new department. These programs are: the National Flood Insurance Programs, the Defense Production Act and the Emergency Food and Shelter Program. FEMA's mission is to prevent, prepare for, respond to, and recover from disasters of all types. The Committee believes that FEMA's expertise in consequence management is critical to the function of the proposed Office of Homeland Security and that all of these programs should remain within FEMA at this time.

The Federal Insurance and Mitigation Administration within FEMA manages the National Flood Insurance Program and has expertise in risk assessment, mitigation and insurance. Efforts such as resident education and flood mapping enable FEMA to reach out to residents in flood prone regions and protect against preventable losses. These services work in conjunction with the National Flood Insurance Program and have proven successful in building relationships and resources in areas where floods are a threat to property and lives. In order to ensure smooth operation of the National Flood Insurance Program, the Committee believes that it should remain within FEMA at this time.

The Defense Production Act was established to ensure that the United States has the ability to mobilize industrial and civilian resources when there is a threat to national security. The DPA allows the government to employ economic tools to provide uninterrupted supplies of industrial resources in times of military crisis and civil emergency. These functions are critical to maintaining civil emergency preparedness and military readiness for the protection of the United States. The DPA will be a valuable resource within the new department of Homeland Security.

It can be argued that FEMA's Emergency Food and Shelter Program has little to do with the protection of the United States from terrorist activities. However, it is a critical in supplying food and shelter to needy people in emergency situations. In order to ensure that this program continues to be effective and functional, the Committee recommends that it remain within FEMA at this time. In the future this program could be moved to another federal agency in order to ensure effective allocation of Federal resources to aid those in need. The Committee may examine the viability of such a move in the future.

Finally, I commend the President for his proposal to move the United States Secret Service to the new Department and maintain it as a "distinct entity" outside the four major jurisdictional cylinders established under the new Secretary. The long dual-role history of the Service—investigative and protective—combined with its more recently developed expertise in preventing and investigating cyber crimes and its core mission of protecting the financial system of the United States, make the Secret Service uniquely suited to draw from and augment the work of the other component agencies of the new Department.

I would like to thank the Members of the Committee for the opportunity to testify today. The creation of this new department will be reflected in the history of our nation as occurring at a time when Americans joined together in a unified fight against terrorism and against those who seek to suppress freedom. While the Financial Services Committee waives its referral of H.R. 5005, its Members stand ready to assist in the structuring of the envisioned Department of Homeland Security if such assistance is requested. Thank you very much.

[Whereupon, at 8:38 p.m., the committee was adjourned.]

# APPENDIX: RECOMMENDATIONS OF THE STANDING COMMITTEES

## COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
*Washington, DC, July 11, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR MR. CHAIRMAN: I am transmitting herewith the results of the Committee on Agriculutre's consideration recommendations with respect to H.R. 5005, the "Homeland Security Act of 2002".

The instructions to this Committee contained in H.Res. 449, as passed by the House of Representatives on June 19, 2002 related to changes in laws within the Committee on Agriculture's jurisdiction that dealt largely with moving the Animal Plant and Health Inspection Service (APHIS) to the new Department of Homeland Security.

The enclosed recommendations adopted by this Committee in a business meeting on this date, in the presence of a majority quorum, comply with those instructions. Also submitted for inclusion are additional views by Members of this Committee.

Sincerely,

LARRY COMBEST,
*Chairman.*

[COMMITTEE ON AGRICULTURE RECOMMENDATIONS REGARDING

H.R. 5005]

**(As Adopted July, 11, 2002)**

Strike section 302(4), relating to the Plum Island Animal Disease Center.

At the end of title III, insert the following new section:

**SEC. 3___. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.**

(a) TRANSFER REQUIRED.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—Upon the transfer of the Plum Island Animal Disease Center, the Secretary of Homeland Security and

the Secretary of Agriculture shall enter into an agreement to ensure Department of Agriculture access to the center for research, diagnostic, and other activities of the Department of Agriculture.

In section 401, relating to the Under Secretary for Border and Transportation Security, redesignate paragraph (5) as paragraph (6) and insert before such paragraph the following new paragraph:

(5) conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 4____.

Strike section 402(3), relating to the Animal and Plant Health Inspection Service.

At the end of title IV, insert the following new section:

**SEC. 4___. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.**

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term "functions" does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary of Homeland Security under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary of Homeland Security may include as part of the agreement the following:

(A) Authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary of Homeland Security pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security funds for activities carried out by the Secretary of Homeland Security for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary of Homeland Security under this subsection may not exceed the proportion of the costs incurred by the Secretary of Homeland Security to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—During the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting "or the Department of Homeland Security" after "Department of Agriculture"; and

(B) by inserting "or the Secretary of Homeland Security" after "Secretary of Agriculture";

(2) by striking "Secretary" each place it appears (other than in sections 501(a) and 501(e)) and inserting "Secretary concerned"; and

(3) by adding at the end of section 501 the following new subsection:

"(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

"(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

"(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.".

## SECTION-BY-SECTION ANALYSIS OF HOUSE COMMITTEE ON AGRICULTURE RECOMMENDATIONS TO H.R. 5005

The Committee on Agriculture Recommendation to H.R. 5005 strikes section 302(4) and adds a new section 3____ to the end of title III.

*Sec. 3____. Transfer of Plum Island Animal Disease Center, Department of Agriculture.*

Transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security and requires the Secretary of Agriculture and the Secretary of Homeland Security, upon completion of the transfer, to enter into an agreement providing for continued access by USDA for research, diagnostic and other programs.

The Committee recognizes the critical importance of the Plum Island Animal Disease Center to the safety and security of animal agriculture in the United States. The Committee expects that the transfer of this foreign animal disease facility to the Department of Homeland Security shall be completed in a manner that minimizes any disruption of agricultural research, diagnostic or other Department of Agriculture activities. Likewise, the Committee expects that funds that have and continue to be appropriated for the maintenance, upgrade, or replacement of agricultural research, diagnostic and training facilities at the Plum Island Animal Disease Center shall continue to be expended for those purposes.

The Committee shares the goal of expanding the capabilities of the Plum Island Animal Disease Center. Likewise, the Committee supports the accompanying goal of building agro-terrorism prevention capabilities within the Department of Homeland Security. With this in mind, the Committee fully expects that in the absence of alternative facilities for current Department of Agriculture activities, the Secretary of Homeland Security shall make every possible effort to expand and enhance agricultural activities related to foreign animal diseases at the Plum Island Animal Disease Center.

The Recommendations adds a reference to the inspection functions of the Department of Agriculture to the list of responsibilities of the Under Secretary for Border and Transportation Security in section 401.

The Recommendation to H.R. 5005 strikes section 402(3) and adds a new section 4____ to the end of title IV.

*Sec. 4____. Transfer of Certain Agricultural Inspection Functions of the Department of Agriculture.*

(a) Transfers to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities.

The Committee is aware that the Agricultural Quarantine and Inspection Program of the Department of Agriculture's Animal and Plant Health Inspection Service conducts numerous activities with respect to both domestic and international commerce in order to protect the health of agriculturally important animals and plants within the United States. Within the Department of Homeland Security will be created a mission area of Border and Transportation Security. In order that the new streamlined border security program operates efficiently, the Committee has transferred to the Department of Homeland Security the responsibility for certain agricultural import and entry inspection activities of the Department of Agriculture conducted at points of entry. This transfer will include the inspection of arriving passengers, luggage, cargo and means of conveyance into the United States to the Under Secretary for Border and Transportation Security. In addition to inspections at points of entry into the United States, responsibility for inspections of passengers, luggage and their means of conveyance, at points of departure outside the United States, where agreements exist for such purposes, shall be the responsibility of the Secretary of Homeland Security. The provision allows the Secretary of Homeland Security to exercise authorities related to import and entry inspection functions transferred including conducting warrantless in-

spections at the border, collecting samples, holding and seizing articles that are imported into the United States in violation of applicable laws and regulations, and assessing and collecting civil penalties at the border. The Committee intends that the Department of Agriculture will retain the responsibility for all other activities of the Agricultural Quarantine and Inspection Program regarding imports including pre-clearance of commodities, trade protocol verification activities, fumigation activities, quarantine, diagnosis, eradication and indemnification, as well as other sanitary and phytosanitary measures. All functions regarding exports, interstate and intrastate activities will remain at the Department of Agriculture.

(b) Delineates the laws governing agricultural import and entry inspection activities that are covered by the transfer of authorities.

The Committee is aware that the authority to inspect passengers, cargo, and their means of conveyance coming into the United States is derived from numerous statutes that date back, in some cases, more than 100 years. The Committee does not intend that the reference to these statutes should be construed to provide any authority to the Secretary of Homeland Security beyond the responsibility to carry out inspections (including pre-clearance inspections of passengers, luggage and their means of conveyance in such countries where agreements exist for such purposes) and enforce the regulations of the Department of Agriculture at points of entry into the United States.

(c) Excludes quarantine activities from the term "functions" as defined by this Act for the purposes of this section.

While agricultural inspection functions, as well as those related administrative and enforcement functions, shall be transferred and become the responsibility of the Secretary of Homeland Security, the legislation retains all functions related to quarantine activities and quarantine facilities within the Department of Agriculture. Although the Committee has excluded quarantine activities from those functions transferred to the Department of Homeland Security, the Committee does not intend to preclude the Secretary of Homeland Security from taking actions related to inspection functions such as seizure or holding of plant or animal materials entering the United States. These authorities fall within the purview of inspection related enforcement functions that shall be transferred to the Secretary of Homeland Security.

(d) Requires that the authority transferred to the Secretary of Homeland Security shall be exercised in accordance with the regulations, policies and procedures issued by Secretary of Agriculture; requires the Secretary of Agriculture to coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the covered laws related to the functions transferred under subsection (a); provides that the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue guidelines and directives to ensure the effective use of personnel of the Department of Homeland Security to carry out the transferred functions.

One intention of this legislation is to create a streamlined Border and Transportation Security program at points of entry into the United States. With regard to the protection of animal and plant

health, the Committee does not intend or expect the Department of Homeland Security to make the determination of what animals, plants, animal or plant products, soils, or other biological materials present an unacceptable risk to the agriculture of the United States. Policies and procedures regarding actions necessary to detect and prevent such unacceptable risks shall remain the responsibility of the Secretary of Agriculture. Likewise, policies and regulations defining restrictions on movement into the United States of substances that would pose a threat to agriculture shall continue to be the responsibility of the Secretary of Agriculture.

The Committee has provided authority for the Secretary of Homeland Security to issue directives and guidelines in consultation with the Secretary of Agriculture in order to efficiently manage inspection resources. When exercising this authority, the Committee expects that the agricultural inspection function at points of entry into the United States shall not be diminished, and as a result, the Committee expects that Secretary of Homeland Security shall ensure that necessary resources are dedicated to carrying out the agricultural inspection functions transferred from the Department of Agriculture.

(e) Requires the Secretary of Agriculture and the Secretary of Homeland Security to enter into an agreement to effectuate the transfer of functions. The agreement must address the training of employees and the transfer of funds. In addition the agreement may include authority for the Secretary of Homeland Security to perform functions delegated to APHIS for the protection of domestic livestock and plants, as well as authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out APHIS functions.

The Committee is aware of the unique nature and the specialized training necessary for effective and efficient border inspection activities carried out by the Agricultural Quarantine and Inspection Program. The Committee expects that the training of personnel and detector dogs for this highly specialized function will continue to be supervised by the Department of Agriculture.

While a large proportion of the personnel employed by the Agricultural Quarantine and Inspection Program are permanently stationed at one of 186 points of entry into the United States, the Committee is aware that the Secretary of Agriculture commonly redeploys up to 20 percent of the border inspection force in order to manage agricultural pests and diseases throughout the United States. In completing the transfer of Agricultural Quarantine and Inspection Program border inspectors to the Department of Homeland Security, the Committee expects that the Secretary of Agriculture and the Secretary of Homeland Security will enter into an agreement whereby inspection resources, where possible, would continue to be made available to the Secretary of Agriculture in response to domestic agricultural needs.

(f) Provides that the Secretary of Agriculture shall transfer funds collected by fee authorities to the Secretary of Homeland Security so long as the funds do not exceed the proportion of the costs incurred by the Secretary of Homeland Security in carrying out activities funded by such fees.

Beginning in fiscal year 2003, the unobligated balance of the Agricultural Quarantine and Inspection Fund will be transferred to other accounts within the Department of Agriculture and will be used to carry out import and domestic inspection activities, as well as animal and plant health quarantine activities, without additional appropriations. Fees for inspection services shall continue to be collected and deposited into these accounts in the manner prescribed by regulations issued by the Secretary of Agriculture. In effectuating the transfer of agricultural import inspection activities at points of entry into the United States, the Committee intends that funds from these accounts shall be transferred to the Department of Homeland Security in order to reimburse the Department of Homeland Security for the actual inspections carried out by the Department. The Committee expects that the Secretary of Agriculture shall continue to manage these accounts in a manner that ensures the availability of funds necessary to carry out domestic inspection and quarantine programs.

(g) Provides that during the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security up to 3,200 full-time equivalent positions of the Department of Agriculture.

(h) Makes conforming amendments to Title V of the Agricultural Risk Protection Act of 2000 related to the protection of inspection animals.

## COMMITTEE CONSIDERATION

### *I. Hearings*

The Committee on Agriculture held a hearing on June 26, 2002 to review the Administration's proposed legislation on creating a Department of Homeland Security. Witnesses representing State agencies and the agricultural community testified before the Committee.

### *II. Full Committee Consideration*

The Committee on Agriculture met in open session pursuant to notice on July 11, 2002 and by a voice vote adopted the recommendations set forth.

## REPORTING THE BILL—ROLL CALL VOTES

In compliance with clause 3(b) of Rule XIII of the House of Representatives, the Committee on Agriculture's recommendation to H.R. 5005 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

## BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of

Rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 were not received by the Committee on Agriculture prior to submitting its recommendation to the Select Committee on Homeland Security. However the Committee was notified that this language would not create any new, or affect any existing, mandatory spending since this recommendation would only transfer employees and functions.

## CHANGES IN EXISTING LAW

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives changes in existing law made by the recommendation of the Committee on Agriculture will be provided by Legislative Counsel to the Select Committee on Homeland Security.

## ADDITIONAL VIEWS OF THE HONORABLE JOHN ELIAS BALDACCI

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON HOMELAND SECURITY,
*Washington, DC, July 11, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C. 20515*

DEAR CHAIRMAN ARMEY: I am writing to add my opinions to those of my colleagues on the House Agriculture Committee with regards to the creation of a new Department of Homeland Security. I appreciate your attention to my comments.

The Agriculture Committee has received numerous, pointed comments from agriculture groups across the Nation who are concerned that the Animal and Plant Health Inspection Service's (APHIS) primary mission to prevent and eradicate plant and animal diseases may be lost if the entire agency were to be moved out of the purview of the US Department of Agriculture (USDA). Indeed, many in my home state, including the relevant officials in the Maine Department of Agriculture, have expressed similar concerns.

In this process, I feel our first responsibility should be to protect the interests of Americans on all fronts. I was pleased with the Agriculture Committee's recommendation to transfer only the agricultural import and inspection activities of APHIS to the Department of Homeland Security. By leaving other activities of APHIS within the jurisdiction of USDA, the high quality performance of traditional functions such as plant and animal disease research, oversight of animal welfare, certification of US agricultural products for export, and quarantine activities will be maintained.

Furthermore, the levels of cooperation between the Secretaries of Agriculture and Homeland Security recommended by the Agriculture Committee will be an important element of any future activities to control the vast numbers of imported agricultural goods into our country. I applaud the efforts of Congress not only in this effort to establish a new Department of Homeland Security, but also in earlier actions to boost the number of inspectors at US border crossings and points of entry.

My state has one of the longest coastlines in the nation, in addition to a significant border with Canada stretching from Quebec in our west and New Brunswick in the east. Following the horrific

events of September 11, imports into the State of Maine from Canada were severely delayed due to a lack of qualified border inspectors. These delays impacted both the economy of my State and, by extension the rest of the nation. I would ask that during this reorganization period, that additional APHIS inspectors be assigned to border crossings and ports in Maine in order to better facilitate the passage of agricultural goods into the State and the nation.

Again, I commend Congress and the Administration on this concerted effort to establish a more responsive mechanism to address our homeland security needs. I have appreciated the opportunity to work with my colleagues on the House Agriculture Committee to make responsible recommendations to ensure that our nation's food supplies are safe from both terrorist attacks and non-terrorism related agricultural disasters. I thank you for your attention to my concerns.

Sincerely,

JOHN E. BALDACCI
*Member of Congress*

ADDITIONAL VIEWS OF THE HONORABLE NICK SMITH

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON HOMELAND SECURITY
*Washington, DC, July 11, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C. 20515*

DEAR CHAIRMAN ARMEY: It is important that your committee consider the attached Amendment to H.R. 5005 that would authorize establishment of a National Center for Plant Disease Research and Control. The virtual center would utilize existing facilities of the Department of Homeland Security, U.S. Department of Agriculture and state universities to provide coordination of a much-needed first line of defense against possible acts of bioterrorism directed at the nation's food supply.

Please review the supporting comments from the American Phytopathological Society (APS), the world's largest organization of plant health scientists, and the National Academy of Sciences.

The APS and the National Academy of Sciences state that while there are many scientists with expertise on the subject, there is no established network for coordinating their efforts and no standardized methods and procedures for detecting such events or preventing them from occurring. Using the Centers for Disease Control as a model, the amendment would direct the Secretary of Homeland Security to evaluate the need for a National Center for Plant Disease Research and Control and authorize the Secretary to establish the Center if it is determined that a need exists. Under the legislation, the center would bring together a network of existing laboratories and experts for the purposes of detecting and controlling diseases that might result from bioterrorist activities. The Center would coordinate a rapid response team, develop a high-capacity communication network, oversee continual monitoring and risk assessment of potential threats, support the development of

new tools for rapid detection and diagnosis of plant diseases and expand research on genomics and plant biotechnology.

This amendment is much needed to protect our nation's food supply, and the formation of such a center is the effective way to coordinate such an effort through scientists and experts. I appreciate your consideration of our amendment.

Sincerely,

NICK SMITH,
*Member of Congress*

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COMMITTEE ON SCIENCE AND TECHNOLOGY FOR COUNTERING TERRORISM, NATIONAL RESEARCH COUNCIL, NATIONAL ACADEMY OF SCIENCES,
*Washington, DC.*

RECOMMENDATION 5: ... create an agency for control and prevention of plant disease. This agency should have the capabilities necessary to deal effectively with biothreats.

For animal disease, USDA operates several laboratories - Plum Island and Ames among them - that perform diagnoses, carry out research, and provide training for veterinarian. CDC is the central agency for the control and prevention of communicable human disease, but no center currently exists to serve the same function for plant disease. Such a center is desperately needed. Departments of plant pathology at various state universities, APHIS, and a wide variety of other agencies, all of which often depend on outside experts, currently deal with new and unusual plant pathogens as best they can.

A major research, development, and training center is called for that would address fungal, bacterial, and viral diseases of plants. Programs would focus on genomics and proteomics, databasing and informatics, forensics, pathogenesis, host-parasite interactions, diagnostics, sensors, food safety, analytical methods, epidemiology, modeling of disease outbreaks, intervention, and management. Other efforts could include outreach, technology transfer, collections of pathogens, and epidemiological intelligence and response. Close linkages could be established with other federal and state agencies, as well as with academic institutions, international agencies with responsibilities for surveillance of plant diseases and bioterrorism, and industrial, extension, and professional organizations. These collaborators could, among other functions, provide advice on containment and control procedures. Reprinted from: National Academy of Sciences: National Research Council "Making the Nation Safer: The role of Science and Technology in Countering Terrorism" (National Academy Press: Washington D.C. 2002) pg.3–ll to 3–12

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DEPARTMENT OF ENTOMOLOGY AND PLANT PATHOLOGY
OKLAHOMA STATE UNIVERSITY, STILLWATER, OK 74078
*Washington, DC, March 14, 2002*

DEAR CONGRESSMAN SMITH: I am writing as President-Elect of the American Phytopathological Society, the professional scientific society representing the plant pathologists of America and the world's largest professional society concerned with the diffusion of knowledge of plant diseases and their control. Members of the American Phytopathological Society promote the practice of plant pathology for the welfare of the environment plants, animals and human kind. However, with U.S. and global vulnerability to agricultural bioterrorism. the nation's research and education infrastructure must now work also to protect our gains, continue consumer confidence in the safely of our food, and assure sustainable growth in the production of food and fiber products produced from plants.Part of the vulnerability of our crops and food reserves is due to gaps in the nation's infrastructure that are needed to detect, diagnose, and limit or recover from such an attack. Whether or not an attack should ever materialize, this infrastructure is still needed as part of the continuing improvements in this nation's ability to produce high quality food in competitive and sustainable production systems.

We believe that the United States needs a national center that can provide many of the same services and national leadership currently provided for human diseases

by the Centers for Disease Control and Prevention. The center could be termed the "Center for Plant Disease Control,—or alternatively, the "National Plant Disease Center." I am enclosing a brief description of some activities and responsibilities that could be performed by such a center.

We strongly urge you to support the establishment and activities of such a center. We recognize that the planning stages must involve input and participation from the various Federal and State agencies whose missions include aspects of plant food production and safety. The APS stands ready to work with you and others in the development of this critical national resource.

Thank you for your consideration and assistance. Please let us know how the APS can assist further in this process.

Sincerely yours,

JACQUELINE FLETCHER,
*President-Elect,*
THE AMERICAN PHYTOPATHOLOGICAL SOCIETY

## AMENDMENT

## OFFERED BY MR. SMITH OF MICHIGAN

At the end of title IV, insert the following new section:

**SEC. ___.INFORMATION COLLECTION AND NATIONAL CENTER FOR PLANT DISEASE RESEARCH AND CONTROL.**

(a) **INFORMATION COLLECTION AND INVESTIGATIVE AUTHORITY.—**The Secretary of Homeland Security may gather and compile information and conduct any investigations the Secretary considers necessary for the administration and enforcement of the agricultural import and entry inspection functions transferred to Secretary under section 4 (a)

(b) **EVALUATION OF NEED FOR NATIONAL CENTER.—**The Secretary of Homeland Security shall evaluate the feasibility and desirability of establishing a National Center for Plant Disease Research and Control in the Department of Homeland Security (in this section referred to as the "Center") that;

(1) would facilitate the gathering and compiling of information and the conducting of basic research and investigations related to plant pests and pathogens that can directly or indirectly injure, cause damage to, or cause disease in plants or plant products; and

(2) could act as a first responder in the event of an accidental or deliberate introduction or use of a plant pest or pathogen.

(c) **ESTABLISHMENT OF CENTER.—**If the results of the evaluation conducted under subsection (b) support the need for a Center, the Secretary of Homeland Security may establish the Center and ass to it the specific functions referred to subsections (b) and (d) and such other duties as the Secretary considers appropriate. The Secretary shall utilize existing facilities of the Department of Homeland Security and land-grant colleges and universities to establish the Center.

(d) **CENTER FUNCTIONS.**—The Center, if established by the Secretary of Homeland Security, may be used to perform and support the following activities:

(1) Development of new tools for rapid detection and diagnosis of plant diseases, including by remote sensing.

(2) Expansion of research on genomics and plant biotechnology as the foundation for more rapid and effective development of

crop plants with resistance to pathogens that are potential threat agents.

(3) Expansion of research on genomics and plant biotechnology that can be used for detection of, forensics related to, or recovery from a bioterrorist attack on plants or plant products.

(4) Development and maintenance of a data base for the identification of known or potential plant pests and pathogens and for the collection of risk assessments regarding the threat such plant pests and pathogens pose to plants and plant products.

(5) Coordination of new or acquired collections of foreign and domestic pathogens and development of methods for their characterization and rapid diagnosis.

(e) **COORDINATI0N.**—The Secretary of Homeland Security shall coordinate the activities of the Center with other Federal and State agencies and appropriate experts in the area of plant pest control at public and private research institutions.

(f) **FUNDING.**There is authorized to be appropriated for each fiscal year $5,000,000 to support the activities of the Center.

## COMMITTEE ON APPROPRIATIONS

JULY 11, 2002

[RECOMMENDATIONS TO THE SELECT COMMITTEE ON HOMELAND SECURITY]

[CONCERNING H.R. 5005]

The Committee on Appropriations, to whom was referred the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, having considered the same, report thereon with its recommendations and views on the bill. In this opinion, the Committee has limited its specific textual recommendations to matters within the jurisdiction of the Committee on Appropriations, and for other matters, the Committee remains descriptive in those matters in which the Committee has expertise to lend.

The Committee believes that the enactment of H.R. 5005, as introduced, would constitute a major erosion of the separation of powers as established in the United States Constitution, abrogating the central role of the Congress—the direction and oversight of public expenditures. The bill would provide the Secretary of the Department of Homeland Security with extraordinary and unprecedented powers that would in effect be both legislative and executive in nature and undermine the fundamental precept of the founding fathers, "checks and balances."

The Committee has been in the forefront of strengthening the nation's capacity to identify, find and destroy terrorist organizations and to enhance our nation's defenses and capacity to respond to terrorist attacks. We strongly support efforts to streamline, centralize and improve the management and efficiency of the nation's counter-terrorism and homeland security activities. The importance of attaining these goals, however, need not involve sacrificing the constitutional processes that have remained intact for more than two centuries and have served the nation well during foreign invasions, civil war and two world wars. In fact, the current administrative morass troubling a number of key homeland security agencies would argue for even more intense Congressional scrutiny and oversight.

For those matters within the jurisdiction of the Committee on Appropriations, the Committee recommends that the bill, H.R. 5005, be amended, with an amendment as follows:

Page 38, strike lines 19 through 22 and insert the following:

"(4) shall deposit the proceeds of any exercise of the authority granted by this subsection into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.".

Page 39, strike lines 5 through 14.

Page 39, line 15, strike "; TRANSFER".

Page 39, line 16, strike "(a) ALLOCATION OF FUNCTIONS.—".

Page 40, strike lines 6 through 13.

Page 42, beginning on line 12, strike "or non-reimbursable".

Page 42, strike lines 15 through 22.

Page 42, line 23, strike "(d)" and insert "(c)".

Page 43, line 20, strike "(e)" and insert "(d)".

Page 44, beginning on line 2, strike "and" the second place it appears and all that follows through "Code" on line 4.

Page 44, after line 10, insert the following new subsections:

"(e) USE OF TRANSFERRED FUNDS.—Except as may be provided in an appropriation Act pursuant to subsection (g), balances of appropriations and any other funds transferred pursuant to this Act shall—

"(1) be available only for the purposes for which they were originally available; and

"(2) remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds.

"(f) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress at least 15 days in advance of any transfer of appropriations balances or other funds pursuant to this Act.

"(g) Additional Uses of Funds During Transition.—During the transition period and provided that the Committees on Appropriations are notified at least 15 days in advance, amounts transferred to or otherwise made available to the Department may be used for purposes in addition to those for which they were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriation Act and only under the conditions and for the purposes specified in such appropriation Act.".

Page 47, strike lines 12 through 19.

## COMMITTEE PERSPECTIVE ON PROVISIONS OF H.R. 5005 WITHIN THE JURISDICATION OF THE COMMITTEE ON APPROPRIATIONS

H.R. 5005 was referred to the Select Committee on Homeland Security, and in addition to several permanent committees, including the Committee on Appropriations, in each case for consideration of such matters as fall within the jurisdiction of the committee concerned. For the Committee on Appropriations, the matters within its jurisdiction are transfers of certain authorities and appropriations and unobligated and unexpended balances of previous appropriations.

Specifically, H.R. 5005 includes:

1. the general transfer of several agencies, such as the Coast Guard, Secret Service, the Federal Emergency Management Agency, etc., to the new department and calls for the transfer of "functions, personnel, assets and liabilities". The legislation defines "assets" to include (among other items) "unobligated or unexpended balances of appropriations, and other funds and resources".

2. broad powers to help finance the operations of the new department. Subsections (d) through (f) of section 732 authorize the Secretary of Homeland Security to acquire real estate and sell or exchange assets owned by the Department, and to raise funds by leasing or subleasing property owned or leased by the Department. The proceeds raised through these arrangements would be available for any purpose of the Department, without the need for appropriation or other congressional action. These amounts could be substantial, as the Department would acquire control over considerable property when it absorbs agencies such as the Coast Guard, the Animal and Plant Health Inspection Service, and various laboratories. The broad authorities granted are contrary to longstanding principles of existing law which requires governmental receipts to be deposited in the Treasury and spent only pursuant to

appropriations—except where Congress has authorized specific uses.

3. section 733(b) which provides the Secretary of the new department the permanent authority to transfer up to five percent of any appropriation available to the secretary in any fiscal year to any other appropriation (on 15 days' notice to the Appropriations Committees). No Congressional approval is required. This provision could allow transfers of $2 billion or more.

4. authority in section 803(c) which allows the President to transfer to the new department up to five percent of the unobligated balances available to any agency being moved to the new department before the move takes place. The amounts transferred would then be available to finance any of the purposes of the new department, without regard to the purposes for which they were originally appropriated. In other words, the new department could start its operations with initial funding of $1 billion or more, provided not through an appropriation for that purpose, but rather through a five percent surcharge against appropriations made for agencies such as the Coast Guard, the Customs Service, and the Federal Emergency Management Agency. Again, no Congressional approval is required.

5. section 803(e), a provision that provides that upon the transfer of an agency to the new Department, the personnel, assets and liabilities of the agency shall be transferred to the Secretary for appropriate allocation, subject only to the approval of the Director of the Office of Management and Budget. This section would expressly override the provision of permanent law (31 U.S.C. 1531(a)(2)) that requires funds transferred under such circumstances (that is in connection with transfers of functions) be used only for the purposes for which the appropriation was originally available.

6. section 806, which authorizes the director of the Office of Management and Budget to make additional and incidental dispositions of personnel, assets, and liabilities in connection with the functions transferred in the Act, as he determines appropriate.

These transfer provisions are overly broad and sweeping. If enacted, they could have a serious impact on the appropriations process, hinder Congress in the exercise of its constitutional duty to direct the expenditure of public funds, and erode the role of Congress as established under Article I of the Constitution. They would have the effect of vitiating and rendering as irrelevant annual appropriations levels established by Congress for specific individual programs and would undermine Congressionally-imposed restrictions and program allocations. As a matter of fact, H.R. 5005 would provide the Secretary of the new department the ability to unilaterally rewrite fiscal year 2003 and perhaps some of fiscal year 2004 appropriations relating to both homeland security and to all other functions (such as other missions of the Coast Guard) that he wishes to shift to the new department. This would amount to giving the Secretary of Homeland Security an unrestricted lump-sum appropriation in an amount that could exceed $30 billion. Moreover, this transfer authority would be available in perpetuity.

## EXPLANATION OF THE PROPOSED AMENDMENT

The Committee recommends that the bill, H.R. 5005, be amended as follows:

Page 38, strike lines 19 through 22 and insert the following:

"(4) shall deposit the proceeds of any exercise of the authority granted by this subsection into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.".

Page 39, strike lines 5 through 14.

Page 39, line 15, strike "; TRANSFER".

Page 39, line 16, strike "(a) ALLOCATION OF FUNCTIONS.—".

Page 40, strike lines 6 through 13.

Page 42, beginning on line 12, strike "or non-reimbursable".

Page 42, strike lines 15 through 22.

Page 42, line 23, strike "(d)" and insert "(c)".

Page 43, line 20, strike "(e)" and insert "(d)".

Page 44, beginning on line 2, strike "and" the second place it appears and all that follows through "Code" on line 4.

Page 44, after line 10, insert the following new subsections:

"(e) USE OF TRANSFERRED FUNDS.—Except as may be provided in an appropriation Act pursuant to subsection (g), balances of appropriations and any other funds transferred pursuant to this Act shall—

"(1) be available only for the purposes for which they were originally available; and

"(2) remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds.

"(f) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress at least 15 days in advance of any transfer of appropriations balances or other funds pursuant to this Act.

"(g) Additional Uses of Funds During Transition.—During the transition period and provided that the Committees on Appropriations are notified at least 15 days in advance, amounts transferred to or otherwise made available to the Department may be used for purposes in addition to those for which they were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriation Act and only under the conditions and for the purposes specified in such appropriation Act.".

Page 47, strike lines 12 through 19.

The amendments recommended by the Committee remove the various extraordinary transfer authorities and budgetary powers that would be conferred on the executive branch by the bill as introduced. Instead, the Committee recommends relying on more traditional procedures, which allow funds to be transferred along with the organizations they finance but which require the executive to propose and obtain congressional approval to increase funding levels or change the uses of appropriated funds.

The Committee's amendments leave intact the various provisions of the introduced bill (such as section 202) that provide for transfer to the Department of Homeland Security of the assets of the various federal entities being moved to the new department, and that define those assets as including unobligated or unexpended balances of appropriations. Similarly, the amendments leave in place the basic structure of section 803(e), which clarifies that the transfer of appropriations balances and other assets occurs at the time an organization is transferred to the Department of Homeland Security and that these balances are transferred to the Secretary of Homeland Security for appropriate allocation.

However, the Committee amendments strike the provision of the bill that expressly overrides provisions of permanent law requiring that funds transferred under such circumstances be used only for

the purposes for which they were originally appropriated. Instead, the amendments specifically apply the basic principles found in sections 1531 and 1532 of title 31, United States Code, that transferred funds are available only for the same purposes and subject to the same limitations as applied prior to the transfer.

Thus, under the Committee amendments, when an organization such as the Immigration and Naturalization Service or the Secret Service is moved to the Department of Homeland Security, it would bring along its own funding in the form of the unobligated and unexpended balances of its appropriations. However, such appropriations would not normally be available to finance other operations of the new Department. The Committee expects the Administration to prepare and propose to Congress a specific plan for financing those operations and needs of the Department of Homeland Security that do not represent simply the continuation of functions for which appropriations are already available. Such a plan could consist of any combination of appropriations transfers, new appropriations, rescissions and other measures as the Administration considers advisable. The Committee would expect to act expeditiously on any such proposal.

The process that would be established by H.R. 5005 as amended by the Committee is very similar to the process used when the Department of Energy was created in 1977 and when the Department of Education was created in 1979. In both cases, legislation establishing the new departments provided for transfer of appropriations balances along with the functions being transferred—but only for the purposes for which the funds were originally appropriated. In both cases, further transfers were allowed only to the extent specifically authorized in appropriations legislation.

The Committee understands the language contained in the bill (as amended) transferring appropriations balances and other assets to the Department of Homeland Security as applying only to the assets of the federal entities specifically transferred by sections 202, 302, 402, 502, and 720. Thus, nothing in the bill authorizes transfer of any portion of the appropriations balances of any agency, such as the National Institutes of Health or the Federal Aviation Administration, that is not transferred to the Department of Homeland Security in whole or in part by the bill. If the Administration wishes to shift to the Department of Homeland Security any part of the funds appropriated to an agency not being transferred, the Administration should propose the necessary specific appropriations legislation to Congress.

Specifically, the amendment recommended by the Committee:

(1) eliminates provisions of section 732 authorizing the Secretary to use, without appropriation, the proceeds from sale or lease of Department property. Instead, the Committee alternative requires any such proceeds to be deposited in the Treasury, where they will be available for spending only by appropriation. The Committee also notes, that the General Services Administration already possesses authority to recover the direct and indirect costs of such sales under 40 U.S.C. 485, which may be available to the Secretary of Homeland Security under section 732(e) of the bill (requiring delegation of some GSA authorities to the Secretary). Thus, the Com-

mittee amendment should not unduly hamper any effort to dispose of the Department's surplus property.

(2) deletes section 733(b) which provides that not to exceed five percent of any appropriation available to the Secretary of Homeland Security in any fiscal year may be transferred between appropriations provided that at least 15 days' notice is given the Appropriations Committees prior to the transfer. The Committee strongly believes that whether and in what amounts to grant sweeping transfer authority and the restrictions that should apply are matters that should and can be addressed through the annual appropriations process, rather than through a permanent blanket of general authority.

(3) amends section 803(b), which allows agencies to provide services or detail personnel on a reimbursable or non-reimbursable basis to assist the transition. The Committee amendment deletes the authority to enter into non-reimbursable agreements.

(4) deletes section 803(c) which provides that, prior to the actual transfer of an agency to the Department within the twelve-month transition period, the President is authorized to transfer to the Secretary of Homeland Security not to exceed five percent of the unobligated balance of any appropriation available to such agency, to fund the purposes authorized in the bill, provided that at least 15 days' notice is given the Appropriations Committee prior to the transfer. Additional uses of funds are addressed in a new subsection (g) to section 803.

(5) amends section 803(e) which provides that transfers of personnel, assets, liabilities, and functions to the Department shall be available for activities of the new department. The amendment strikes language that would override permanent law (31 U.S.C. 1531(a)(2)) which requires executive agencies to obligate funds only for the purposes for which they were appropriated.

(6) includes new subsections (e) through (g) to section 803 regarding the use and notification of appropriations and other funds transferred pursuant to provisions of this Act. These new provisions allow the limited transfer of appropriations and other funds when expressly provided in an annual appropriations Act. Such transfers are currently requested, contemplated and contained in such Acts. In addition, the new provisions provide that amounts transferred to or otherwise made available to the new department may be used for purposes in addition to those for which they were originally available, but only to the extent such transfer or use is expressly permitted in an appropriation Act.

(7) deletes section 806 which provides the Director of the Office of Management and Budget the authority to transfer "incidental" assets and personnel as he may deem appropriate.

## MATTERS WHICH LESS DIRECTLY AFFECT THE COMMITTEE'S JURISDICTION

### *Coordination and Resource Requirements for Counter-Terrorism Activities*

The Committee is also concerned that at least some of the proposed reorganization of administrative authority expressed in H.R. 5005 will not improve the efficiency, coordination or effectiveness

of the nation's counter-terrorism and homeland security efforts. We would encourage the committees of jurisdiction to weigh carefully the following three principles:

First, does a proposed transfer of an agency or activity to the new department increase the focus and coordination of government counter-terrorism activities?

The organization chart of current government efforts in counter-terrorism that accompanied the Administration's announcement of plans to create a new department indicates that there are approximately 133 programs and offices involved in the effort. H.R. 5005 would move less than two-dozen of these into the new department. This leaves the overwhelming majority of such agencies and activities outside the proposed department—including some of the most critical government counter-terrorism efforts such as the FBI and the CIA. The question that must be asked in each instance is whether or not the inclusion of an activity within the department will not only improve departmental coordination of counter-terrorism but government-wide coordination.

By the same token, some proposed changes might give the new secretary such an unwieldy portfolio as to create serious distractions from the underlying mission. H.R. 5005 would place functions such as oil spill cleanups, pet store licensing, international adoptions, tariff collection and boll weevils eradication under the responsibility of the Secretary of Homeland Security. While the inclusion of some extraneous activities may be unavoidable given the variety of functions that many of the agencies proposed for the new department perform, having responsibilities as far ranging as those proposed in H.R. 5005 would likely increase administrative requirements, increase overhead expenditures and make it difficult for the leadership of the department to maintain a clear focus on security issues.

Second, will the structure proposed for managing the department create a demand for administrative resources that will reduce funds available for frontline activities such as container inspections or the identification, apprehension and deportation of illegal entrants that pose a possible terrorist threat?

In the defense community this question is referred to as the relationship between the tooth and the tail. It is easily possible to organize government activities in such a way that the cost of coordinating the activities becomes more expensive than the activities themselves. There is ample reason to be concerned that H.R. 5005 could seriously erode resources needed to sharpen the tooth.

This is particularly true if the administration maintains its stated intention to fund all activities of the department within the existing budgets for those activities. If that policy is followed, it will mean that most of the resources necessary to fund the activities of the Secretary, Deputy Secretary, five proposed Under Secretaries, as many as sixteen proposed Assistant Secretaries and six other proposed sub-cabinet positions will have to be met through cuts in border inspectors, immigration enforcement and first responders.

Thirdly, will the reorganization disrupt highly sensitive security functions during critical threat periods?

There is a reason that the Executive Reorganization Act of 1947 took place in 1947 and not 1944. The consolidation of the War De-

partment and the Navy may have created more efficiency and better coordination of defense activities in the long term but it certainly had significant short-term costs with respect to both of these goals. Similar disruptions are inevitable in any reorganization.

The severity of such disruptions and time lost resulting from reorganization will vary based on the amount of administrative change envisaged for a particular program or activity. Simply changing the chain of command involves a relatively small loss of work effort. Changing network servers and phone systems and phone numbers adds to the loss in terms of short-term performance. Relocating facilities, restructuring personnel assignments and lines of authority often entail dislocations that can take months or even years to fully recover from. If there is a clear case for greater focus and long term efficiency these costs may be acceptable so long as they do not reduce performance during periods of potential threat.

Any reorganization should carefully weigh these factors with respect to both the entities to be transferred to the new department and the timing of that transfer.

*Fiscal Year 2004 Budget Presentation*

The Committee expects that the President's fiscal year 2004 budget submission will reflect the newly created department of homeland security and its component agencies, consistent with statements made by the Administration. Budget estimates and accompanying justification materials shall be prepared and submitted in the same manner and level of detail as provided previously to the Committee on Appropriations for the department's component agencies, programs and activities.

## EXPRESSION OF VIEWS ON OTHER MATTERS OUTSIDE THE APPROPRIATIONS COMMITTEE'S JURISDICTION

Sec. 733(a) of the bill authorizes the Secretary to "establish, consolidate, alter, or discontinue" any organizational units of the Department. The provision expressly allows consolidating or abolishing organizations and entities established by statute, provided only that 90 days advance notice is given to Congress. Though the bill does prohibit the use of its section 733(a) authority to eliminate specific agencies (e.g., the Coast Guard and the Secret Service), there is no such prohibition on abolishing various other agencies transferred to the Department, such as the Animal and Plant Health Inspection Service and the Customs Service, thereby allowing the Secretary to unilaterally overturn longstanding policies set in law. Congress should not authorize the Executive Branch to establish, consolidate, alter, or discontinue any agency of government that was established by statute. To do so would be tantamount to allowing the executive branch to unilaterally amend existing laws, and therefore contrary to the constitutional principles that vest legislative power in Congress rather than the President.

## RECORDED VOTES IN COMMITTEE

During consideration of the Committee's recommendations and views on H.R. 5005, there were no recorded votes taken in the Committee.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Government of the United States or in department or officer thereof.

## OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform, as provided for in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, was available to the Committee with reference to the subject matter specifically addressed in the Committee amendment proposed to H.R. 5005.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Appropriations' oversight findings and recommendations are reflected in the body of this report.

## ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act will be created by the amendment recommended by the Committee on this legislation.

## APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the recommended amendment to the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

## FEDERAL MANDATES STATEMENT

The amendment recommended by the Committee on this legislation contains no unfunded mandates.

## CHANGES IN EXISTING LAW

The amendment recommended by the Committee on this legislation would make no change in existing law.

## CONGRESSIONAL BUDGET ACT

With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the

Congressional Budget Act of 1974, the Committee amendment would not result in the provision of any new budget authority.

## COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
*Washington, DC, July 12, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 6 of House Resolution 449, I hereby forward to the Select Committee on Homeland Security the recommendations of the Committee on Armed Services to the bill H.R. 5005, the Homeland Security Act of 2002.

On July 10, 2002, the Committee on Armed Services held a mark-up on those portions of H.R. 5005 within its jurisdiction and reported out favorably recommendations to the bill by voice vote.

The committee devoted considerable attention and effort in reviewing the President's proposal and offers recommendations that are fully consistent with the important objectives inherent in H.R. 5005. I trust that the Select Committee will give these recommendations due consideration and stand ready to work with you and other members of the Select Committee in moving this process forward.

Sincerely,

BOB STUMP,
*Chairman.*

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## AMENDMENTS

Amendments to H.R. 5005

Adopted by the Committee on Armed Services

Section 2(2) is amended to read as follows:

(2) The term "assets" includes contracts, leases, grants, cooperative and other agreements and other transactions, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

Insert after section 2(10) the following new paragraph (and redesignate the subsequent paragraph accordingly):

(11) The term "State" has the meaning given in section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288; 42 U.S.C. 5122(4)).

Section 101(b)(2) is amended by inserting the following new subparagraph after subparagraph (D) (and redesignating the subsequent subparagraph accordingly):

(E) research, development, test, and evaluation in support of such mission;

Amend section 202(5) to read as follows:

(5) the Energy Security and Assurance Program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center and the functions of the Secretary of Energy relating thereto; and

Section 203 is amended by inserting the following new paragraph after paragraph (2) (and redesignating the subsequent paragraph accordingly):

(3) the Secretary shall have full access and input with respect to information from any national collaborative information analysis capability (as referred to in section 924 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1199) established jointly by the Secretary of Defense and the Director of Central Intelligence; and

Amend section 301 to read as follows:

**SEC. 301. UNDER SECRETARY FOR CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES.**

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(B), the primary responsibilities of the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures shall include—

(1) securing the people, infrastructures, property, resources, and systems in the United States from acts of terrorism involving chemical, biological, radiological, or nuclear weapons, explosives and explosive materials, and other emerging threats;

(2) conducting a national scientific research, development, test, and evaluation program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding, and conducting research, development, test, and evaluation relating to the same;

(3) establishing priorities for, directing, funding, and conducting national research, development, and procurement of technology and systems—

(A) for preventing the importation of—

(i) chemical, biological, radiological, nuclear, and related weapons and explosives and explosive materials; and

(ii) materials, technology, and equipment intended for the illicit research, development, production, or use of chemical, biological, radiological, nuclear, and related weapons and related devices, and explosives and explosive materials, in the United States; and

(B) for detecting, preventing, protecting against, and responding to terrorist attacks in the United States that involve such weapons or material;

(4) establishing guidelines for State and local government efforts to develop and implement countermeasures to threats of chemical, biological, radiological, and nuclear terrorism, and other terrorist threats; and

(5) establishing an intelligence analysis capability to support chemical, biological, radiological, and nuclear counterterrorism in the United States.

Amend section 302 to read as follows:

**SEC. 302. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities—

(1) the select agent registration enforcement programs and activities of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto;

(2) the following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities directly relating to the mission of the National Nuclear Security Administration, as specified in section 3211 of the National Nuclear Security Administration Act (Pub. Law 106–65; 113 Stat. 957; 50 U.S.C. 2401):

(A) the programs and activities relating to chemical and biological national security, and supporting programs and activities directly related to homeland security, of the non-proliferation and verification research and development program;

(B) the programs and activities relating to nuclear smuggling, and other programs and activities directly related to homeland security, within the proliferation detection program of the non-proliferation and verification research and development program;

(C) those aspects of the nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program that are directly related to homeland security;

(D) such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department;

(E) the Environmental Measurements Laboratory; and

(F) the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory;

(3) the homeland security projects within the Chemical Biological Defense Program of the Department of Defense known as the Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program; and

(4) the Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto.

Strike section 304.

Title III of the bill is amended by adding at the end the following new section:

**SEC. 305. ADMINISTRATION OF PROGRAMS AND ACTIVITIES TRANSFERRED FROM THE DEPARTMENT OF ENERGY.**

(a) HOMELAND SECURITY CENTER AT NATIONAL LABORATORY.—(1) The Secretary shall establish at a national security laboratory of the National Nuclear Security Administration selected by the Secretary, a center to serve as the primary location for carrying out research, development, test, and evaluation activities of the Department in support of the mission described in section 101. The Secretary shall establish, in concurrence with the Secretary of Energy, such additional centers at one or more national laboratories of the Department of Energy as the Secretary considers appropriate to serve as secondary locations for carrying out such activities.

(2) Each center established under paragraph (1) shall be composed of such facilities and assets as are required for the performance of such activities. The particular facilities and assets shall be designated by the Secretary of Energy with the concurrence of the Secretary.

(3) Facilities and assets designated under paragraph (2) shall be transferred to the Department and, with the concurrence of the Secretary and the Secretary of Energy, may be so transferred in place of facilities and assets otherwise required to be transferred from the Department of Energy under this Act.

(4) For each center established at a laboratory under this subsection, every effort shall be made to consolidate Department facilities and assets within existing infrastructure of that laboratory.

(b) SEPARATE CONTRACTING.—To the extent programs and activities transferred from the Department of Energy or carried out through authorities provided under this Act are carried out through contracts, the Secretary, and the Secretary of Energy, shall ensure that such contracts are separate from contracts of the Department of Energy.

(c) INDIRECT COSTS.—In the case of an activity carried out by a national laboratory of the Department of Energy but paid for by the Department on a reimbursable basis, funds for such activity shall be provided through a method under which the Secretary of Energy waives any requirement for the Department to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such laboratory and paid for by the Department of Energy.

(d) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the mission of the Department described in section 101.

(e) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

(f) TRANSITION.—(1) Subject to paragraph (2), the transfer of functions, personnel, assets, and liabilities required to be transferred from the Department of En-

ergy to the Department under this Act shall be carried out pursuant to a schedule to be prescribed by the Secretary of Energy with the concurrence of the Secretary.

(2) Transfers referred to in paragraph (1)—

(A) shall commence not later than January 1, 2003; and

(B) shall be completed not later than September 30, 2003.

Amend section 501(2) to read as follows:

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards, evaluating performance, and certifying when standards have been met; and

(B) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning and conducting joint and other exercises and training;

At the end of section 502(1) insert the following before the semicolon ", and the Integrated Hazard Information System of the Department of Defense".

Amend section 503 to read as follows:

**SEC. 503. NUCLEAR INCIDENT RESPONSE.**

(a) NUCLEAR INCIDENT RESPONSE TEAM.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency within the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) CONSTRUCTION.—Nothing in this Act shall be construed to affect the responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

(c) INDEMNIFICATION OF CONTRACTORS DURING TRANSITION PERIOD.—(1) To the extent the Department of Energy has a duty under a covered contract to indemnify an element of the Nuclear Incident Response Team, the Department and the Department of Energy shall each have that duty, whether or not the Nuclear Incident Response Team is operating as an organizational element of the Department.

(2) Paragraph (1) applies only to a contract in effect on the date of the enactment of this Act, and not to any extension or renewal of such contract carried out after the date of the enactment of this Act.

Amend section 735 to read as follows:

**SEC. 735. MILITARY ACTIVITIES.**

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

In section 802, insert "pursuant to this Act" after "The transfer of an agency".

In section 803, strike "shall provide" (page 42, line 6) and insert "may provide".

Strike section 904(b) and insert the following new subsections (and redesignate the subsequent subsection accordingly):

(b) TITLE 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888,946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b),

10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731(a)(e), 16131(a), 16136(a), 16301(g), and 18501 by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(2) Section 801(1) of such title is amended by striking "the General Counsel of the Department of Transportation" and inserting "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security".

(3) Section 983(d)(2)(B) of such title is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(4) Section 2665(b) of such title is amended by striking "Department of Transportation" and inserting "Department in which the Coast Guard is operating".

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking "Secretaries of the Army, Air Force, and Transportation" both places it appears and inserting "Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security"; and

(B) in subsection (b), by striking "Department of Transportation" and inserting "Department of Homeland Security".

(6) Section 7361(b) of such title is amended in the subsection heading by striking "TRANSPORTATION" and inserting "HOMELAND SECURITY".

(7) Section 12522(b) of such title is amended in the subsection heading by striking "TRANSPORTATION" and inserting "HOMELAND SECURITY".

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(d) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking "of Transportation" and inserting "of Homeland Security"; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking "of Transportation" and inserting "of Homeland Security".

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking "after consultation with the Secretary of Transportation".

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(8) Section 2301(5)(D) of Public Law 107–110 (20 U.S.C. 6671(5)(D)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(9) Section 2307(a) of Public Law 107–110 (20 U.S.C. 6677(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking "of Transportation" in the fourth paragraph and inserting "of Homeland Security";

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking "Secretaries of Army, Navy, Air Force, or Transportation" and inserting "Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,"; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking "of Transportation" both places it appears and inserting "of Homeland Security".

Strike section 907.

## PURPOSE AND BACKGROUND

The purpose of H.R. 5005, the Homeland Security Act of 2002, is to implement the President's proposal to create a new Department of Homeland Security (DHS). Several portions of this bill affect the Department of Defense (DOD) and the defense-related activities of the Department of Energy (DOE)—both of which are under the jurisdictional responsibility of the Committee on Armed Services. These sections of H.R. 5005 were reviewed and studied by the committee, which subsequently amended the legislation on July 10, 2002 to provide the President and the new Secretary of Homeland Security the necessary authority, organizations, and resources needed to accomplish the homeland security mission, while ensuring that DOD's and DOE's national security, warfighting, and military missions are not diminished.

The new Department of Homeland Security would be created through a sweeping re-organization of the federal government that would involve over a half dozen departments, multiple agencies, and nearly 170,000 people. The mission of this new department would be to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur. Under the introduced version of this legislation, the Department of Homeland Security would have four organizational components, each led by an Under Secretary: Border and Transportation Security; Emergency Preparedness and Response; Chemical, Biological, Radiological, and Nuclear Countermeasures; and, Information Analysis and Infrastructure Protection.

Compared to other departments of the federal government, the impact of this initiative on the Department of Defense and the defense-related activities of the Department of Energy is limited. While establishment of the DHS involves transferring organizations and people from DOD and DOE to the Department of Homeland Security, collectively these moves represent less than 1 percent of new department's total projected end strength, and less than 2 percent of its projected annual budget authority.

The committee amendment was developed in keeping with the following principles:

- Provide the President and the new Secretary of Homeland Security the necessary authority, organizations, and personnel needed to accomplish the homeland security mission;
- Ensure that DOD's and DOE's national security, warfighting, and military missions are not diminished;
- Allow the new Secretary of Homeland Security sufficient latitude and flexibility to efficiently implement the provisions of H.R. 5005;
- Ensure the new department will have a sufficient research, development, testing, and evaluation (RDT&E) capability to meet its mission needs; and
- Prevent the creation of duplicative, impaired, or unnecessary organizations and activities.

Based on these principles, the committee held a number of meetings with the Departments of Defense and Energy, and the White

House beginning in late June 2002. A full committee hearing was also held on June 26, 2002, with senior officials from the Department of Defense and Department of Energy appearing as witnesses. These meetings and the hearing highlighted several elements of H.R. 5005 that required further refinement, and were incorporated into a comprehensive committee amendment.

Most of the provisions contained in the committee amendment made no change to the President's fundamental proposal. Rather, they simply clarified and fine tuned "what" entities and activities will be transferred from DOD and DOE to the Department of Homeland Security; "how" they will be transferred; "where" they will be located within the new department; and what their new role, mission, and authorities will be within the new department. Some of these provisions, however, clarify the future relationship (authority, limitations, and conditions) between the Department of Energy's national laboratories and the Department of Homeland Security on matters ranging from contracting and accounting, to research and development and control of Nuclear Incident Response Teams. Further, these provisions ensure that the Department of Homeland Security receives from DOD and DOE only those entities and activities directly related to homeland security, that "no harm" will come to DOD and DOE and their activities as a result of this reorganization, and that the Secretary of Homeland Security has the tools and resources he needs to accomplish the homeland security mission.

The few provisions in the amended bill that substantively deviate from the Administration's legislative proposal are designed to maximize organizational effectiveness at the new Department of Homeland Security, or to preserve essential capabilities and activities at the Department of Energy that have a broader national security mission. These changes include:

- Transferring the entire Energy Security and Awareness program to the Department of Homeland Security Under Secretary for Information Analysis and Infrastructure Protection, rather than separating the program between the above office and the Department of Homeland Security Under Secretary for Chemical, Biological, Radiological, and Nuclear (CBRN) Countermeasures;
- Expanding the responsibilities of the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures to include explosives and explosive materials;
- Giving the Secretary of Homeland Security the responsibility and authority to conduct research, development, testing and evaluation in support of the Department of Homeland Security's mission; and,
- Granting authority to the Department of Homeland Security's Under Secretary for CBRN Countermeasures to establish an intelligence and analysis capability within DHS rather than transferring this organization/activity (as the Administration proposed) out of DOE, where it currently performs a critical national security mission.

In conclusion, the provisions contained in H.R. 5005, as amended by the Committee on Armed Services, will improve the effectiveness of the new Department of Homeland Security, while ensuring that the Department of Defense and the Department of Energy re-

tain the ability to fully conduct their warfighting and military missions so critical to our national security.

## LEGISLATIVE HISTORY

H.R. 5005 was introduced on June 24, 2002 and was referred to the Select Committee on Homeland Security. The bill was also referred jointly and sequentially to the Committee on Agriculture; Committee on Appropriations; Committee on Armed Services; Committee on Energy and Commerce; Committee on Financial Services; Committee on Government Reform; House Select Committee on Intelligence; Committee on International Relations; Committee on Judiciary; Committee on Science; Committee on Transportation and Infrastructure; and the Committee on Ways and Means, on June 24, 2002.

On July 10, 2002 the Committee on Armed Services held a markup session to consider H.R. 5005. The committee adopted the bill with amendments and reported the same favorably by voice vote.

Section-by-Section Analysis

The following is a section-by-section analysis of those sections of H.R. 5005 amended by the Committee on Armed Services.

*Section 2. Definitions*

This section, as amended, would expand the definition of the term "assets" to include "leases, grants, cooperative and other agreements and other transactions* * *" and also added a definition of the term "state". This latter change conforms the definition of the term "state" used in this bill with that already in existing law in section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288). The effect of this change is to include not only the states of the United States, but also the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands within the defined term "state".

*Section 101. Executive Department; Mission*

As amended, subsection 101(b)(2) would specify the conduct of research, development, test, and evaluation in support of homeland security as an additional mission of the Department of Homeland Security.

*Section 202. Functions Transferred*

As amended, the committee endorses the transfer of the National Communication Systems (NCS) in this section to the Department of Homeland Security with the understanding that the Department of Defense's mission will not be adversely affected or degraded. The committee also expects that, in light of DOD's unique telecommunication requirements, DOD will continue to be a key member of the NCS and receive priority recognition when appropriate.

In addition, the committee believes the NCS should maintain its mission to advise the President on protecting critical communications assets across all infrastructures. To successfully fulfill this mission, the NCS should receive high visibility and attention from the Secretary of Homeland Security.

This section, as amended, would also transfer the entire Energy Security and Assurance program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center (NISAC), and related functions, to the Under Secretary for Information Analysis and Infrastructure Protection.

In the fiscal year 2003 budget request, the Energy Security and Assurance program of the Department of Energy includes NISAC as the primary component. The President's legislative proposal would place NISAC under the Under Secretary for Information Analysis and Infrastructure Protection, but transfer the balance of the program to the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures. Broadly, the functions of the Energy Security and Assurance program are coordination activities to ensure a secure flow of energy, analysis of energy infrastructure vulnerabilities and interdependencies, and planning for response and recovery to disruptions of the supply of energy. The program also includes critical infrastructure protection functions. The committee believes that all such functions properly belong with the Under Secretary for Information Analysis and Infrastructure Protection, and are only indirectly related to CBRN Countermeasures. Consequently, the committee recommends the transfer of the entire program to the Under Secretary for Information Analysis and Infrastructure Protection.

*Section 203. Participation In National Collaborative Intelligence Analysis Capability*

As amended, this section would ensure that the Secretary of Homeland Security shall have full access, as a full participant, to information from any national collaborative information analysis capability, and is authorized to provide inputs to the same. The committee notes the Administration's increased demand for a national-level capability to analyze information and intelligence data from all government agencies and other sources. Such a capability would dramatically improve the United States' efforts to detect and identify threats to the nation's security. As such, the committee included supportive language in committee report 107-436 accompanying H.R. 4546, the Bob Stump National Defense Authorization Act for fiscal year 2003, which endorsed the DOD proposal that this new development effort be conducted by the Defense Advanced Research Projects Agency (DARPA). The committee also notes that the DARPA development initiative is consistent with the provision contained in the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107) that directed the Secretary of Defense and the Director of Central Intelligence to jointly develop an architecture for a national collaborative environment that would enable national-level data-mining of intelligence and other information.

In 1998, the committee identified advances in computer-based analysis technology that enabled recognition of previously undetectable associations and patterns resident within large volumes of data compiled from various sources. The committee recognized that this capability, commonly known as data mining, offered the potential for early detection of existing and emerging asymmetric terrorist threats to our nation. The committee supported re-

search and development of a capability to collect, fuse, and analyze disparate data from multiple agencies. The purpose of this capability would be to assist policymakers as they decide the actions necessary to prevent, preempt, or counter a variety of threats, including terrorism, weapons proliferation, espionage, and information warfare. Having the ability to better understand the trends and relationships between individuals, groups, and actions is considered critical to detecting, predicting and preventing acts of terrorism. The committee's efforts resulted in the eventual increase of $7.0 million for the Army Intelligence Command Land Information Warfare Activity in fiscal year 2000.

After several years of continuous support for research and development of the requisite technologies, and successful demonstration of this capability, this effort encountered another obstacle. Effective data-mining can only occur if it is part of a national capability that integrated some 33 separate departments, agencies, and other entities into an architecture that overcomes the historical stove-piped nature of the intelligence community. The committee further recognized that full support by all involved agencies for a national collaborative intelligence capability would be dependent upon the active participation of the administration.

Therefore, in order to determine the most appropriate architecture, the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) requires the Secretary of Defense, jointly with the Director of Central Intelligence, to assess and recommend the best architecture for a multi-agency national collaborative information analysis capability (NCIAC). The National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107) expanded the previous report requirement to include a requirement for draft legislation necessary to establish such a capability, and identification of any legislative or regulatory changes that would be needed to implement the preferred architecture.

The events of September 11, 2001 have added urgency to the requirement to establish a national collaborative intelligence analysis capability. The committee believes that the Secretary of Homeland Security should be a full participant in both providing data to a NCIAC and having access to its analyses. The committee also believes that the Secretary of Defense and the Director of Central Intelligence must, as rapidly as possible, determine the best NCIAC architecture, and recommend a plan to develop such a capability. The committee believes that this capability will transform intelligence analyses, and provide a fundamentally new capability to defend our nation against both internal and external threats.

*Section 301. Under Secretary For Chemical, Biological, Radiological, And Nuclear Countermeasures*

As amended, Section 301 would expand the scope of threats for which the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures is responsible by including explosives and explosive materials. Additionally, subsection 301(3)(A) would clarify that the Under Secretary is not only responsible for preventing the importation of CBRN weapons, related weapons, and explosives and explosive materials, but also the materials,

technologies, and equipment intended for the illicit research, development, production, or use of these weapons and devices.

The committee recognizes that some weapons of mass destruction require explosives in order to be activated or disseminated, and that sufficient amounts of explosives or explosive materials can be used by terrorists to inflict mass casualties or damage. Additionally, there is sufficient likelihood that terrorists could not only attempt to covertly bring complete CBRN weapons into the country, but that they could also import a weapon's key items (goods, technologies, and material) into the United States, use these items to construct a weapon of mass destruction, and then deliver it to their intended target. Therefore, the committee considered it imperative that the Under Secretary for CBRN Countermeasures not only be responsible for preventing the importation of whole weapons, but also the weapons' components.

The committee recognizes the paramount role intelligence will play in preventing future acts of terrorism against the United States. This role is particularly heightened by the fact that, in the future, terrorists may employ CBRN weapons that could prove far more catastrophic than the attacks of September 11. The committee declined to adopt the Administration's proposal to transfer the intelligence program and activities of Lawrence Livermore National Laboratory (LLNL) to the Department of Homeland Security. The committee is concerned that the intelligence effort undertaken by LLNL for the Department of Energy is a small part of a much larger program, and questions whether that portion is separable without adversely affecting Department of Energy nonproliferation programs, as well as support for other Federal agencies. Accordingly, as amended, subsection 301(5) would authorize the Under Secretary to establish a separate intelligence analysis capability to support CBRN counterterrorism in the United States.

*Section 302. Functions Transferred*

As amended, subsection 302(2) would specifically exclude from transfer to the Department of Homeland Security those programs and functions of the Department of Energy that are directly related to the mission of the National Nuclear Security Administration, as specified in section 3211 of the National Nuclear Security Administration Act (Public Law 106-65).

Subsection 302(2)(A), as amended, would further specify that only those supporting activities of the Nonproliferation and Verification Research and Development program directly related to homeland security, as described in the fiscal year 2003 budget request, shall be transferred to the Department of Homeland Security. A similar condition would be incorporated into subsections 302(2)(B) and 302(2)(C) of the bill regarding transfer of nuclear smuggling activities of the Proliferation Detection Program and the Nuclear Assessment Program, respectively.

Finally, as discussed above, the committee declined to adopt the part of subsection 302(2)(F) that would have transferred the existing intelligence programs at Lawrence Livermore National Laboratory to the Department of Homeland Security.

*Section 304. Military Activities*

As amended, section 304 was renumbered as section 735. The amended section clarifies that nothing in this Act would grant authority to the Secretary of Homeland Security to engage in warfighting, the military defense of the Untied States, or other military activities. This section would further clarify that nothing in this Act limits the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

*Section 305. Administration of Programs and Activities Transferred from the Department of Energy*

As amended, Section 305 would specify how certain homeland security-related research, development, test, and evaluation (RDT&E) activities would be conducted.

Subsection 305(a) requires the Secretary of Homeland Security to establish a primary center for carrying out the RDT&E activities of the Department of Homeland Security at a national laboratory of the National Nuclear Security Administration. This subsection would also provide for the establishment of secondary centers at one or more national laboratories of the Department of Energy.

While the committee amendment does not specify which laboratory will serve as this center, the committee understands that the Administration initially proposed Lawrence Livermore National Laboratory as the preferred site for this activity. Secondary centers would be established at the discretion of the Secretary of Homeland Security with the concurrence of the Secretary of Energy.

This subsection would further provide for the transfer from the Department of Energy of facilities and assets required to execute the research and development mission of the Department of Homeland Security. The Secretary of Energy would designate the facilities and assets to be transferred, with the concurrence of the Secretary of Homeland Security. The facilities and assets transferred under this subsection by the Department of Energy could, with the concurrence of the Secretary of Homeland Security, substitute for the specific transfers of assets required in Titles II and III, provided that substitute facilities and assets were substantively equivalent.

It is the intent of the committee to give the Secretary of Homeland Security and the Secretary of Energy the flexibility to organize and consolidate facilities and assets in a manner that is advantageous to the execution of their respective missions, consistent with the transfer of functions described in this Act. The committee expects this consolidation to occur within the existing infrastructure of the national laboratories, and for nothing in this section to be construed as authorization for new construction.

The committee wishes to convey special intent with the choice of the word "center". The committee believes that there is great value for the Department of Homeland Security in establishing and physically consolidating, within the national laboratories, a critical mass of talent and technology whose primary focus and application is homeland security. At the same time, the committee recognizes that, due to the unique nature of some facilities, it will not be possible in all cases to achieve such a consolidation.

Consistent with the committee's intent to consolidate and establish a unique identity for homeland security efforts at the Department of Energy national laboratories, subsection 305(b) would require execution of homeland security programs under separate contracts with the Department of Homeland Security. The committee believes that separate contracts will ensure proper focus on the Secretary of Homeland Security's unique priorities. The committee expects the Department of Homeland Security to take advantage of the unique opportunity to stand up a new organizational structure and establish a streamlined process for managing these contracts, with clearly defined responsibilities and accountability. A small headquarters organization can focus on policy, budgeting, technical objectives, and strategic planning for research and development, with responsibility for day-to-day oversight of contract activities delegated to site offices. The committee sees no need for intermediate levels of federal management; nor does it see a need for the Department of Homeland Security to generate detailed guidance for its contractors on how to conduct RDT&E activities.

The committee recognizes that certain activities the Department of Homeland Security may wish to conduct at a Department of Energy national laboratory might be of limited scope or duration. In such cases, it may be more advantageous for the Department of Homeland Security to conduct those activities on a reimbursable "work-for-others" basis, rather than through a separate contract. In such a circumstance, subsection 305(c) would waive the Department of Energy "added factor" for pass through of funds from the Department of Homeland Security to the national laboratory. It would further stipulate that personnel costs charged to the program for laboratory contractors could not exceed those that the Secretary of Energy authorizes for Department of Energy programs at that same laboratory. In other words, this subsection would prevent higher personnel costs or pass through charges, as is common practice, for future work performed by the Department of Energy for the Department of Homeland Security on a work-for-others basis.

The committee understands the value of laboratory-directed research and development, but believes that funds should be expended for the purpose for which they are authorized and appropriated by Congress. Subsection 305(d) would require that any laboratory-directed research and development projects undertaken at a national laboratory of the Department of Energy, with funds derived from the Department of Homeland Security, shall support the mission of the Department of Homeland Security. This subsection would prevent the use of Department of Homeland Security funds for self-directed research that is not relevant to homeland security.

Subsection 305(e) would require the Secretary of Energy to coordinate with the Secretary of Homeland Security to ensure that homeland security-related RDT&E activities undertaken by the Department of Energy are not duplicative of Department of Homeland Security efforts. Specifically, the committee cautions the Department of Energy against requesting funds in future budget submissions for functions that have been assumed by the Department of Homeland Security.

Subsection 305(f) would require the Secretary of Energy, with the concurrence of the Secretary of Homeland Security, to develop a schedule for transfer of assets from the Department of Energy to the Department of Homeland Security. The transfer could begin upon enactment of this Act, and must be completed by the end of fiscal year 2003.

*Section 501. Under Secretary For Emergency Preparedness And Response*

As amended, this section would clarify the role and responsibilities of the Under Secretary for Emergency Preparedness and Response with regard to the training of nuclear incident response teams.

The committee understands that, regardless of homeland security needs, the Secretary of Energy has a requirement to respond to nuclear incidents and emergencies. Accordingly, the committee believes that the Secretary of Energy should retain primary responsibility for organizing, training, and equipping nuclear incident response teams to conduct Department of Energy missions, as described in subsection 503(b). Thus, it is the committee's intent that the Department of Homeland Security should bear the incremental cost of joint planning and training for the homeland security missions that exceed the scope of capabilities required of the nuclear incident response teams by the Secretary of Energy.

*Section 502. Functions Transferred*

As amended, this section would transfer the Integrated Hazard Information System (not including personnel) of the Department of Defense to the Department of Homeland Security so that the latter would have a near real-time capability to detect wild fires in North America.

*Section 503. Nuclear Incident Response*

As amended, this section would limit the circumstances under which the Secretary of Homeland Security may assume operational control of nuclear incident response teams to respond to incidents occurring within the United States. This section was also amended to ensure that current indemnity provisions applicable to these nuclear incident response teams remains in place when these teams are activated by the Department of Homeland Security.

*Section 735. Authorization Of Appropriations*

As amended, this section would strike the original provision in the underlying bill that would have provided a permanent authorization of appropriations for the new Department of Homeland Security. This section would be replaced with an amended version of section 304 of the underlying bill, which addresses limits placed on the military activities of the Department of Homeland Security.

*Section 904. Coast Guard*

This section, as amended, would modify certain provisions of the United States Code relevant to the potential transfer of the Coast Guard from the Department of Transportation to the Department of Homeland Security. This section would accomplish this task by

replacing references to the Department of Transportation and the Secretary of Transportation with references to the new Department and Secretary of Homeland Security. The committee did not address the merits of transferring the Coast Guard to the Department of Homeland Security; consideration of that matter is properly vested in the committee with the primary jurisdiction over the Coast Guard. Should the decision be made by the Congress, however, to transfer the Coast Guard to the Department of Homeland Security, the changes made by this section would assure that all pay, benefits, and other privileges afforded to the uniformed members of the Coast Guard remain in effect.

*Section 907. Transfer Of Department Of Defense Chemical Biological Defense Program Homeland Security Projects*

As amended, this section would strike the requirement for the Department of Defense to establish a National Bio-weapons Defense Analysis Center, as provided for in the underlying bill. After the establishment of the Center in the Department of Defense, section 302(3) of H.R. 5005, as introduced, would have transferred the Center to the Department of Homeland Security. Instead of the original proposal, the amended subsection 302(3) would transfer two homeland security projects from the Department of Defense chemical-biological defense program to the Department of Homeland Security: the biological counter-terrorism research program and the biological defense homeland security support program.

The President's fiscal year 2003 budget request for the Department of Defense contained a total of $420 million for two homeland security initiatives, both of which were added to the Department of Homeland Security's initial fiscal year 2003 budget request. These initiatives would strengthen the federal government's chemical and biological defense and response capabilities. The request included $118 million ($113 million in research and development and $5 million in military construction funds) for a biological counter-terrorism research program that would focus on assessment of the traditional and emerging threats from the perspective of counterterrorism, and would include the establishment of a Center for Biological Counterterrorism Research at Fort Detrick, Maryland.

The request also included $272 million in research and development, and $30 million in procurement, for the biological defense homeland security support program to: initiate a comprehensive program to build a National Biological Defense System; and, provide an integrated homeland security capability to detect, mitigate, and respond to biological-related incidents.

## ITEMS OF SPECIAL INTEREST

*Transfer of Work-for-Others Activities*

The committee is aware that "work-for-others" activities compose a significant fraction of the programmatic activities of the national laboratories of the National Nuclear Security Administration. It is the committee's expectation that work-for-others activities related to homeland security, and specifically those related to functions

transferred from the Department of Energy, will also move to the Department of Homeland Security where feasible.

*Prioritization of Homeland Security Investments*

The committee believes, as the Department of Homeland Security embarks upon its important mission, that it should first conduct a thorough and critical analysis of the nation's homeland security needs. This assessment would not only help the department accomplish its current mission, but also allow the Secretary to conduct long-term planning and direct future investments. Such analysis should also extend beyond a prioritization of research and development efforts, and examine homeland security on the basis of a system of systems. For example, one might consider the relative national security costs and benefits of acquiring additional agents for the Border Patrol, as compared to procuring imaging equipment to scan cargo containers at ports of entry. The committee believes that the earlier such investments are made in these areas, the more quickly homeland security can be enhanced and savings realized. The committee thus recommends that the Department of Homeland Security formalize a process to provide an initial assessment, and continuous reassessments, of benefits versus costs studies of the nation's homeland security needs.

*Department of Homeland Security use of existing counterterrorism capabilities*

The committee notes that, independent of the establishment of the new Department of Homeland Security, a variety of federal, state and local initiatives have been undertaken in recent years that may contribute to an improved ability to prevent or help respond to terrorist activities against the United States. For example, civilian bioterrorism medical response centers already exist. Although not specifically incorporated into the new Department of Homeland Security by H.R. 5005, such centers and others focused on various aspects of domestic counterterrorism have the potential to enhance the capabilities of both the Departments of Defense and Homeland Security to better prepare for and respond to the terrorist threat. Accordingly, the committee encourages the Secretary of Homeland Security and the Secretary of Defense to take full advantage of these centers as they devise plans for how best to respond to this pressing threat.

*Homeland security research and development program*

The committee believes that one of the Secretary of Homeland Security's primary responsibilities and capabilities should be to conduct research and development in support of the homeland security mission.

The committee notes that the National Research Council's recent report, "Making the Nation Safer—the Role of Science and Technology in Countering Terrorism," recommends establishment of an Under Secretary for Technology in the Department of Homeland Security to provide a focal point for guiding key research and technology development programs across the Department of Homeland Security. This Under Secretary would also coordinate the Department of Homeland Security's research and development programs

with those of the major science, engineering, and medical science agencies outside the Department of Homeland Security.

The committee also notes that the council report recommends the establishment of a Homeland Security Institute: a dedicated, contracted, not-for-profit organization, which would provide technical analysis and support to the Department of Homeland Security and the Office of Homeland Security.

The committee recommends the designation of an individual, within the secretariat of the Department of Homeland Security, who would be responsible for the department's research and development (R&D) program. This individual's duties should include the integration of the R&D programs and activities of each organizational element within the Department of Homeland Security, as well as the coordination of the department's R&D programs with those of other federal agencies.

## COMMITTEE POSITION

On July 10, 2002, the Committee on Armed Services ordered H.R. 5005, as amended, reported to the House with a favorable recommendation by voice vote, a quorum being present.

## ADDITIONAL VIEWS OF CONGRESSMAN JOHN SPRATT

Soon after Pearl Harbor, President Roosevelt appointed James F. Byrnes as head of a War Mobilization Office, and vested him with a broad, powerful charter: to marshal the nation for war. Byrnes became known as the "Assistant President,"and with the President's proxy and his own personal ability, Byrnes made the War Mobilization Office work. I think that model is worth remembering and trying in the wake of September 11, but I recognize that it is not the only way to deal with the threat of terrorism, and not the route we now seem bent upon taking. So, I support this legislation and accept the need for Congress to act expeditiously. But the bill reported by the committee is far from perfect. Efforts to improve this bill need to continue in the House Select Committee, on the House floor, in conference with the Senate, and in the years to come. Merging many organizations, most with purposes other than homeland security, into a new department is not likely to be done right on the first try, particularly when done at a fast clip. In this vein, I want to highlight areas of the legislation that I believe could be problematic and that warrant continued attention.

Section 301 of the bill as amended by our committee requires the Under Secretary for Chemical, Biological, Radiological, and Nuclear (CBRN) Countermeasures to be responsible for intelligence analysis of CBRN threats. This seems reasonable, but elsewhere the legislation establishes an Under Secretary for Information Analysis and Infrastructure Protection. I believe placing the CBRN intelligence analysis function outside the Under Secretary for Information Analysis and Infrastructure Protection may detract from the Administration's attempt to establish one threat analysis center within the new department. It may also confuse the lines of accountability, blurring who is responsible for analyzing CBRN threats. I think these provisions need further attention.

Section 301 also charges the Secretary of CBRN with "developing national policy for and coordinating the Federal Government's civilian efforts" for "identifying, preventing, and responding to" CRBN attacks. To the extent that all such federal efforts are located within DHS, this may be workable, but I am skeptical that this will be the case. If not, I do not believe that an under secretary in one department will be able to develop and coordinate a federal strategy that will be binding on other agencies. Such an interagency process is probably better chaired and handled by the Executive Office of the President.

Section 302 of the bill transfers parts of the Department of Energy (DOE) and National Nuclear Security Administration (NNSA) to the new Department of Homeland Security (DHS). The Chairman and Ranking Member have tried to revise the Administration's original bill and narrow the scope and clarify the purpose of these transfers. DOE and NNSA will continue to conduct critical national security missions—most notably stockpile stewardship of the nation's nuclear arsenal and non-proliferation programs. These roles will not be part of the DHS mission. The committee made several important changes to emphasize that only those programs and activities directly related to homeland security, and not part of DOE and NNSA's other important national security missions, are to be transferred. But most of the scientists in DOE and NNSA wear several hats and work multiple projects. Singling out those who work only on homeland security and do nothing else related to other national security will be virtually impossible.

I commend the committee's approach to this matter, but I am concerned that the bill language could lead to the transfer of more programs and activities than the committee intends, either because the Administration interprets the legislation differently or because it changes the names or scopes of the programs identified in Section 302. The legislation is silent on the definition of "homeland security," complicating the task of identifying those programs "directly related to homeland security." It does not specify what should occur should the Secretary of Energy and the Secretary of DHS disagree on a transfer, an easily foreseeable circumstance. In addition, the legislation contains no reporting requirements to Congress during the transition phase, which will make it difficult for Congress to oversee the transition and intervene if it strongly objects to a particular transition proposal.

In addition, setting a deadline of September 30, 2003 for completion of the transition phase when the Administration's proposed legislation set no such date may create undue pressure that will complicate rather than ease the arduous task of merging different entities into one. I hope our committee will continue to assess these issues throughout the legislative process and will closely monitor the transfers from DOE and NNSA throughout the transition phase.

Section 305 of the bill requires the Secretary of DHS to establish a "center of excellence" for homeland security at one of the three national security laboratories, Lawrence Livermore, Los Alamos, or Sandia. This may be wise, but many federal labs and the private sector can be useful in developing needed homeland security technology, and the center should not become a monopoly that stifles

competition. One of the reasons for the Manhattan Project's success was that Oppenheimer staunchly opposed the compartmentalization that General Groves insisted upon. Care must also be taken to ensure that DOE and NNSA personnel at this "center of excellence" working on other critical national security missions—particularly stockpile stewardship and non-proliferation—are not absorbed with homeland security assignments to the detriment of other missions. I understand that the committee is continuing to consider this issue, and commend it for doing so.

Finally, I would sound a cautionary note on cost. It is difficult to believe the Bush Administration's assertions that DHS will be budget-neutral. The Congressional Budget Office estimates that H.R. 5005 as introduced will cost $3 billion more over 2003—2007 than we are currently spending. The CBO estimate assumes extremely limited transition costs, does not assume that the majority of this agency will at some point have a central headquarters or use a consistent information technology system, and it assumes that the DHS will not require increases above 2002 levels of spending to enhance homeland security. Given the large, sustained budget deficits that are forecast, the unacknowledged costs of homeland security, the ambitious ramp-up in defense spending, and the advent of the Baby Boom retirement era, Congress and the Administration must become much more candid in considering budgetary trade-offs. As meritorious as homeland security may be, this bill is indicative of a recent and disturbing trend toward committing the government to an undertaking without frankly considering how we will pay for it.

This is not a perfect bill, but the committee has made a good-faith effort in a short period of time to improve the Administration's proposal, and despite my concerns, I support it, though I do believe that the work of the committee in this area is not ending, but just beginning.

JOHN SPRATT

DISSENTING VIEWS OF CONGRESSWOMAN HEATHER WILSON

The Committee added to this bill Section 305, Administration of Programs and Activities Transferred From the Department of Energy. This section directs the Secretary of Homeland Security to establish at a national security laboratory of the National Nuclear Security Administration a center to serve as the primary location for carrying out research, development, test, and evaluation activities for the Department.

I offered an amendment, which in part would have removed this section. I withdrew the amendment with the consensus of the Committee to further develop and submit my concepts relating to strengthening the role and ability of the Department to conduct and deploy research and technology that will be a critical strategic element for securing our homeland. Those provisions have been incorporated into the bill reported by the Energy and Commerce Committee.

The Committee discussed whether any laboratory should be designated. We did not discuss which laboratory should be designated, and intentionally left that undecided. The committee made no rec-

ommendation at all in that regard nor would I have consented to such an approach.

I believe that creating a Center for Homeland Security at one of our national laboratories without giving the Department a stronger overall mission in the R&D area could undermine the ability of the Department to acquire the best available research and technology from wherever it may be available.

The Department should develop its research and technology priorities and employ the capabilities throughout the country whether at universities, in industry, at national laboratories, or in other federal agencies to best meet its objectives based on considerations of technical merit and demonstrated performance.

I want to be clear that I strongly support the use of the national laboratories, which have made and will continue making vital contributions to homeland security.

HEATHER WILSON

## COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
*Washington, DC, July 12, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR MAJORITY LEADER ARMEY: We take pride in transmitting to you herewith the recommendations of the Committee on Energy and Commerce with respect to H.R. 5005, the Homeland Security Act of 2002.

Please find enclosed (1) a Committee Print of the Committee's specific legislative recommendations, and (2) a Report on those recommendations.

The Committee on Energy and Commerce looks forward to working closely with the Select Committee on H.R. 5005. Please do not hesitate to contact us or have your staff contact Mr. David V. Marventano, the Staff Director, or Mr. Reid Stuntz, the Minority Staff Director, if we can be of assistance.

Sincerely,

W.J. "BILLY" TAUZIN,
*Chairman,*
JOHN D. DINGELL,
*Ranking Member.*

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## COMMITTEE PRINT

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Homeland Security Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:


Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—CYBERSECURITY, INFORMATION ANALYSIS, AND INFRASTRUCTURE PROTECTION

Sec. 201. Under Secretary for Cybersecurity, Information Analysis, and Infrastructure Protection.
Sec. 202. Functions transferred.
Sec. 203. Access to information.
Sec. 204. Information voluntarily provided.
Sec. 205. Federal cybersecurity program.

TITLE III—RESEARCH, DEVELOPMENT AND TECHNOLOGY SYSTEMS

Sec. 301. Under Secretary for Research, Development, and Technology Systems.
Sec. 302. Functions transferred.
Sec. 303. Conduct of certain public health-related activities.
Sec. 304. Security at Federal research laboratories.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Functions transferred.
Sec. 403. Visa issuance.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Functions transferred.
Sec. 503. Nuclear incident response.
Sec. 504. Definition.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Chief Financial Officer.
Sec. 603. Chief Information Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of human resources management system.
Sec. 731. Advisory committees.
Sec. 732. Acquisitions; property.
Sec. 733. Reorganization; transfer.
Sec. 734. Miscellaneous provisions.
Sec. 735. Authorization of appropriations.
Sec. 736. Military activities.
Sec. 737. Rule of construction regarding regulatory authority.
Sec. 738. Provisions regarding transfers from Department of Energy.

TITLE VIII—TRANSITION

Sec. 801. Definitions.
Sec. 802. Transfer of agencies.
Sec. 803. Transitional authorities.
Sec. 804. Savings provisions.
Sec. 805. Terminations.
Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Inspector General Act.
Sec. 902. Executive schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic national stockpile and smallpox vaccine development.
Sec. 906. Biological agents; Public Health Service Act.
Sec. 907. National Bio-Weapons Defense Analysis Center.

**SEC. 2. DEFINITIONS.**

The following shall apply for purposes of this Act:

(1) The term "American homeland" or "homeland" means the United States, in a geographic sense.

(2) The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) The term "Department" means the Department of Homeland Security.

(4) The term "emergency response providers" includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(5) The term "executive agency" means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(6) The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(7) The term "local government" has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(8) The term "major disaster" has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(9) The term "personnel" means officers and employees.

(10) The term "Secretary" means the Secretary of Homeland Security.

(11) The term "United States", when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

**SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

**SEC. 4. EFFECTIVE DATE.**

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

# TITLE I—DEPARTMENT OF HOMELAND SECURITY

**SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—(1) The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism; and

(C) minimize the damage, and assist in the recovery, from terrorist attacks that occur within the United States.

(2) The Secretary shall also be responsible for carrying out the functions of entities transferred to the Department as provided by law.

**SEC. 102. SECRETARY; FUNCTIONS.**

(a) SECRETARY.—(1) There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may delegate any of his functions to any officer, employee, or organizational unit of the Department;

(2) may promulgate regulations as provided in section 301 of title 5, United States Code; and

(3) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out his responsibilities under this Act or otherwise provided by law.

**SEC. 103. OTHER OFFICERS.**

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of chapter 33, subchapter 3, of title 5, United States Code.

(2) An Under Secretary for Cybersecurity, Information Analysis, and Infrastructure Protection.

(3) An Under Secretary for Research, Development, and Technology Systems.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) Not more than six Assistant Secretaries.

(b) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A General Counsel, who shall be the chief legal officer of the Department.

(2) Not more than ten Assistant Secretaries.

(3) A Director of the Secret Service.

(4) A Chief Financial Officer.

(5) A Chief Information Officer.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the department shall perform the functions specified by law for his office or prescribed by the Secretary.

# TITLE II—CYBERSECURITY, INFORMATION ANALYSIS, AND INFRASTRUCTURE PROTECTION

**SEC. 201. UNDER SECRETARY FOR CYBERSECURITY, INFORMATION ANALYSIS, AND INFRASTRUCTURE PROTECTION.**

The Secretary, acting through the Under Secretary for Cybersecurity, Information Analysis, and Infrastructure Protection , shall have responsibility for—

(1) taking (with respect to those functions established under another Act and transferred to the Secretary by this Act) or seeking to effect necessary measures to protect the key resources and critical infrastructures in the United States, in coordination with other executive agencies and in cooperation with State and local government personnel, agencies, and authorities, the private sector, and other entities;

(2) receiving and analyzing law enforcement information, intelligence, and other information in order to understand the nature and scope of the terrorist threat to the American homeland and to detect and identify potential threats of terrorism within the United States;

(3) comprehensively assessing (in addition to, and not in lieu of, assessments collected, possessed, or prepared by other executive agencies) the vulnerabilities of the key resources and critical infrastructures in the United States to a terrorist attack or other intentional act intended to substantially disrupt the functioning of such resources and infrastructures;

(4) integrating relevant information, intelligence analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) to identify protective priorities and to support protective measures by the Department (with respect to those functions established under another Act and transferred to the Secretary by this Act), by other executive agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities;

(5) developing a comprehensive national plan for securing the key resources and critical infrastructures in the United States to a terrorist attack or other intentional act intended to substantially disrupt the functioning of such resources and infrastructure;

(6) administering the Homeland Security Advisory System, exercising primary responsibility for public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures; and

(7) reviewing, analyzing, and making recommendations for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to homeland security within the Federal Government and between such government and State and local government personnel, agencies, and authorities.

**SEC. 202. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto.

(5) The energy security and assurance program and activities of the Department of Energy (including the National Infrastructure Simulation and Analysis Center), including the functions of the Secretary of Energy relating thereto.

(6) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

**SEC. 203. ACCESS TO INFORMATION.**

The Secretary shall have access to all reports, assessments, and analytical information relating to threats of terrorism in the United States, and to all information concerning the vulnerabilities of key resources and critical infrastructures, or other vulnerabilities, of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any executive agency, except as otherwise directed by the President. The Secretary shall also have access to other information relating to the foregoing matters that may be collected, possessed, or prepared by an executive agency, as the President may further provide. With respect to the material to which the Secretary has access under this section—

(1) the Secretary may obtain such material by request, and may enter into cooperative arrangements with other executive agencies to share such material on a regular or routine basis, including requests or arrangements involving broad categories of material;

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall provide to the Secretary—

(A) all intelligence reports, assessments, and analytical information relating to threats of terrorism in the United States;

(B) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary shall have access to such information; and

(C) such other material as the President may further provide; and

(3) the Secretary shall ensure that—

(A) material to which the Secretary has access under this section is protected from disclosure to the extent provided under Federal laws other than this Act, and is handled and used only for the performance of official duties;

(B) such material that is intelligence information is transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act and related procedures; and

(C) such material that is sensitive law enforcement information is transmitted, retained, and disseminated consistent with the authority of the Attorney General under applicable law.

**SEC. 204. INFORMATION VOLUNTARILY PROVIDED.**

*[Omitted from Committee consideration]*

**SEC. 205. FEDERAL CYBERSECURITY PROGRAM.**

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Cybersecurity, Information Analysis, and Infrastructure Protection, shall establish and manage a program to improve the security of Federal critical information sys-

tems, including carrying out responsibilities under paragraphs (2) and (3) of section 201 that relate to such systems.

(b) DUTIES.—The duties of the Secretary under subsection (a) are—

(1) to evaluate the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical information systems, including, as appropriate, consideration of cryptography;

(2) to provide assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems; and

(3) to coordinate research and development for critical information systems relating to supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

(c) FEDERAL INFORMATION SYSTEM SECURITY TEAM.—

(1) IN GENERAL.—In carrying out subsection (b)(2), the Secretary shall establish, manage, and support a Federal information system security team whose purpose is to provide technical expertise to civilian executive agencies to assist such agencies in securing Federal critical information systems by conducting information security audits of such systems, including conducting tests of the effectiveness of information security control techniques and performing logical access control tests of interconnected computer systems and networks, and related vulnerability assessment techniques.

(2) TEAM MEMBERS.—The Secretary shall ensure that the team under paragraph (1) includes technical experts and auditors, computer scientists, and computer forensics analysts whose technical competence enables the team to conduct audits under such paragraph.

(3) AGENCY AGREEMENTS REGARDING AUDITS.—Each civilian executive agency may enter into an agreement with the team under paragraph (1) for the conduct of audits under such paragraph of the Federal critical information systems of the agency. Such agreement shall establish the terms of the audit and shall include provisions to minimize the extent to which the audit disrupts the operations of the agency.

(4) REPORTS.—Promptly after completing an audit under paragraph (1) of a civilian executive agency, the team under such paragraph shall prepare a report summarizing the findings of the audit and making recommendations for corrective action. Such report shall be submitted to the Secretary, the head of such agency, and the Inspector General of the agency (if any), and upon request of any congressional committee with jurisdiction over such agency, to such committee.

(d) DEFINITION.—For purposes of this section, the term "Federal critical information system" means an "information system" as defined in section 3502 of title 44, United States Code, that—

(1) is, or is a component of, a key resource or critical infrastructure;

(2) is used or operated by a civilian executive agency or by a contractor of such an agency; and

(3) does not include any national security system as defined in section 5142 of the Clinger-Cohen Act of 1996.

# TITLE III—RESEARCH, DEVELOPMENT AND TECHNOLOGY SYSTEMS

**SEC. 301. UNDER SECRETARY FOR RESEARCH, DEVELOPMENT AND TECHNOLOGY SYSTEMS.**

The Secretary, acting through the Under Secretary for Research, Development, and Technology Systems, shall have responsibility for—

(1) conducting and supporting a national scientific research and development program to support the mission of the Department, except that such responsibility does not extend to human health-related research and development activities;

(2) establishing long-term research and development needs and capabilities for all elements of the Department;

(3) integrating similar research and development needs between the operating elements of the Department;

(4) aligning research and development programs with other executive agencies to reduce duplication and identify unmet needs;

(5) in consultation with other appropriate executive agencies, developing a national policy and strategic plan for, identifying priorities for, and coordinating the Federal Government's civilian efforts to identify and develop counter-

measures to chemical, biological, radiological, nuclear, and other emerging terrorist threats;

(6) establishing priorities for, conducting, and supporting national research, development, demonstration, and, as appropriate, transitional operation of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear weapons and related material;

(B) for detecting, preventing, and protecting against terrorist attacks that involve such weapons or related material; and

(C) for interoperability of communications systems for emergency response providers;

(7) establishing a central Federal repository for information relating to technologies and systems described in paragraph (6) for dissemination to Federal, State and local government and private sector personnel, agencies and authorities; and

(8) developing nonmandatory and technology-neutral standards, and providing recommendations and technical assistance as appropriate, to assist Federal, State and local government and private sector efforts to evaluate and implement the use of technologies and systems described in subparagraphs (A) and (B) of paragraph (6).

**SEC. 302. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The program under section 351A of the Public Health Service Act, and functions thereof, including the functions of the Secretary of Health and Human Services relating thereto, subject to the amendments made by section 906(3), except that such transfer shall not occur unless the program under section 212 of the Agricultural Bioterrorism Protection Act of 2002 (subtitle B of title II of Public Law 107-188), and functions thereof, including the functions of the Secretary of Agriculture relating thereto, subject to the amendments made by section 907, is transferred to the Department.

(2) Such aspects of programs and activities of the Department of Energy as relate to homeland security, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States), as follows:

(A) The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program.

(B) The nuclear smuggling programs and activities, and other programs and activities, within the proliferation detection program of the non-proliferation and verification research and development program, except that the programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated for transfer to the Department by the President.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities, and the intelligence program and activities, at Lawrence Livermore National Laboratory.

(3) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

(4) The Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto.

**SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities for such activities in collaboration with the Secretary of the Department of Homeland Security.

**SEC. 304. SECURITY AT FEDERAL RESEARCH LABORATORIES.**

*[Former section 304 transferred to title VII]*

The Secretary, in consultation with the Attorney General, shall have authority to establish standards for security at Federal civilian facilities, other than facilities of the Department of Energy, that conduct research and development to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats.

# TITLE IV—BORDER AND TRANSPORTATION SECURITY

*[Omitted from Committee consideration]*

# TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

**SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.**

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall have responsibility for—

(1) assisting in the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies;

(2) with respect to Federal emergency response providers, conducting joint and other exercises and training and evaluating performance in consultation with the heads of the relevant executive agencies;

(3) with respect to emergency response functions transferred to the Secretary by this Act, providing the Federal Government's response to terrorist attacks and major disasters;

(4) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(5) assisting in the recovery from terrorist attacks and major disasters;

(6) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(7) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(8) with respect to Federal programs that provide assistance to emergency response providers to enhance preparedness and response for terrorist attacks or major disasters—

(A) identifying preparedness priorities;

(B) evaluating the effectiveness of, and coordination among, such programs; and

(C) making recommendations to enhance the effectiveness of such programs, and to minimize inconsistencies and duplication among such programs.

**SEC. 502. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of

Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(6) To the extent provided pursuant to the amendments made by section 905, the Strategic National Stockpile of the Department of Health and Human Services.

**SEC. 503. NUCLEAR INCIDENT RESPONSE.**

(a) NUCLEAR INCIDENT RESPONSE TEAM.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack or major disaster), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) CONSTRUCTION.—Nothing in this title limits the authority of the Secretary of Energy or the Administrator of the Environmental Protection Agency to organize, train, equip, or utilize their respective entities in the Nuclear Incident Response Team, or to exercise direction, authority, and control of their respective entities when the entities are not operating as a unit of the Department.

**SEC. 504. DEFINITION.**

For purposes of this title, "nuclear incident response team" means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as Oak Ridge National Laboratory, radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform radiological emergency response and support functions.

**[SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.]**

*[The Committee Print strikes section 505.]*

# TITLE VI—MANAGEMENT

*[Omitted from Committee consideration]*

# TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

*[Omitted from Committee consideration, except section 701; 733; the addition of a section 736 (transferred from title III of the bill); and the addition of new sections 737 and 738.]*

**[SEC. 701. RESPONSIBILITIES.]**

*[The Committee Print strikes section 701.]*

**SEC. 733. REORGANIZATION; TRANSFER.**

The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only after the expiration of 90 days after providing notice of such action to the Congress, which shall include an explanation of the rationale for the action. Authority under this section does not extend to the abolition of any entity established or required to be maintained as a distinct entity by this Act, or to any entity or function transferred to the Department by this Act and established by statute.

**SEC. 736. MILITARY ACTIVITIES.**

*[Formerly was section 304]*

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other traditional military activities.

**SEC. 737. RULE OF CONSTRUCTION REGARDING TRANSFER OF AUTHORITY.**

(a) REGULATORY AUTHORITY.—With respect to regulatory authority (whether applying by order, by regulation, or by direct operation of law), this Act may not be construed as—

(1) establishing such authority for the Secretary, except to the extent that a function transferred to the Secretary by section 202, 302, 402, 403, 502, or 720 includes such authority; or

(2) altering or diminishing such authority of any other executive agency, except to the extent that a function of such agency that includes such authority is transferred to the Secretary by a section specified in paragraph (1).

(b) OTHER AUTHORITY.—With respect to authority that is not regulatory authority, this Act may not be construed as—

(1) transferring to the Secretary such authority of another executive agency, except to the extent that a function transferred to the Secretary by a section specified in subsection (a)(1) includes such authority; or

(2) altering or diminishing such authority of any other executive agency, except to the extent that—

(A) a function of such agency that includes such authority is transferred to the Secretary by a section specified in subsection (a)(1); or

(B) with respect to functions not so transferred to the Secretary, such agency is required by this Act to coordinate or collaborate with the Secretary, or to provide information or documents to the Secretary.

**SEC. 738. PROVISIONS REGARDING TRANSFERS FROM DEPARTMENT OF ENERGY.**

(a) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through contracts with the operator of a national laboratory of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the contracts of the Department of Energy with such operator.

(b) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a national laboratory of the Department of Energy but under contract with the Department of Homeland Security, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

# TITLE VIII—TRANSITION

*[Omitted from Committee consideration]*

# TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

*[Sections 901 through 904 omitted from Committee consideration]*

**SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.**

(a) IN GENERAL.—The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended—

(1) in section 121(a)(1)—

(A) by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security";

(B) by inserting "the Secretary of Health and Human Services and" between "in coordination with" and "the Secretary of Veterans Affairs"; and

(C) by inserting "of Health and Human Services" after "as are determined by the Secretary"; and

(2) in subsections 121(a)(2) and (b), by inserting "of Health and Human Services" after "Secretary" each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

**SEC. 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC HEALTH SERVICE ACT.**

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting "(as defined in subsection (l)(9))" after "Secretary";

(2) in section 351A(h)(2)(A), by inserting "Department of Homeland Security, the" before "Department of Health and Human Services"; and

(3) in section 351A(l), by inserting after paragraph (8) a new paragraph as follows:

"(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.".

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

**SEC. 907. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**

*[Omitted from Committee consideration]*

## THE RECOMMENDATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE TO THE SELECT COMMITTEE ON HOMELAND SECURITY CONCERNING H.R. 5005, THE HOMELAND SECURITY ACT OF 2002

### BACKGROUND AND NEED FOR LEGISLATION

The events of September 11, 2001, and other acts of terrorism since then, have highlighted the need for a stronger emphasis on homeland security. President Bush recognized this need by mobilizing, upgrading, and coordinating Federal resources, and by appointing Governor Tom Ridge as the Director of a newly created Office of Homeland Security to lead the effort in enhancing the security of our country and its citizens.On June 18, 2002, President Bush sent to Congress a proposed bill to establish a Department of Homeland Security. Majority Leader Dick Armey introduced the

President's bill on June 24, 2002, as H.R. 5005, the Homeland Security Act of 2002. The bill would consolidate a number of Federal agencies, offices, programs, and functions in a new Department in an effort to streamline and enhance homeland security efforts, and to apply increased direction, coordination, and focus to homeland security issues. The general concept of creating such a Cabinet-level department has been supported on a bipartisan basis. The Committee on Energy and Commerce has direct jurisdiction over much of H.R. 5005, including issues contained in Title II on cybersecurity, information analysis, and infrastructure protection; Title III on research and development programs within the Department of Energy (DOE) and the Department of Health and Human Services (HHS), and on the selection, safety and security of dangerous biological agents; Title V on emergency preparedness and response; and related provisions elsewhere in the bill.

Given the Committee's decades of experience dealing with complex public health and energy-related policy issues, and its aggressive oversight of Federal agencies in these same areas, the Committee has the primary expertise to ensure that programs within DOE and HHS are coordinated with, or transferred to, programs in the new Department of Homeland Security in a manner that best effectuates the dual goals of increasing homeland security and preserving other national priorities in the health and energy areas. Indeed, on June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188), on which this Committee spent months of careful work and thoughtful deliberation. This critical legislation will greatly enhance the structure, coordination, and effectiveness of Federal programs for bioterrorism and other public health emergency preparedness and response by building up the Nation's public health infrastructure. This Act also takes important steps to improve the safety, security, and tracking of dangerous biological agents and toxins, as well as the protection of our food and drinking water supplies.

In the area of critical infrastructure protection (including cyber security)—addressed in Title II of H.R. 5005—the Committee also has extensive expertise, as the Committee is responsible for policy and oversight of the Nation's key critical infrastructures. These include the energy and telecommunications systems, chemical, oil and gas, and nuclear facilities, and the food and drinking water supplies. The Committee has used its expertise in this area, as well as the other areas discussed above, to craft a strongly bipartisan Committee Print to enhance homeland security, and to ensure the most effective approach with respect to the new Department of Homeland Security.

## HEARINGS

On Tuesday, June 25, 2002, the Subcommittee on Oversight and Investigations held a hearing on "Creating the Department of Homeland Security: Consideration of the Administration's Proposal," focusing on the emergency preparedness and response functions proposed for transfer to the new Department. The Subcommittee received testimony from: The Honorable Tom Ridge, The White House; The Honorable Claude Allen, Deputy Secretary, De-

partment of Health and Human Services; General John A. Gordon, Administrator, National Nuclear Security Administration; Ms. Jan Heinrich, Director, Health Care and Public Health Issues, U.S. General Accounting Office; Dr. Harry C. Vantine, Program Leader, Counterterrorism and Incident Response, Lawrence Livermore National Laboratory; Mr. David Nokes, Director, Systems Assessment and Research Center, Sandia National Laboratories; Dr. Donald D. Cobb, Associate Director for Threat Reduction, Los Alamos National Laboratory; Dr. Lew Stringer, Medical Director, Division of Emergency Management, North Carolina Department of Crime Control and Public Safety; Mr. Edward P. Plaugher, Chief, Arlington County Fire Department, Executive Agent for the Washington Area National Medical Response Team; Mr. Philip Anderson, Senior Fellow, Center for Strategic and International Studies; Dr. Ronald Atlas, President-Elect, American Society for Microbiology; and Dr. Tara O'Toole, Director, Center for Civilian Biodefense Studies, Johns Hopkins University.

On Tuesday, July 9, 2002, the Subcommittee on Oversight and Investigations continued its hearing on "Creating the Department of Homeland Security: Consideration of the Administration's Proposal," focusing on the research and development and critical infrastructure activities proposed for transfer to the new Department. The Subcommittee received testimony from: Mr. Jerome Hauer, Director, Office of Public Health Emergency Preparedness, Department of Health and Human Services; Ms. Jan Heinrich, Director, Health Care and Public Health Issues, U.S. General Accounting Office; Dr. Gail Cassell, Vice President, Scientific Affairs, Distinguished Lilly Research Scholar for Infectious Diseases, Eli Lilly and Company; Dr. Margaret Hamburg, Vice President, Biological Programs, Nuclear Threat Initiative; Mr. John S. Tritak, Director, Critical Infrastructure Assurance Office, Department of Commerce; Mr. James McDonnell, Director, Energy Security and Assurance Program, Department of Energy; Dr. Samuel G. Varnado, Director, Infrastructure and Information Systems Center, Sandia National Laboratories; Dr. Donald D. Cobb, Associate Director for Threat Reduction, Los Alamos National Laboratory; Mr. Robert F. Dacey, Director, Information Security Issues, U.S. General Accounting Office; Mr. William Smith, Executive Vice President, Network Operations, BellSouth; Mr. Guy Copeland, Vice President, Information Infrastructure Advisory Programs, Federal Sector, Computer Sciences Corporation, on behalf of the Information Technology Association of America; Ms. Lynn P. Costantini, Director, Online Services, North American Electric Reliability Council; Mr. John P. Sullivan, Jr., President and Chief Engineer, Boston Water and Sewer Commission, on behalf of the Association of Metropolitan Water Agencies; Mr. Kenneth C. Watson, President, Partnership for Critical Infrastructure Security, Cisco Systems, Inc.; Mr. Jeremiah Baumann, Environmental Health Advocate, U.S. Public Interest Research Group; Mr. David L. Sobel, General Counsel, Electronic Privacy Information Center; Mr. Jason Ahearn, Assistant Commissioner, Field Operations, United States Customs Service; Ambassador Linton Brooks, Acting Administrator, National Nuclear Security Administration; Ms. Gary Jones, Director, Natural Resources and Environment Issues, U.S. General Accounting Of-

fice; Mr. Frank Panico, Manager, International Networks and Transportation, United States Postal Service; Mr. David Nokes, Director, Systems Assessment and Research Center, Sandia National Laboratories; Dr. Wayne J. Shotts, Associate Director for Nonproliferation, Arms Control and International Security, Lawrence Livermore National Laboratory; Mr. Steven W. Martin, Director, Homeland Security Programs, Pacific Northwest National Laboratory; Mr. Robert A. Bryden, Vice President, Corporate Security, FedEx Corporation; Mr. Jim Holsen, Vice President, Engineering, United Parcel Service, Inc.; and Mr. Barry Howe, Vice President, Thermo Electron Corporation.

## COMMITTEE CONSIDERATION

On Thursday, July 11, 2002, the Full Committee met in open markup session for the consideration of a Committee Print to provide recommendations to the Select Committee on Homeland Security with respect to H.R. 5005, and approved the Committee Print, without amendment, by voice vote.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short Title; Table of Contents.*

Section 1 of H.R. 5005 sets forth the title and table of contents of this Act. The Committee Print makes only technical and conforming changes to this section.

*Section 2. Definitions.*

Section 2 of H.R. 5005 sets forth the definitions for certain terms used in this Act. The Committee Print makes a change to the definition of the term "emergency response providers" to ensure that non-governmental personnel are included within the definition used in this Act.

*Section 3. Construction; Severability.*

Section 3 of H.R. 5005 sets forth a rule of construction regarding severability of the Act's provisions. The Committee Print does not make any changes to this section.

*Section 4. Effective Date.*

Section 4 of H.R. 5005 sets forth the effective date of the Act. The Committee Print does not make any changes to this section.

## TITLE I—DEPARTMENT OF HOMELAND SECURITY

*Section 101. Executive Department; Mission.*

Section 101 of H.R. 5005 establishes the Department of Homeland Security and sets forth its primary mission and responsibilities. The Committee Print alters this section of H.R. 5005 by striking subsection (b)(2)—which sets forth primary responsibilities of the Department using different language than that which is contained in subsequent titles of the bill—in order to avoid potential confusion or misinterpretation of the specific responsibilities provided to the new Department.

*Section 102. Secretary; Functions.*

Section 102 of H.R. 5005 establishes a Secretary for the new Department and sets forth the Secretary's functions and authorities. The Committee Print alters subsection (b)(2)—which authorizes the promulgation of regulations by the Secretary—by adding the phrase "as provided in section 301 of title 5, United States Code." The intent of this change is to ensure that the regulatory authority granted to the Secretary in this section is circumscribed to administrative matters relating to the organization and functioning of the Department.

*Section 103. Other Officers.*

Section 103 of H.R. 5005 sets forth other officers of the Department, including a Deputy Secretary and five Under Secretaries. The Committee Print makes only technical and conforming changes to this section.

TITLE II—CYBERSECURITY, INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

*Section 201. Undersecretary for Cybersecurity, Information Analysis and Infrastructure Protection.*

Section 201 of H.R. 5005 establishes an Undersecretary for Information Analysis and Infrastructure Protection, whose responsibilities include: receiving and analyzing law enforcement, intelligence, and other information regarding terrorist threats; comprehensively assessing the vulnerabilities of key resources and critical infrastructures in the United States; integrating relevant information, intelligence analyses, and vulnerability assessments; developing a comprehensive national plan for securing key resources and critical infrastructures in the United States; taking or seeking to effect necessary measures to protect key resources and critical infrastructures in the United States; administering the Homeland Security Advisory System; and making recommendations for improvements in the policies and procedures for sharing of law enforcement, intelligence and other information.

The Committee Print makes six changes to this section as introduced. First, the Committee Print clarifies that the Secretary's responsibility to comprehensively assess critical infrastructure vulnerabilities is a function that is in addition to, and not in lieu of, assessments collected, possessed, or prepared by other executive agencies. Second, the Committee Print clarifies that the responsibilities of the Secretary in this section to assess critical infrastructure vulnerabilities and to develop a national plan for securing those infrastructures are related to threats to those infrastructures posed by "a terrorist attack or other intentional act intended to substantially disrupt the functioning of such resources and infrastructures." Third, the Committee Print clarifies that the Secretary's responsibility for public advisories is limited to those relating to terrorist threats. Fourth, the Committee Print renames the Undersecretary for Information Analysis and Infrastructure Protection, as proposed in H.R. 5005, to the "Undersecretary for Cybersecurity, Information Analysis and Infrastructure Protection,"

in order to emphasize the role of the Department relating to cybersecurity.

Fifth, by striking the word "primary" before "responsibility"in the first sentence of this section as introduced, the Committee Print makes clear that the Secretary's responsibilities do not alter or diminish the authority of another executive agency, except to the extent that a function of such agency that includes such authority is transferred to the Department under this Act. Finally, in sections 201(1) and 201(4), the Committee Print clarifies that the Secretary's authority to "take" necessary measures and to "support protective measures by the Department" is limited to those functions established under another Act and transferred to the Department by this Act.

*Section 202. Functions Transferred.*

Section 202 of H.R. 5005 transfers to the Department the following functions or programs of other executive agencies: the National Infrastructure Protection Center of the Federal Bureau of Investigation (FBI) (other than the Computer Investigations and Operations Section); the National Communications System at the Department of Defense (DOD); the Critical Infrastructure Assurance Office of the Department of Commerce (DOC); the Computer Security Division of the National Institute of Standards and Technology (NIST); the National Infrastructure Simulation and Analysis Center (NISAC) of the Department of Energy (DOE); and the Federal Computer Incident Response Center of the General Services Administration (GSA).

The Committee Print makes one change to this section from H.R. 5005, as introduced. The Committee Print includes the transfer of the DOE energy security and assurance program in section 202, moving it from section 303 of H.R. 5005. The Committee recognizes that the NISAC, which is operated jointly by Sandia National Laboratories and Los Alamos National Laboratory, has been established as part of the energy security and assurance program at DOE. Rather than transferring the NISAC and its functions to the Undersecretary for Cybersecurity, Information Analysis and Infrastructure Protection, and also separately transferring the energy assurance and security program to the Undersecretary for Research, Development and Technology Systems, the Committee Prints consolidates the transfer of both programs in section 202.

*Section 203. Access to Information*

Section 203 of H.R. 5005 provides the Secretary with access to all reports, assessments, and analytical information relating to threats of terrorism in the United States, and to information concerning the vulnerabilities of key resources and critical infrastructures, or other vulnerabilities, of the United States to terrorism that may be collected, possessed, or prepared by any executive agency. In addition, this section requires all executive agencies to promptly provide, regardless of whether the Secretary has requested, all intelligence reports, assessments and analytical information relating to threats of terrorism in the United States, all information concerning infrastructure and other vulnerabilities, and all information relating to significant and credible threats of ter-

rorism in the United States, whether or not such information has been analyzed. Section 203 also requires the Secretary to ensure that such information is protected from unauthorized disclosure.

The Committee Print makes two changes to section 203 of H.R. 5005, as introduced. First, it changes section 203 by eliminating the requirement for all executive agencies to provide, regardless of whether requested, all information concerning infrastructure and other vulnerabilities of the United States to terrorism. The Committee is concerned that the phrase "all information concerning infrastructure" included in section 203(2)(B) of H.R. 5005 is overly broad in scope, and that requiring all such information to be submitted to the Secretary automatically, including in situations where the Secretary has not requested such information, could inundate the Secretary with information and make it more difficult to identify the most significant vulnerabilities to terrorism of critical infrastructures in the United States. As a result, the Committee strikes the provision from the bill requiring the delivery of such information regardless of whether the Secretary has requested it; however, the Secretary retains the authority to request such information. Second, the Committee Print clarifies that the Secretary's obligation to protect from unauthorized disclosure information to which the Secretary has access under this section means that the Secretary shall ensure that such information is protected from disclosure to the extent provided under Federal laws other than this Act.

*Section 204* Omitted from Committee consideration.

*Section 205. Federal Cybersecurity Program.*

There is no comparable provision in H.R. 5005. Section 205 of the Committee Print creates a new Federal cybersecurity program. Section 205 directs the Secretary to establish and manage a program to improve the security of Federal critical information systems. It establishes three duties for the Secretary. First, the Secretary is responsible for evaluating the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical systems, including, as appropriate, consideration of cryptography. Second, the Secretary is responsible for providing assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems. Third, the Secretary is responsible for coordinating research and development to enhance the security of critical information systems, including supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

Section 205 also establishes, as part of the program to improve security of Federal critical information systems, a Federal Information System Security Team to provide technical expertise to civilian executive agencies by conducting cybersecurity audits of civilian executive agency information systems (other than national security systems), in accordance with agreements between the Secretary and the head of such agencies. This team will be comprised of computer security technical experts who will conduct tests of the effectiveness of logical access controls of interconnected computer sys-

tems and networks of civilian executive agencies and contractors, including penetration tests and other vulnerability assessment techniques on Federal critical information systems.

The Committee includes section 205 in the Committee Print because greater emphasis is needed on information security of Federal critical information systems, and on research and development to enhance security of the Nation's critical information systems. Over the past several years, the Committee has conducted a series of investigations, including information security reviews at HHS, DOE, the Department of Commerce (DOC), and the Environmental Protection Agency (EPA). The U.S. General Accounting Office (GAO) has performed many of the information security audits for the Committee, and has documented the results of its penetration testing in a series of reports that found pervasive computer security weaknesses.

Moreover, many of the Nation's critical infrastructures are controlled and maintained using process control, operations, and maintenance technologies, called supervisory access control and data acquisition (SCADA) systems. These are information systems and computer networks that serve command and control functions for such critical infrastructures as electric power distribution and drinking water systems. The Committee supports the transfer of the National Infrastructure Simulation and Analysis Center to the Department of Homeland Security and recognizes the work of Sandia and Los Alamos National Laboratories in the area of SCADA systems. As part of its cybersecurity program under section 205, the Committee encourages the Secretary to develop a program to identify and address potential vulnerabilities of SCADA systems.

TITLE III—RESEARCH, DEVELOPMENT, AND TECHNOLOGY SYSTEMS

*Section 301. Under Secretary for Research, Development and Technology Systems.*

Section 301 of H.R. 5005 creates an Under Secretary for Chemical, Biological, Radiological and Nuclear Countermeasures, whose principal responsibilities include: conducting a national research and development program to support the mission of the Department; coordinating Federal civilian efforts to identify, develop, and demonstrate countermeasures and technologies to protect against chemical, biological, radiological, and nuclear terrorist threats; and establishing guidelines for state and local government efforts to implement such countermeasures.

The Committee Print makes several significant changes to section 301. First, it changes the title of this officer to the Under Secretary for Research, Development and Technology Systems in order to reflect the principal responsibilities assigned to the Under Secretary, and to emphasize the critical role of research, development, and technology in the new Department. Second, the Committee Print clarifies that the Department will not conduct human health-related research and development activities (for reasons more fully described in section 303), but will nonetheless play an important role in identifying priorities and developing national policy and a strategic plan for such research as it pertains to the threats of biological, chemical, radiological, and nuclear terrorism. The Com-

mittee notes that other executive agencies shall continue to carry out their similar responsibilities under existing authorities, and the new Department shall consult closely with such agencies in carrying out its planning and coordination roles. Third, the Committee Print adds additional responsibilities to the Secretary with respect to research and development within and for the Department, and among its various elements.

Moreover, the Committee Print directs the Secretary to establish, acting through the Under Secretary, a central Federal repository to receive and, as appropriate, review solicited and unsolicited submissions relating to homeland security-relevant technologies and systems developed by the Department, universities and other academic institutions, other governmental agencies, and the private sector. The purpose of this repository is to serve as a centralized clearinghouse for commercial, governmental, and other technology developers, and for the dissemination of information about available technologies and systems to appropriate Federal, state and local governments, emergency response providers, and private sector users of such technologies and systems. The Under Secretary shall also recommend to the Secretary changes necessary to improve policies relating to the acquisition of information about governmental, commercial, and other homeland security technologies, and regarding the procurement of those technologies. Finally, the Committee Print gives the Secretary responsibility for developing nonmandatory and technology-neutral standards, and providing recommendations and technical assistance as appropriate, to assist the government and private sector in evaluating and implementing the use of such technologies.

*Section 302. Functions Transferred.*

Section 302 of H.R. 5005 transfers specific functions and programs from other executive agencies to the new Department, specifically (1) the select agent program of HHS for the possession and transfer of dangerous biological agents and toxins; (2) various DOE research, development, and assessment programs relating to chemical, biological, radiological and nuclear agents; and, (3) two other research centers from DOD and the Department of Agriculture (USDA).The Committee Print amends the transfer of the HHS select agent program by making it conditional upon the transfer of the overlapping select agent program of USDA to the new Department, as well as upon a continuing consultation role for the Secretary of HHS in all aspects of the program. While the Committee recognizes the disadvantages to transferring the HHS select agent program from a scientific, research-oriented agency to a department whose focus is combating terrorism, the Committee believes that, on balance, the advantages of transferring the program will outweigh the disadvantages, provided that the companion program currently at USDA is transferred as well. If both programs are transferred to a single department, it will enhance the coordination and joint registration and regulatory system required under the Public Heath Security and Bioterrorism Preparedness and Response Act of 2002. However, if the agricultural select agent program remains at USDA, then the Committee views the transfer of the HHS program to the new Department as only exacerbating the

existing coordination problems by involving yet a third government agency (since the HHS consultation role will and must continue).

With respect to the DOE programs, the Committee Print modifies this category of transfers to the new Department by emphasizing that only those aspects of these programs that are related to homeland security would be transferred to the new Department. The Committee recognizes that many of these programs serve vital interests and responsibilities of the Department of Energy, and thus care must be taken to ensure that DOE is not left without critical abilities and resources, and that unrelated programs are not transferred.

*Section 303. Conduct of Certain Public Health-Related Activities.*

Section 303 of H.R. 5005 provides that, except as the President otherwise may direct, the Secretary shall carry out his responsibilities for civilian, human health-related biological, biomedical, and infectious disease defense research and development through HHS, under agreements with the HHS Secretary; may transfer funds to the HHS Secretary for carrying out such research; and has the authority to establish the research and development program and set its priorities, in consultation with the HHS Secretary. It also permits similar arrangements between the new Department and other executive agencies.

The Committee Print revises section 303 in accordance with amendments made to section 301, which clarify that the new Department will not have authority to conduct human health-related research and development. In recognition of the fact that the new Department will have important intelligence, threat, and vulnerability-related information necessary for the identification of certain research priorities, the Committee Print provides that the Secretary of HHS shall set priorities in collaboration with the Secretary of the Department of Homeland Security with respect to human health-related research and development activities on countermeasures for chemical, biological, radiological, and nuclear terrorist threats. The Committee Print also eliminates the transfer of funds provision in this section.

The reasons for these changes are substantial. The Committee understands, based on testimony from Governor Ridge, that it was not the intent behind the Administration's proposal in this area to grant the new Secretary authority to conduct or unilaterally direct the research and development programs carried out by HHS through the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC). However, the original statutory language of section 303 appears to grant such authority. The Committee's amendments seek to ensure that the primary responsibility for such research remains with HHS, while requiring that the HHS Secretary collaborate with the Secretary of Homeland Security with respect to setting priorities for research activities involving countermeasures for chemical, biological, radiological, or nuclear terrorism. As experts with GAO emphasized in testimony before the Committee on H.R. 5005, much of the terrorism-related research currently being performed by HHS, through NIH and CDC, is dual-purpose in nature, and the Committee believes it would be counter-productive to separate such purposes, even if

it could be done. Accordingly, the Committee believes it would be inappropriate for the Homeland Security Department to control this research agenda. Similar concerns have been expressed by a wide range of national, state, and local health and research-related associations. The approach adopted by the Committee Print responds to such concerns.

The Committee also believes it would be unwise, unnecessary, and administratively cumbersome for the funds for such activities to be appropriated in the first instance to the new Department, only to be "contracted" back to HHS for further distribution to NIH, CDC, and the hundreds of grant recipients conducting such research. The Committee understands the need and desire of the Administration to improve the coordination of funding on such research activities across the Federal government. But the Committee believes that such coordination can occur without the control of HHS funds that H.R. 5005 contemplates, by providing in section 301 an explicit grant of authority to the new Secretary to coordinate all Federal civilian research efforts in this area. Indeed, under the original Administration proposal, the new Secretary would not receive control over the substantial research funds of other agencies that conduct research activities similar to those of HHS, including the Departments of Defense, Veterans' Affairs, and Agriculture, the Central Intelligence Agency, and others. Given that fact, the Committee does not believe that budgetary control is necessary with respect to HHS research dollars in order to ensure such coordination.

*Section 304. Security at Federal Research Laboratories.*

The Committee Print moves section 304 of H.R. 5005, entitled "Military Activities," to section 736 of this Act without further change, and creates a new section 304 regarding security at Federal civilian research laboratories. The Committee Print adopts the concept for this section from section 505(a)(1) of H.R. 5005, which the Committee understands to grant certain authorities to the new Secretary with respect to security-related enhancements to certain HHS research facilities. The Committee Print revises the language to ensure that the scope of the new Secretary's authority is broadened to include all Federal civilian research facilities (except for those of the Department of Energy), but appropriately limits such authority to setting standards for the security of facilities conducting research to identify and develop countermeasures to chemical, biological, radiological, or nuclear terrorism.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Title IV was omitted from Committee consideration.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

*Section 501. Under Secretary for Emergency Preparedness and Response.*

Section 501 of H.R. 5005 creates an Under Secretary for Emergency Preparedness and Response, whose principal responsibilities include enhancing the preparedness of emergency response providers at the Federal, state and local levels for terrorist attacks,

major disasters, and other emergencies; managing the Federal government's response to terrorist attacks and major disasters, including directing certain response assets under the Department's control and coordinating other Federal response resources; assisting in the recovery from such attacks or disasters; establishing standards and conducting joint and other exercises and training for the Federal nuclear incident response teams; and developing and promoting acquisition of interoperable communications technology for emergency response providers.

The Committee Print makes modifications to section 501 of H.R. 5005, including adding a new paragraph (8) that provides the Secretary with additional responsibilities with respect to Federal assistance programs to enhance the preparedness of state and local emergency response providers for terrorist attacks. Specifically, the Secretary will have the responsibility to identify preparedness priorities for all such programs (including those run by HHS), to evaluate the effectiveness and coordination of such programs to eliminate inconsistencies and duplication, and to make recommendations to enhance the effectiveness of such programs.

Through amendments to sections 501(3) and (4), the Committee Print ensures that the new Homeland Security Department will have the responsibility for coordinating all Federal response resources in the event of a terrorist attack or major disaster. Importantly, however, the Committee Print eliminates any suggestion that the new Department will itself direct programs that are under the jurisdiction of other executive agencies. The Committee believes such language could supercede authorizations, duties, and responsibilities under other laws, such as the Public Health Service Act, which provide specific responsibilities and duties to other executive agencies and their officers. The Committee believes that such responsibilities should remain with such agencies and officials, unless those duties are expressly and specifically transferred to the new Department.

*Section 502. Functions Transferred.*

Section 502 of H.R. 5005 transfers specific functions and programs from other executive agencies to the new Department, including the Federal Emergency Management Agency (FEMA), and other emergency preparedness and response functions from the Departments of Justice and Health and Human Services. The latter category includes, from HHS, the Office of the Assistant Secretary for Public Health Emergency Preparedness, the Office of Emergency Preparedness, the National Disaster Medical System, the National Strategic Stockpile, and the Metropolitan Medical Response System.

The Committee Print transfers all of the offices and programs transferred in H.R. 5005, as introduced, with certain modifications. Subsection 502(5) of the Committee Print provides for a more limited transfer of authorities from HHS, by retaining at HHS the coordination, liaison, and other functions of the Office of the Assistant Secretary for Public Health Emergency Preparedness. The specific functions of the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System are transferred, along with the responsibilities of

the Secretary and Assistant Secretary relating thereto. Nothing in this section should otherwise reduce the responsibilities of the HHS Secretary or the Assistant Secretary for Public Health Emergency Preparedness. HHS retains primary responsibility for public health emergency preparedness. Moreover, all provisions of the Public Health Service Act continue to apply to officials at HHS, except for any provisions that specifically apply directly to the Office of Emergency Preparedness, the National Disaster Medical System, or the Metropolitan Medical Response System.

*Section 503. Nuclear Incident Response.*

Section 503 of H.R. 5005 provides that the Secretary may call into action certain nuclear incident response elements of DOE and EPA, in response to a terrorist attack, major disaster, or other emergency.The Committee Print provides clarifications concerning the nuclear incident response team and the new working relationship among the Department of Homeland Security, DOE, and EPA. Except as specifically directed by the Secretary of Homeland Security in connection with an actual or threatened terrorist attack or major disaster, the EPA Administrator and the DOE Secretary will continue to exercise control of their respective entities in the Nuclear Incident Response Team for responding to emergencies and other incidents. For example, the radiological and emergency response team at EPA has previously responded to emergencies at the Hanford Nuclear Reservation in Washington, and in Los Alamos, New Mexico. Similarly, DOE's radiological assistance teams often deploy at the request of state or local officials to investigate potential radiation exposures or contamination events. The Committee intends for DOE and EPA to continue to exercise their responsibilities to respond to emergencies and other incidents as in the past, without the need for direction by the Secretary of Homeland Security.

*Section 504. Definition.*

Section 504 of H.R. 5005 defines the term "nuclear incident response team" as used in section 503. The Committee Print makes minor clarifications to this section.

*Section 505. Conduct of Certain Public Health-Related Activities.*

Section 505 of H.R. 5005 provides that the new Secretary shall carry out certain responsibilities through HHS, under agreements with the HHS Secretary, including (1) preparedness-related construction, renovation and enhancement of security for research and development or other facilities owned or occupied by HHS, and (2) public health-related activities carried out by HHS to assist state and local governments and other non-Federal public and private health care and educational entities to plan or prepare for chemical, biological, radiological, and nuclear events and other public health emergencies.

Section 505, as introduced, was eliminated in the Committee Print. The Committee found this provision, as introduced, highly problematic. While it is not unusual to have statutory provisions requiring a Cabinet-level official to have responsibilities that flow through certain offices within the jurisdiction of that Cabinet-level

official, section 505 gave broad legal responsibilities to the new Secretary of Homeland Security to operate through the Secretary of HHS—a co-equal Cabinet-level official. Moreover, section 505, as introduced, states that the new Secretary of Homeland Security "shall have authority to establish the preparedness and response program, including the setting of priorities." The Committee is unclear how this provision would impact the duties and authorities of the Secretary of HHS with respect to public health emergency preparedness and response, including grants and contracting. Those responsibilities are specifically spelled out under the Public Health Service Act, and the Committee believes that they should not be superceded unless there are direct amendments to that Act.

The Committee also is concerned because the language in section 505 is unclear in several other respects: would the new Secretary have the authority to exercise discretion under the provisions of the Public Health Services Act, or even supercede or modify those provisions with respect to "the emergency preparedness and response program"? What would be the power to "establish" the program? Would this include the authority to declare public health emergencies? If grants were issued, would they need approval from both the Secretary of Homeland Security and the Secretary of HHS? The uncertainty created by this approach is substantial, and could cause damage to a recently implemented HHS preparedness program that has been winning praise from States, local governments, and public health and emergency response communities across the Nation.

The Committee does not believe it is feasible to separate legal responsibilities from the statutes that authorize those responsibilities. Nor is it feasible to separate the officials charged with administering those responsibilities from the personnel required to do so. The Committee believes these activities are properly authorized under the Public Health Service Act and administered by the Secretary of HHS. Neither a wholesale transfer of these responsibilities, nor some unusual splitting of responsibilities in this area, is warranted.

It also has become clear during the Committee's months of deliberation on bioterrorism legislation that many public health emergency preparedness programs serve dual roles that cannot easily be separated from core public health activities. The approach of the Committee Print on this issue is amply supported in hearings reviewing this legislation. At a hearing on June 25, 2002, Dr. Tara O'Toole, M.D., Director, Center for Civilian Biodefense Studies, Johns Hopkins University, stated:

> Instead of consolidating similar programs, the proposed agency would split bioterrorism preparedness programs from the related but more encompassing mission of public health protection which is DHHS' main objective * * * [T]he country would be forced to create parallel workforces: one in Homeland Security for bioterrorism preparedness and another in DHSS for 'normal' public health functions.

The same argument was made by Ms. Janet Heinrich, Director, Health Care Issues, at GAO:

> Although the HHS programs are important for homeland security, they are just as important to the day-to-day needs of public health agencies and hospitals, such as reporting on disease outbreaks and providing alerts to the medical community. The current proposal does not clearly provide a structure that ensures that both the goals of homeland security and public health will be met.

The Committee Print provides an overall coordination role for the new Secretary of Homeland Security, applying to all executive agencies, with respect to Federal response resources in the event of a terrorist attack or major disaster. The Committee believes, however, that the Secretary of HHS must maintain the primary role in public health preparedness. Both Secretaries, of course, report to the President, and executive authority to create task forces or issue executive orders, consistent with other provisions of law, remain as the traditional way to ensure coordination, cooperation, and collaboration among Cabinet officials.

The Committee also questions why funding authority for certain research facilities at HHS should be transferred to the new Department. Obviously, there are many Federal research facilities and a need for increased security in many areas. As discussed above, the Committee Print provides a role for the new Department in establishing standards for security at certain Federal civilian research facilities. The assignment to the new Department of specific responsibilities for construction, renovation and enhancement of certain HHS facilities is not appropriate.

## TITLE VI—MANAGEMENT

Title VI was omitted from Committee consideration.

## TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS

### Subtitle A—Coordination with Non-Federal Entities

*Section 701. Responsibilities.*

Section 701 of H.R. 5005 sets forth responsibilities of the Secretary relating to coordination with state and local governments, the private sector, and other entities, with respect to planning, equipment, training and exercise activities, Federal communications systems, and Federal grant programs for emergency response providers.

The Committee Print strikes section 701. The Committee recognizes the critical importance of Federal coordination with state and local governments and private sector entities with respect to homeland security matters, especially emergency response functions. However, the Committee views the responsibilities set forth in this section as either duplicative of responsibilities contained in other titles of the act, or inconsistent with such responsibilities, particularly as amended by the Committee Print.

Subtitle B—Inspector General

*Section 710.* Omitted from Committee consideration.

Subtitle C—United States Secret Service

*Section 720.* Omitted from Committee consideration.

Subtitle D—General Provisions

*Section 730.* Omitted from Committee consideration.

*Section 731.* Omitted from Committee consideration.

*Section 732.* Omitted from Committee consideration.

*Section 733. Reorganization; Transfer.*

Section 733 of H.R. 5005 provides that the Secretary may reorganize the Department or reallocate its functions among officers of the Department, including establishing, discontinuing, or consolidating organizational units within the Department. The section prohibits the abolition of any entity established or required to be maintained as a distinct entity under this Act, or the abolition of any entity or function transferred to the Department and established by statute unless 90 days notice is given to Congress.

The Committee Print alters the authorities in section 733 by requiring notice to Congress of any changes to the organization of, or allocation of functions within, the Department, and expressly prohibits the abolition of entities established or required to be maintained as a distinct entity under this Act, or the abolition of any entity or function transferred to the Department and established by statute, regardless of any notification to Congress.

*Section 734.* Omitted from Committee consideration.

*Section 735.* Omitted from Committee consideration.

*Section 736. Military Activities.*

Section 736 (originally, section 304 of H.R. 5005) provides that the Secretary shall have no authority to engage in military activities. The Committee Print does not alter this language.

*Section 737. Rule of Construction Regarding Transfer of Authority.*

There is no comparable provision in H.R. 5005. The Committee Print adds a new Section 737 to provide a rule of construction regarding the transfers of authority made by this Act. Importantly, the rule of construction ensures that, with respect to regulatory authority, this Act does not establish such authority for the Secretary, except to the extent that a function transferred to the Secretary by sections 202, 302, 402, 403, 502 or 720 of this Act includes such authority. This rule of construction also ensures that the Act does not alter or diminish the regulatory authority of any other executive agency, except to the extent that a function of such agency that includes such authority is transferred to the Secretary by one of the sections listed in the preceding sentence. Section 737 also provides a similar rule of construction for other non-regulatory authorities that are transferred to the Secretary.

*Section 738. Provisions Regarding Transfers from Department of Energy.*

There is no comparable provision in H.R. 5005. The Committee Print adds a new section 738 to clarify how the transfers of authority from DOE to the new Department will occur with respect to the activities being carried out for DOE by its national laboratories. In such circumstances, the two Secretaries shall ensure that the contracts between the Department of Homeland Security and the operators of the national laboratories are separate from the general management contracts between DOE and the operators of the national laboratories. Given that the national laboratories performing work for the Department of Homeland Security will continue to utilize DOE facilities, section 738 further provides that the new Department shall reimburse DOE for costs relating to such activities. However, the new Department shall not be required to pay administrative or personnel costs of DOE or its contractors in excess of the amount that the Secretary of Energy normally pays for an activity carried out by such a contractor. Through this provision, the Committee intends to permit direct tasking of the national laboratories by the new Department with respect to those transferred activities. The Department also may contract with the operators of such laboratories to perform other tasks through the existing "work for others" program of DOE.

TITLE VIII-TRANSITION

Title VIII was omitted from Committee consideration.

title ix-conforming and technical amendments

*Section 901.* Omitted from Committee consideration.

*Section 902.* Omitted from Committee consideration.

*Section 903.* Omitted from Committee consideration.

*Section 904.* Omitted from Committee consideration.

*Section 905. Strategic National Stockpile and Small-Pox Vaccine Development.*

Section 905 of H.R. 5005 makes technical and conforming changes to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, consistent with the transfer of certain authorities over the National Strategic Stockpile from HHS to the new Department in section 502 of this Act. The Committee Print does not alter the language of this section.

*Section 906. Biological Agent Registration; Public Health Service Act.*

Section 906 of H.R. 5005 makes technical and conforming changes to the Public Health Service Act with respect to the program established in section 351A of such Act governing the registration of dangerous biological agents and toxins, if the program is transferred to the new Department. The Committee Print makes minor modifications to this section to address errors in the original text.

*Section 907.* Omitted from Committee consideration.

## COMMITTEE ON FINANCIAL SERVICES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
*Washington, DC, July 11, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR CHAIRMAN ARMEY: The terrorist attacks of September 11th demonstrated the need for improved security and prevention measures to combat acts of violence against U.S. citizens. The Financial Services Committee has contributed to the fight against terrorism by cutting off funding for organizations that finance terrorist activities and strengthening existing money laundering laws through the USA PATRIOT Act (P.L. 107-56). Additionally, the Committee has sought to prevent catastrophic economic losses from such attacks through the passage of the Terrorist Risk Protection Act (H.R. 3210).

The Financial Services Committee has done an extensive review of its jurisdiction as it relates to the President's proposal to create a Department of Homeland Security (H.R. 5005). The Committee strongly supports the efforts of the President and the Select Committee on Homeland Security to create a new executive department that will coordinate resources in an effort to prevent attacks on the United States.

While the Committee will not mark up H.R. 5005, it would like to identify its jurisdiction over this legislation and reserve its right to consider the issues within our jurisdiction in the future. The Committee believes that it is in the best position to continue oversight of these programs, regardless of what executive department they are located.

The following represents our views about how the programs within our jurisdiction will integrate into the new Department of Homeland Security:

### FEDERAL EMERGENCY MANAGEMENT AGENCY

The Committee has jurisdiction over three programs within the Federal Emergency Management Agency (FEMA) that would become the responsibility of the new department created through H.R. 5005. These programs are: the National Flood Insurance Programs, the Defense Production Act and the Emergency Food and Shelter Program. FEMA's mission is to prevent, prepare for, respond to, and recover from disasters of all types. The Committee believes that the expertise of FEMA in consequence management is critical to the function of the proposed Office of Homeland Security.

*National Flood Insurance Program*—The National Flood Insurance Act of 1968 (42 USC 4001 et seq.) created the National Flood Insurance Program (NFIP) and authorized the Director of FEMA to administer the Federal Insurance Administration (FIA). The FIA provided insurance protection for properties which are vulnerable to floods, but not insured by the private sector. Prior to passage of this act, insurance companies generally did not offer coverage for flood disasters because of the high risks involved. The legislation as amended in 1973 and 1994 authorized the FIA and Mitigation Directorate to administer the NFIP. In 2001, the FIA and the Mitigation Directorate were brought together into a single organization, the Federal Insurance and Mitigation Administration (FIMA).

FIMA has expertise in risk assessment, mitigation or loss prevention and insurance. Efforts such as resident education and flood mapping enable FEMA to reach out to residents in flood prone regions and protect against preventable losses. These services work in conjunction with the NFIP and have proven successful in building relationships in regions where floods are a threat to property and lives. The Committee understands that FIMA's risk assessment programs are now being designed to assist local communities to identify and address their vulnerabilities from natural and man-made disasters.

The Committee views FEMA's efforts to prevent and mitigate damage from floods as critical to the protection of lives and property. The Committee further believes that it is important that the NFIP and the FIMA to work together efficiently in the prevention of losses from floods and from other disasters and for that reason should for the time being remain within FEMA as it is transferred to the Department of Homeland Security. FEMA's programs may be reviewed by the Committee in the future in an effort to improve their operation and to ensure that users are properly served.

*The Defense Production Act*—The goal of the Defense Production Act of 1950 (50 USC App. 2062) (DPA) is to ensure that the United States has the ability to mobilize industrial and other civilian resources in support of national defense an civil emergency preparedness maintain military readiness when there is a threat to national security. The DPA is essential to the protection of the United States in so far as it uses economic tools to provide uninterrupted supplies of industrial resources in times of military crisis and civil emergency.

The DPA authorizes FEMA to coordinate Federal agencies' decisions concerning the provision of transportation services, the priority availability of civil defense resources, materials, services and facilities to ensure the dispersal of such resources in the interest of national defense. The DPA was reauthorized by the Financial Services Committee in 2001 for two years (P.L. 107-47).

The Committee believes the DPA is an important mechanism for the protection of the United States and should be located in the new Department of Homeland Security. Through the President's proposal, the DPA will be very important to mobilize national defense and civil emergency preparedness resources in the event of a terrorist attack or in an effort to ensure that there is adequate preparation to prevent such an attack.

*The Emergency Food and Shelter Program*—The Emergency Food and Shelter Program (EFSP) (P.L. 100-77) is governed by a national board consisting of several charitable organizations and is chaired by FEMA. The goal of this program is to allocate Federal funds for the provision of food and shelter. The national board awards funds to jurisdictions based upon a formula. Further, a small portion of the overall award is allocated by formula to state set-aside committees which then allocate funds to jurisdictions based upon the criteria they feel is most appropriate. The EFSP seeks to ensure that allocations are quickly made to neediest areas of the country, that the public and private sectors cooperate, and that decisions are made at the local level. In 2001, $140 million in aid was distributed through this program.

It can be argued that the operation of food and shelter programs has little to do with the protection of the United States from terrorist activities. However, the EFSP is a critical program which supplies food and shelter to needy people in emergency situations, and to ensure that the program remains effective and functional, the Committee recommends that it remain within FEMA at this time. The President's 2003 budget proposal calls for the EFSP to be moved from FEMA to the Department of Housing and Urban Development. This could be an effective allocation of Federal resources to aid those in need, and the Committee may examine the viability of such a move in the future.

## UNITED STATES SECRET SERVICE

The Committee commends the President for his proposal to move the United States Secret Service (USSS) to the new Department and maintain it as a "distinct entity" outside the four major jurisdictional cylinders established under the new Secretary. The Committee believes that the long dual-role history of the Service—investigative and protective—combined with its more recently developed expertise in preventing and investigating cyber crimes and its core mission of protecting the financial system of the United States, make the USSS uniquely suited to draw from and augment the work of the other component agencies of the new Department.

Since its founding in 1865 as the first investigative arm of the United States government and the protector of the integrity of U.S. currency, the Service has been the primary guardian of the country's financial services—banks, currency and payment systems. The added mission of personal protection, dating to 1901 following the assassination of President William McKinley, built on the Service's expertise at preventing crimes. That mission statement was expanded again in 1984 with passage of the Omnibus Crime Control Act (P.L. 98-473), adding jurisdiction over new crimes involving identity theft, access devices such as credit cards, and computer crimes. In 1994, further jurisdiction was added, recognizing USSS expertise investigating fraud against financial institutions. Today, the Secret Service has over 6,000 employees, an annual budget of just over $1 billion and 125 field offices across the United States and around the world.

*Infrastructure Protection*—Springing from the Service's personal-protection role is the unique and important duty to protect critical infrastructures of the United States. The Committee believes this

role should become an enhanced portion of the Service's duties at the new Department.

The events of September 11 reinforce lessons the Committee learned in efforts to protect against financial-system and infrastructure failures due to the Year 2000 problem: that in an increasingly computerized and inter-connected world, the failure of a seemingly innocuous system can cause panic, deaths or economic calamity. Recent news stories indicating that Al Qaeda operatives have been probing the cyber security of U.S. power systems and dams as well as banks and defense systems show that the lesson has not been lost on terrorists, either. A serious compromise of these electronic networks could wreak havoc on our economy, law enforcement, military, health care, transportation and emergency services.

*Cyber Crime*—Cyber criminals have devised sophisticated programs and techniques to defraud both consumers and private industry through electronic means. In response, the Secret Service has developed new tools to combat the growing areas of cyber terrorism, financial crime and computer fraud. These techniques include the widely respected Electronic Crimes Special Agent Program and the series of task forces modeled on the New York Electronic Crimes Task Force that are now under development. The former program provides specialized training to select agents in all areas of electronic crimes, qualifying those personnel as experts in the forensic examination of electronic evidence. The USA PATRIOT Act, to which the Committee contributed a major title, authorized the Secret Service to establish a nationwide network of cyber crime task forces, based on the New York model that uses an innovative approach allowing local, state and national law enforcement agencies to combine their resources and experience with those of prosecutors, the private sector and academic institutions to deter electronic crimes of all sorts. In recent months, the Service has launched similar task forces across the country. The Committee strongly supports these efforts and believes they can be instrumental in preventing crimes that could disrupt the financial systems of the United States.

*Anti-Counterfeiting*—The Service's original mission in 1865 was to block the counterfeiting of the newly issued national currency, and while the mission does not today have the profile of protecting the President, it remains a core function. Indeed, the USSS anti-counterfeiting efforts may be even more important today than they were a century ago, as the U.S. dollar is the reserve currency of the world, is the official currency of a number of countries, and is the default currency of many more. The public's faith in the integrity of the dollar is at the heart of the stability of the U.S. economy.

Thus, the Committee believes that the Service's efforts to combat counterfeiting deserve continued and enhanced emphasis. Recent discoveries in Colombia of credible counterfeits of the new U.S. one-dollar coin and in both Colombia and in areas of Eastern Europe of counterfeit plants producing or ready to produce both U.S. banknotes and the new Euro banknotes indicate the magnitude of the problem. The Committee believes that the continued growth of counterfeiting by personal computer in the U.S. eventually will be

mirrored overseas, where counterfeiting still mostly is done on presses and is thus somewhat easier to interdict. Also, the Committee believes that the establishment of more overseas field offices so that agents can gather and act on information first-hand—rather than relying on other Federal law agencies or other countries' law-enforcement—will increase the ability to stop counterfeiting.

Given the demonstrated nexus between counterfeiting, drug-running, arms-smuggling and terrorism, the Committee strongly believes that trying to staff anti-counterfeiting and other anti-crime and threat-assessment efforts for all of Central and South America and the Caribbean (except Colombia) from a single office in Miami is simply not practical anymore. The Committee further believes that the Service's recent agreement with Europol to jointly police against counterfeiting is an important move and a model for other law enforcement that should be encouraged. The Committee stands ready to enhance other anti-counterfeiting law, as appropriate.

*Financial Crimes*—The Service's pedigree as the only Federal investigative unit until some of its agents were detailed to help form the Federal Bureau of Investigation in 1907, and its position within the Department of the Treasury, naturally led to a good relationship with the financial services industry and successes in stopping financial crimes. In the 1980s, with the advent of relatively new technologies such as computers and credit cards came a wave of an entirely new sort of bank and financial fraud, and the 1984 Act created three new criminal statutes—Title 18, Sections 1028, 1029 and 1030—to deal with fraud in conjunction with identity documents, access device fraud and computer crimes, giving the Service major new authorities and clear jurisdiction. The USA PATRIOT Act cemented the Service's jurisdiction over Sections 1030 and 1344. The Committee believes that the Service's role in these areas, as well as the assessment of threats against financial services companies and the protection of that infrastructure—communications, power, etc.—vital to those companies, is invaluable and should be emphasized.

*Monetary Security*—While the President's legislative proposal for the new Department does not suggest consolidating the Treasury Department's monetary security forces into the new Department, the Committee believes that this could be an important step that should be closely examined. Currently the United States Mint and the Bureau of Engraving and Printing (BEP) maintain separate security forces that over the years have had varying degrees of success. The Committee feels that transferring this mission to the Secret Service in the new Department would have important benefits both to the security of the facilities that produce the country's currency and coins, and also to the security of U.S. gold reserves held at Fort Knox, currently under the supervision of the Mint. Noting that the BEP currently relies on the USSS heavily for consultations on its security arrangements, the Committee further believes that moving this mission to the Service may allow the currency-production arms of the Treasury to concentrate on what they do best and allow the Service to train its newest agents in a different form of protection detail, ultimately enhancing their abilities.

The Financial Services Committee strongly supports the efforts of the President and the Select Committee on Homeland Security

to protect our citizens from terrorist attacks. While the Committee waives its referral of H.R. 5005, its Members stand ready to assist in the structuring of the envisioned Department of Homeland Security if such assistance is requested.

Yours truly,

MICHAEL G. OXLEY,
*Chairman,*
JOHN J. LAFALCE,
*Ranking Member.*

## COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
*Washington, DC, July 15, 2002.*

Hon. RICHARD K. ARMEY
*Majority Leader and Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR CHAIRMAN ARMEY: On Thursday, July 11, the Committee on Government Reform reported H.R. 5005, the Homeland Security Act of 2002, as amended. After adopting a number of amendments to help the Department better fulfill its mission, the Committee ordered the bill reported with a favorable recommendation by a vote of 30 to 1. I am transmitting the final Committee bill to you, along with a summary of key provisions adopted by the Committee.

The purpose of this letter is to share with you and other Members of the Select Committee my views on a number of important issues debated before the Committee.

*1. Transfer of Key Agencies:*

If the Department of Homeland Security is to be successful in its mission of better protecting the American people from threats of terrorism, we must take a comprehensive approach. While it is not possible to include within the Department every Federal agency that plays a role in homeland security, we must include those agencies that play a pivotal role in border security, transportation security and recovery from terrorist attacks. The proposal sent to Congress by President Bush takes just such an approach.

Last week, the Government Reform Committee cast several votes in support of the President's recommendations to shift key agencies and functions to the new Department. The Committee voted to retain in H.R. 5005 provisions transferring the Coast Guard, the Secret Service, the Federal Emergency Management Agency and the INS to the Homeland Security Department. I believe that the Committee was correct to do so, and I voted to retain these key provisions of the President's plan.

Supporters of the valuable work done by each of these agencies correctly note that they perform important functions not directly related to countering terrorist threats. It is my view that these functions can continue to be performed successfully within the Homeland Security Department. In fact, the Committee amended H.R. 5005 to make very clear that the Department's mission includes these activities. At the same time, those homeland security functions directly related to preventing terrorist attacks will benefit immeasurably from improved coordination and cooperation within the new Department. I urge you to retain these fundamental building blocks of the President's plan in H.R. 5005.

*2. Visa Issuance:*

I have been a strong supporter of transferring the function of visa issuance from the State Department to the Homeland Security Department in its entirety. I continue to support this position, although it did not prevail in Committee.

The Government Reform Committee's oversight of the State Department has produced ample evidence that the Consular Services Bureau lacks a meaningful commitment to security concerns. When the State Department learned that one of its consular officials was selling visas for cash and sex in Communist China, they swept the problem under the rug. Instead of firing him, or having him prosecuted, they brought him back to Washington and placed him in a highly sensitive position -- reviewing visa applications from countries such as Iran and Iraq that are state sponsors of terrorism. Despite the fact that this official, Charles Parish, took the Fifth before the Committee, the State Department vigorously defended its inexplicable decision-making in this case.

More recently, we have learned that the Department established a program known as 'Visa Express' in Saudi Arabia, which allows Saudis to apply for passports through travel agencies. Of the 15 Saudi nationals who took part in the hijackings of September 11, three received their U.S. visas through Visa Express. Because they were able to apply through travel agents, U.S. consular officials never interviewed them. Although the Visa Express program is a clear example of placing convenience ahead of security, the State Department continues to defend it.

In just the last few weeks, we have learned that more than 70 U.S. visas were illegally sold to foreign nationals in Qatar. This is another pertinent example of the State Department's inability to police itself.

State Department officials have made their view clear that diplomatic considerations play an important role in the consideration of visa applications, and the weight of the evidence makes it equally clear that such concerns will continue to outweigh security concerns as long as this function resides at the State Department.

After lengthy debate, the Government Reform Committee adopted a compromise provision that would authorize the Secretary of Homeland Security to place a Homeland Security official in each consulate. In addition, it clarifies that the final decision to reject a visa rests with the Homeland Security Department. I support this provision. I continue to prefer the more direct approach of shifting this function in its entirety to the Homeland Security Department. However, given the contrary votes in three House committees, its adoption appears unlikely. I would request that you and your colleagues on the Select Committee review the Government Reform Committee's provision requiring the State Department to discontinue its Visa Express program in Saudi Arabia, and maintain it in the legislation when it goes to the House floor.

*3. Personnel Provisions:*

The Administration has asked for a great deal of flexibility in managing the personnel of the Department. In an undertaking this large, some flexibility is necessary and appropriate. The Committee adopted alternative language that gives the Administration flexi-

bility where it is needed most, while maintaining appropriate safeguards that have strong support on the Committee. The Committee has authorized the new Secretary to adjust pay levels to correct disparities in pay between agencies being inherited by the Department. The Committee has authorized the Secretary to put in place a system for the expedited suspension and removal of personnel for national security reasons, subject to a hearing. The Committee has also authorized the Secretary to develop a human resources demonstration program to help the Department recruit and retain a talented workforce. While we believe that these provisions are sound, we are open to further discussions with the Administration to refine this legislative language.

I want to draw your attention to two specific issues of concern in this area. First, Congresswoman Morella offered an amendment, which was adopted by one vote, limiting the President's ability to restrict collective bargaining rights at the Homeland Security Department on national security grounds. While I believe that the amendment was well-intentioned, I do not believe that it sets good policy, and I urge you to reconsider it.

Under current law, the President has the authority to restrict collective bargaining at governmental units that are critical to national security. This is an authority that has been used judiciously by both Republican and Democratic Presidents since the late 1970s. The Morella amendment would weaken this Presidential authority at the Department of Homeland Security. Ironically, at a time when national security concerns are paramount, this provision would give the President less authority over the Department of Homeland Security than he has over any other Department. While I have great respect for the author of this amendment, I believe that this language should not be included in the final version of H.R. 5005.

Second, the Committee bill includes language requiring the Administration to adhere to current pay ceilings for members of the Executive Schedule and Senior Executive Service. Efforts to exempt individual agencies from these limitations in the past have been controversial. They have cost the taxpayers significant sums of money while failing to produce better management at those agencies. This Committee has opposed piecemeal exemptions from pay ceilings as a matter of fiscal responsibility, and I recommend that the Select Committee retain these provisions in the final bill.

*4. Indemnification:*

The Committee adopted provisions authorizing Federal agencies to indemnify contractors from liability when they provide the government with anti-terrorism technology necessary to protect critical infrastructures. The Secretary of Homeland Security is authorized to provide similar indemnification for such technology purchased by state and local governments.

These provisions were added to address a serious problem. While private-sector companies are developing advanced technology to help prevent terrorist attacks, they are unable to sell it to government agencies because they cannot obtain sufficient liability insurance. At a time when terrorist organizations are targeting the United States for lethal attacks, we must lower the barriers to the

use of this technology. We have an obligation to do everything we can to ensure that we reduce our vulnerabilities to terrorist attacks.

This legislation is modeled after a law that has successfully provided for indemnification of commercial space launches for decades. It is fiscally responsible and has been constructed to protect the best interests of the government and the public. Before offering indemnification, agency heads would be required to ensure that contractors have obtained as much private insurance coverage in the private marketplace as reasonably possible. Agency heads would be required to determine that the technology is effective, and would be used to protect critical infrastructures. Indemnification would have to be approved jointly by the head of an agency and the Director of OMB, who would be responsible for protecting the overall financial interests of the Federal government.

These indemnification provisions have been crafted in a responsible way to address a serious problem. I hope that the Select Committee will approve them and retain them in H.R. 5005.

Thank you for your consideration of my views on these important issues, and for your consideration of the legislation reported by the Government Reform Committee. If you have any questions, or are in need of any assistance, please don't hesitate to contact me.

Sincerely,

DAN BURTON,
*Chairman.*

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MEMORANDUM

From: Chairman Dan Burton
To: Majority Leader Dick Armey
Date: July 15, 2002
Re: Amendments to H.R. 5005

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On Thursday, July 11, the Committee on Government Reform marked up H.R. 5005, the Homeland Security Act of 2002. After 15 hours of debate, during which the Committee considered 37 amendments, the Committee voted 30-1 to report H.R. 5005 to the Select Committee with a favorable recommendation.

The purpose of this memo is to formally transmit the Committee's bill to the Select Committee, and to outline the most significant actions taken at the mark-up. The Committee cast a series of votes in support of the President's proposals to shift key agencies to the Homeland Security Department, including the Coast Guard, the INS, FEMA and the Secret Service. The Committee also adopted a number of important management reforms and safeguards to ensure that the new Department is able to function efficiently and fulfill its mission.

*Organizational and Policy Provisions Adopted by the Committee:*

1. In a series of votes, the Committee voted to maintain the structural integrity of the proposed Department of Homeland Security. The Committee voted to shift into the Department the Coast Guard, the Immigration and Naturalization Service, the Federal Emergency Management Agency, and the Secret Service.

2. The Committee adopted a modified approach for the inclusion of the Department of Agriculture's Animal and Plant Health Inspection Service.

3. The Committee approved a modification to the Administration's proposal regarding visa issuance, authorizing the Secretary of Homeland Security to place Homeland Security personnel at each consulate to monitor the review of visa applications. The Committee also added a provision clarifying that the final authority to reject a visa application rests with the Secretary of Homeland Security. Finally, the Committee voted to prohibit the continuation of the ″Visa Express″ program in Saudi Arabia.

4. The Committee voted to require the President to develop an annual threat assessment and a strategic plan related to Homeland Security. Also approved was a requirement that the President produce a biannual report to Congress on homeland security preparedness.

5. The Committee adopted provisions allowing Federal agencies to indemnify from liability contractors that provide anti-terrorism technology to protect critical infrastructures. The Secretary of Homeland Security would also have the authority to indemnify contractors providing such technology to state and local governments, with the concurrence of the Director of the Office of Management and Budget.

6. The Committee voted to add the provisions of legislation introduced by Representative Saxby Chambliss (GA) to improve the sharing of information with state and local governments.

7. The Committee voted to add the provisions of legislation introduced by Representative Tom Davis (VA) to improve information security.

8. The Committee voted to maintain provisions in H.R. 5005 to exempt from the Freedom of Information Act information provided to the Homeland Security Department regarding the vulnerability of critical infrastructures. The Committee also adopted an amendment to extend a similar exemption to other Federal agencies.

9. The Committee voted to shift the Port Security functions of the Department of Transportation, along with reporting requirements, to the Homeland Security Department.

10. The Committee added the Secretary of Homeland Security to the National Security Council.

11. The Committee also defined ″terrorism″ and ″homeland security,″ and expanded the mission statement to reflect the importance of non-terrorist functions and the need to respond to natural disasters.

*Management Initiatives:*

1. The Committee voted to create a Deputy Secretary for Management to oversee critical management functions of the Department. Also created by the amendment were a Deputy Secretary for Policy, and a Principal Deputy Secretary.

2. The Committee reduced the number of assistant secretaries authorized by the bill from 16 to 12.

3. The Committee adopted an amendment designating an Assistant Secretary for Narcotics Interdiction.

4. The Committee replaced the Administration's provision related to personnel flexibility with a three-part plan. First, the Secretary would be authorized to adjust pay rates to resolve pay disparities as the Department is being assembled. Second, the Secretary would be authorized to suspend or remove employees of the Department on national security grounds, subject to a hearing. Third, the Secretary would be authorized to conduct a demonstration project creating a new human resources system designed to help recruit and retain talented employees. The Secretary would be required to continue to comply with the Whistleblowers Protection Act, veterans' preference requirements, and other important safeguards.

5. The Committee adopted an amendment to limit the President's authority to deny collective bargaining rights to units of the new Department that have collective bargaining agreements in place. The Committee also adopted an amendment specifying that, as the Secretary adjusts pay rates to resolve pay disparities, he may not reduce pay levels of current employees.

6. The Committee revised the real property provisions of H.R. 5005 to give the Secretary flexibility in managing the Department's property while ensuring that local zoning requirements are taken into consideration and that fair market value is obtained when property is sold or leased.

7. The Committee's modification to H.R. 5005's personal services contracts provision allows the Secretary to waive pay restrictions for experts and consultants for urgent homeland security needs.

8. With regard to the Federal Advisory Committee Act, the Committee deleted provisions in H.R. 5005 exempting the Department from public meeting requirements and conflict-of-interest rules.

9. The Committee retained provisions in H.R. 5005 placing the Inspector General for Homeland Security on the same footing as Inspectors General at the Departments of Defense, Treasury and Justice. The Committee added a provision requiring notification of committees of jurisdiction in the House and Senate whenever an inspector general investigation is curtailed.

10. The Committee voted to authorize funding for the Department for five years.

11. The Committee required the Secretary to submit an organizational plan for the Department to Congress.

12. The Committee clarified that the Department may not perform prosecutorial or investigative functions unless authorized by Congress to do so.

*Other Provisions:*

The Committee also approved the following by voice votes:

1. An amendment by Congressman Horn (CA) that would establish an Intergovernmental Coordinating Council to promote effective coordination and cooperation among Federal, State and local governments on homeland security issues. The council would be chaired by the Secretary and consist of State and local governmental officials as well as officials of the Department and other federal agencies.

2. An amendment by Congressman Waxman (CA) that would establish a privacy officer in the Department. The privacy officer would be appointed by the Secretary from among senior Depart-

ment officials and would be responsible for ensuring that personally identifiable information in the possession of the Department is collected, used and disclosed in accordance with the Privacy Act.

3. An amendment by Rep. Carolyn Maloney (NY) that would give the Secretary broader authority to provide federal assistance to State and local governments following a major disaster.

4. An amendment offered by Rep. Kucinich (OH) that would offer whistleblowers new remedies against retaliation when they disclose information to Congress. This amendment would allow aggrieved employees to bring a civil action in any U.S. district court and seek damages including lost wages and benefits, reinstatement, costs and attorney fees.

5. An amendment offered by Rep. Souder (IN) that would designate one of the Department's assistant secretary positions as the Assistant Secretary for Narcotics Interdiction.

6. An amendment offered by Rep. Ose (CA) that would require the Department to issue common rules with the Department of Transportation on transportation security issues and with the Nuclear Regulatory Commission on nuclear security issues.

7. An amendment offered by Rep. Tierney (MA) that would require the Secretary to develop a plan to expeditiously deliver Potassium Iodide to individuals exposed to radiation following a nuclear power plant disaster.

8. An amendment offered by Rep. Schakowsky (IL) that would require the Secretary to report to Congress on the impact on immigration caused by the transfer of the Immigration and Naturalization Service into the new Department.

9. An amendment offered by Rep. Schakowsky (IL) that would transfer oversight responsibility for internal investigations performed by the Customs Service's Office of Internal Affairs and the Secret Service's Office of Inspections from the Inspector General at the Treasury Department to the Department of Homeland Security Inspector General.

10. An amendment offered by Rep. Schakowsky (IL) that would establish an Office for Civil Rights and Civil Liberties to review and evaluate allegations of civil rights, civil liberties and racial and ethnic profiling abuses by Department officials.

11. An amendment offered by Rep. Schakowsky (IL) that would establish a Citizenship and Immigration Services Ombudsman to assist individuals and employers on citizenship and immigration matters.

12. An amendment offered by Rep. Tom Davis (VA) that would authorize a pilot program for flexible research and development negotiating authority to attract high tech companies to perform advanced research projects.

13. An amendment offered by Rep. Tierney (MA) that would limit the use of the personnel authorities granted to the Transportation Security Administration to employees working for or carrying out the functions of the Transportation Security Administration in the new Department.

14. An amendment offered by Rep. Danny Davis (IL) that would establish an Office of Small and Disadvantaged Business Utilization in the Department.

## 15. An amendment offered by Rep. Kucinich (OH) and Rep. Barr (GA), establishing minimum standards for private security guards.

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H.R. 5005

Showing the Amendment Recommended by the Committee on Government Reform

Strike all after the enacting clause and insert the following:

**SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Homeland Security Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:


Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Establishment; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION; CRITICAL INFRASTRUCTURE INFORMATION

Subtitle A—Information Analysis and Infrastructure Protection

Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
Sec. 202. Functions transferred.
Sec. 203. Access to information.

Subtitle B—Critical Infrastructure Information

Sec. 211. Short title.
Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.
Sec. 216. Applicability.

TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES

Sec. 301. Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures.
Sec. 302. Functions transferred.
Sec. 303. Conduct of certain public health-related activities.
Sec. 304. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Functions transferred.
Sec. 403. Visa issuance.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Interagency common rules.
Sec. 406. Immigration functions.
Sec. 407. Citizenship and Immigration Services Ombudsman.
Sec. 408. Seaport security functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Functions transferred.
Sec. 503. Nuclear incident response.
Sec. 504. Definition.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Minimum requirements for private security officers.

TITLE VI—MANAGEMENT

Sec. 601. Deputy Secretary for Management.
Sec. 602. Chief Financial Officer.
Sec. 603. Chief Information Officer.
Sec. 604. Establishment of Office for Civil Rights and Civil Liberties.

TITLE VII—COORDINATION; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS; ACQUISITIONS; INFORMATION SHARING; PROPERTY

Subtitle A—Coordination With Non-Federal Entities

Sec. 701. Responsibilities.
Sec. 702. Intergovernmental Coordinating Council.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Human resource management.
Sec. 731. Labor-management relations.
Sec. 732. Reporting requirements.
Sec. 733. Requirement to develop comprehensive risk management assessment and homeland security strategy.
Sec. 734. Military activities.
Sec. 735. Reorganization; transfer.
Sec. 736. Miscellaneous provisions.
Sec. 737. Authorization of appropriations.

Subtitle E—Acquisitions

Sec. 740. Research and development projects.
Sec. 741. Personal services.
Sec. 742. Special streamlined acquisition authority.
Sec. 743. Program to encourage and support innovative solutions to enhance homeland security.
Sec. 744. Risk sharing and indemnification.
Sec. 745. Procurements from small businesses.

Subtitle F—Information Sharing

Sec. 750. Short title.
Sec. 751. Findings and sense of Congress.
Sec. 752. Facilitating homeland security information sharing procedures.
Sec. 753. Report.
Sec. 754. Authorization of appropriations.
Sec. 755. Authority to share grand jury information.
Sec. 756. Authority to share electronic, wire, and oral interception information.
Sec. 757. Foreign intelligence information.
Sec. 758. Information acquired from an electronic surveillance.
Sec. 759. Information acquired from a physical search.

Subtitle G—Property

Sec. 761. Real property management.
Sec. 762. Criteria for using authorities.
Sec. 763. Outleases.
Sec. 764. Review and revision of transactions by administrator.
Sec. 765. Transactional reports.

TITLE VIII—TRANSITION

Sec. 801. Definitions.
Sec. 802. Reorganization plan.
Sec. 803. Transitional authorities.
Sec. 804. Savings provisions.
Sec. 805. Terminations.
Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Executive department.
Sec. 902. Executive Schedule.
Sec. 903. Inspector General.
Sec. 904. Chief Financial Officer.
Sec. 905. Chief Information Officer.
Sec. 906. United States Secret Service.
Sec. 907. Coast Guard.
Sec. 908. Strategic national stockpile and smallpox vaccine development.
Sec. 909. Select agent registration.
Sec. 910. Membership of Secretary on National Security Council.
Sec. 911. National Bio-Weapons Defense Analysis Center.

TITLE X—INFORMATION SECURITY

Sec. 1001. Information security.
Sec. 1002. Management of information technology.
Sec. 1003. National Institute of Standards and Technology.
Sec. 1004. Information security and privacy advisory board.
Sec. 1005. Technical and conforming amendments.
Sec. 1006. Construction.
Sec. 1007. Effective date.

TITLE XI—ADDITIONAL RESPONSIBILITIES OF SECRETARY

Sec. 1101. Homeland security events.
Sec. 1102. Standards and reporting.
Sec. 1103. Special commission to review air quality.

**SEC. 2. DEFINITIONS.**

The following shall apply for purposes of this Act:

(1) The term "American homeland" or "homeland" means the United States, in a geographic sense.

(2) The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) The term "Department" means the Department of Homeland Security.

(4) The term "emergency response providers" includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(5) The term "executive agency" means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(6) The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(7) The term "homeland security" means the deterrence, detection, preemption, prevention, and defense against terrorism targeted at the territory, sovereignty, population, or infrastructure of the United States, including the management of the programs and policies necessary to respond to and recover from terrorist attacks within the United States.

(8) The term "local government" has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(9) The term "major disaster" has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) The term "personnel" means officers and employees.

(11) The terms "terrorism" and "terrorist attack" mean the calculated attack or threat of attack against persons, property, or infrastructure to inculcate fear and intimidate or coerce a government, the civilian population, or any segment of such population, in the pursuit of political, religious, or ideological goals.

(12) The term "Secretary" means the Secretary of Homeland Security.

(13) The term "United States", when used in a geographic sense, means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

**SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

**SEC. 4. EFFECTIVE DATE.**

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

# TITLE I—DEPARTMENT OF HOMELAND SECURITY

**SEC. 101. ESTABLISHMENT; MISSION.**

(a) ESTABLISHMENT.—There is established a Department of Homeland Security as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—(1) The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States; and

(D) act as a focal point regarding natural and man-made crises and emergency planning, and carry out all functions of entities transferred to the Department as provided by law.

(2) In carrying out the mission described in paragraph (1), and as further described in this Act, the Department's primary responsibilities shall include—

(A) information analysis and infrastructure protection;

(B) chemical, biological, radiological, nuclear, and related countermeasures;

(C) border and transportation security;

(D) emergency preparedness and response; and

(E) coordination (including the provision of training and equipment) with other executive agencies, with State and local government personnel, agencies, and authorities, with the District of Columbia, with the private sector, and with other entities.

(3) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

**SEC. 102. SECRETARY; FUNCTIONS.**

(a) SECRETARY.—(1) There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may delegate any of his functions to any officer, employee, or organizational unit of the Department, unless otherwise provided by this Act;

(2) may promulgate such regulations as necessary to carry out the functions and duties of the Department as set forth in this Act;

(3) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out his responsibilities under this Act or as otherwise provided by law;

(4) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other; and

(5) shall take reasonable steps to consolidate field offices of the Department in a manner that promotes efficiency without diminishing effectiveness.

(c) CONSTRUCTION.—This Act may not be construed as establishing any regulatory authority for the Secretary, except to the extent that the regulatory authority established by another Act is transferred to the Secretary by this Act. Nor shall this Act be construed as altering the regulatory authority of any other executive agency, except to the extent that a regulatory authority of another executive agency is expressly transferred to the Department by this Act.

**SEC. 103. OTHER OFFICERS.**

(a) DEPUTY SECRETARIES; UNDER AND ASSISTANT SECRETARIES; CFO.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of chapter 33, subchapter 3, of title 5, United States Code.

(2) A Deputy Secretary for Policy.

(3) A Deputy Secretary for Management.

(4) An Under Secretary for Information Analysis and Infrastructure Protection.

(5) An Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures.

(6) An Under Secretary for Border and Transportation Security.

(7) An Under Secretary for Emergency Preparedness and Response.

(8) Not more than four Assistant Secretaries.

(9) A Chief Financial Officer.

(b) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(d) PRIVACY OFFICER.—The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of new technologies sustains, and does not erode, the protections provided in all statues relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in systems of records is handled in full compliance with fair information practices under applicable provisions of section 552a of title 5, United States Code, popularly known as the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government for consistency with section 552a of title 5, United States Code;

(4) conducting a privacy impact assessment of proposed rules when the Secretary deems such assessment appropriate; and

(5) preparing a report to the Congress on an annual basis that—

(A) identifies any complaints received from the public regarding privacy violations by the Department; and

(B) describes how the Department addressed such complaints, and internal controls implemented by the Department to improve privacy protections.

(e) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A General Counsel, who shall be the chief legal officer of the Department.

(2) Not more than eight Assistant Secretaries, one of which shall be an Assistant Secretary for Narcotics Interdiction.

(3) A Director of the Secret Service.

(4) A Chief Information Officer.

(f) ASSISTANT SECRETARY FOR NARCOTICS INTERDICTION.—The Assistant Secretary for Narcotics Interdiction shall—

(1) coordinate policy and operations within the Department and with other Federal departments and agencies to interdict the entry of illicit drugs into the United States;

(2) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(3) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.

(g) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the department shall perform the functions specified by law for his office or prescribed by the Secretary.

# TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION; CRITICAL INFRASTRUCTURE INFORMATION

## Subtitle A—Information Analysis and Infrastructure Protection

### SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall have responsibility for the following:

(1) Receiving and analyzing law enforcement information, intelligence, and other information in order to understand the nature and scope of the terrorist threat to the American homeland and to detect and identify potential threats of terrorism within the United States.

(2) Comprehensively assessing the vulnerabilities of the key resources and critical infrastructures in the United States.

(3) Integrating relevant information, intelligence analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) to identify protective priorities and support protective measures by the Department, by other executive agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities.

(4) Developing a comprehensive national plan for securing the key resources and critical infrastructures in the United States.

(5) Taking or seeking to effect necessary measures to protect the key resources and critical infrastructures in the United States, in coordination with other executive agencies and in cooperation with State and local government personnel, agencies, and authorities, the private sector, and other entities.

(6) Administering the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other executive agencies) providing specific warning information to State and local

government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.

(7) Reviewing, analyzing, and making recommendations for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to homeland security within the Federal Government and between such government and State and local government personnel, agencies, and authorities.

**SEC. 202. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto and the functions of the National Institute of Standards and Technology and the Secretary of Commerce relating to information security established by the amendments made by title X.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy, including the functions of the Secretary of Energy relating thereto.

(6) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

**SEC. 203. ACCESS TO INFORMATION.**

The Secretary shall have access to all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b), and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any executive agency, except as otherwise directed by the President. The Secretary shall also have access to other information relating to the foregoing matters that may be collected, possessed, or prepared by an executive agency, as the President may further provide. With respect to the material to which the Secretary has access under this section—

(1) the Secretary may obtain such material by request, and may enter into cooperative arrangements with other executive agencies to share such material on a regular or routine basis, including requests or arrangements involving broad categories of material;

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall provide to the Secretary—

(A) all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b);

(B) all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed;

(C) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary shall have access to such information; and

(D) such other material as the President may further provide; and

(3) the Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

# Subtitle B—Critical Infrastructure Information

**SEC. 211. SHORT TITLE.**

This subtitle may be cited as the "Critical Infrastructure Information Act of 2002".

**SEC. 212. DEFINITIONS.**

In this subtitle:

(1) AGENCY.—The term "agency" has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term "covered Federal agency" means the Department of Homeland Security and any agency designated by the Department or with which the Department shares critical infrastructure information including the following:

(A) The Department of Justice.
(B) The Department of Defense.
(C) The Department of Commerce.
(D) The Department of Transportation.
(E) The Department of the Treasury.
(F) The Department of Health and Human Services.
(G) The Department of Energy.
(H) The Environmental Protection Agency.
(I) The General Services Administration.
(J) The Federal Communications Commission.
(K) The Federal Energy Regulatory Commission.
(L) The Nuclear Regulatory Commission.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term "critical infrastructure information" means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term "critical infrastructure protection program" means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term "Information Sharing and Analysis Organization" means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term "protected system"—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term "voluntary", in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term "voluntary"—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

**SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.**

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of the Department of Homeland Security.

(3) The head of a covered Federal agency by notice published in the Federal Register. This duty may not be delegated.

**SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.**

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, if analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term "express statement", with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: "This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002."; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.—Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investiga-

tion made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more that one year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under subsection (e), to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

**SEC. 215. NO PRIVATE RIGHT OF ACTION.**

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

**SEC. 216. APPLICABILITY.**

Nothing in this subtitle shall apply to any information submitted in the course of lobbying any covered Federal agency.

# TITLE III—CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES

**SEC. 301. UNDER SECRETARY FOR CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES.**

The Secretary, acting through the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures, shall have responsibility for the following:

(1) Securing the people, infrastructures, property, resources, and systems in the United States from acts of terrorism involving chemical, biological, radiological, or nuclear weapons or other emerging threats.

(2) Conducting a national scientific research and development program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding, and conducting research and development relating to the same.

(3) Establishing priorities for, directing, funding, and conducting national research, development, and procurement of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) for detecting, preventing, protecting against, and responding to terrorist attacks that involve such weapons or material.

(4) Establishing guidelines for State and local government efforts to develop and implement countermeasures to threats of chemical, biological, radiological, and nuclear terrorism, and other emerging terrorist threats.

(5) Promulgating guidelines regarding the health risks of short-, medium-, or long-term exposure to acutely or sub-actuely toxic chemicals, biological, and radioactive materials that may be released into the environment as a consequence of a major disaster that the Secretary determines constitutes a homeland security event under section 1101. The Director of the Centers for Disease Control and Prevention shall provide the Under Secretary with such information and analysis as may be necessary for the Under Secretary to promulgate guidelines under this section in the case of biological materials.

(6) Providing for standardized and rapid data collection and analysis and communication regarding environmental risks following any major disaster that the Secretary determines constitutes a homeland security event under section

1101, in coordination with the Administrator of the Environmental Protection Agency or the Director of the Centers for Disease Control and Prevention (in the case of a release of biological agents) to coordinate all data collection and monitoring and dissemination of analysis regarding the release of pollutants and contaminants (including biological agents) into the environment by reason of any such disaster.

(7)(A) Providing awards of grants, contracts, and cooperative agreements in consultation with the Secretary of Health and Human Services to public and nonprofit private entities for the purpose of collecting public health data during and in the aftermath of public health emergencies, and conducting research with respect to such data, in order to develop medical therapies and other public health strategies for assisting victims of such emergencies in recovering from the emergencies; and

(B) Providing for the approval of applications for awards under subparagraph (A) in advance of public health emergencies in order that, upon the occurrence of such an emergency, the Under Secretary can promptly begin disbursing amounts from the awards and the recipients of the awards can promptly begin carrying out the purpose described in subsection (a).

**SEC. 302. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The select agent registration enforcement programs and activities of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

(2) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program.

(B) The nuclear smuggling programs and activities, and other programs and activities directly related to homeland security, within the proliferation detection program of the non-proliferation and verification research and development program, except that the programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) The energy security and assurance program and activities.

(E) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(F) The Environmental Measurements Laboratory.

(G) The advanced scientific computing research program and activities, and the intelligence program and activities, at Lawrence Livermore National Laboratory.

(3) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

**SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) CERTAIN ACTIVITIES CARRIED OUT THROUGH HHS.—(1) Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(2) With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

(b) TRANSFER OF FUNDS.—With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as he may elect to carry out through the Department of Health and Human Services (including the Public

Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

**SEC. 304. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.**

(a) TRANSFER REQUIRED.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—Upon the transfer of the Plum Island Animal Disease Center, the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure Department of Agriculture access to the center for research, diagnostic, and other activities of the Department of Agriculture.

# TITLE IV—BORDER AND TRANSPORTATION SECURITY

**SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall have responsibility for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry.

(3) Administering the immigration and naturalization laws of the United States, including the rules governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof.

(4) Administering the customs laws of the United States.

(5) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 404.

(6) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

**SEC. 402. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto.

(2) The Immigration and Naturalization Service of the Department of Justice, including the functions of the Attorney General relating thereto.

(3) The Visa Office of the Bureau of Consular Affairs of the Department of State, including the functions of the Secretary of State relating thereto.

(4) The Coast Guard of the Department of Transportation, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of Transportation relating thereto.

(5) The Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto.

(6) The Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

**SEC. 403. VISA ISSUANCE.**

(a) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, including the authority to refuse visa applications and develop programs of training

for consular officers, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(b) AUTHORITY OF THE SECRETARY OF STATE.—

(1) The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(C) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(D) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(E) Section 104 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(F) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328; (Originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(G) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(H) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to any diplomatic and consular posts abroad to perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any or all such applications prior to their adjudication, either on the initiative of the employee of the Department of Homeland Security or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) TRAINING AND HIRING.—

(A) The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) Prior to assigning employees of the Department to perform the functions described in paragraph (1), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described in paragraph (1) and

providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(C) The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(d) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(e) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Governmental Affairs of the Senate.

(f) TERMINATION OF NONINTERVIEW PROGRAMS.—All third-party screening, interview waiver, or other noninterview programs in Saudi Arabia shall be terminated upon enactment of this Act, and no such program may be created after the date of enactment. On-site personnel of the Department of Homeland Security shall review all applications prior to adjudication. All individuals applying for a visa in Saudi Arabia must be interviewed unless on-site personnel of the Department of Homeland Security determine, in writing, and pursuant to written guidelines issued by the Secretary, that such individual is unlikely to present a risk to homeland security. Such guidelines shall be written within 30 days of the date of enactment.

**SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.**

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term "functions" does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security whenever the Secretary of Agri-

culture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary of Homeland Security under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary of Homeland Security may include as part of the agreement the following:

(A) Authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary of Homeland Security pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security funds for activities carried out by the Secretary of Homeland Security for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary of Homeland Security under this subsection may not exceed the proportion of the costs incurred by the Secretary of Homeland Security to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—During the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting "or the Department of Homeland Security" after "Department of Agriculture"; and

(B) by inserting "or the Secretary of Homeland Security" after "Secretary of Agriculture";

(2) by striking "Secretary" each place it appears (other than in sections 501(a) and 501(e)) and inserting "Secretary concerned"; and

(3) by adding at the end of section 501 the following new subsection:

"(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

"(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

"(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.".

**SEC. 405. INTERAGENCY COMMON RULES.**

The Secretary shall issue common rules with modal units of the Department of Transportation with respect to matters relating to transportation security, including with respect to the following:

(1) Air transportation security matters under the authority of the Federal Aviation Administration.

(2) Road, highway, and bridge security matters under the authority of the Federal Highway Administration.

(3) Railroad security matters under the authority of the Federal Railroad Administration.

(4) Mass transit security matters under the authority of the Federal Transit Administration.

(5) Maritime transportation security matters under the authority of the Maritime Administration.

**SEC. 406. IMMIGRATION FUNCTIONS.**

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the United States House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfer made by section 402(2) has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The median processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF THE CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of the Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfer made by section 402(2) takes effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

**SEC. 407. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.**

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the "Ombudsman"). The Ombudsman shall report directly to the Secretary. The Ombudsman shall have a background in customer service as well as immigration law. The Ombudsman may establish an office (other than the local offices described in this section) within the Department, and hire staff as appropriate, consistent with other Federal employment law .

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with citizenship and immigration services;

(2) to identify areas in which individuals and employers have problems in dealing with citizenship and immigration services personnel of the Department;

(3) to the extent possible, to propose changes in the administrative practices of the Department to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committees on the Judiciary and Government Reform of the United States House of Representatives, and the Committees on the Judiciary and Government Affairs of the Senate, on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Ombudsman has taken on improving services and responsiveness of the Department in providing citizenship and immigration services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Department who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Secretary or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Department performing immigration functions outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office;

(4) shall ensure that identifying information about individuals and employers seeking assistance is not disclosed by the Ombudsman or any employee of the Ombudsman without the consent of the individual or employer; and

(5) shall meet regularly with the Secretary (or the Secretary's delegate) to identify serious immigration service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman consistent with other Federal employment law.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Department in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSE OF RECOMMENDATIONS.—The Secretary shall establish procedures requiring a formal response to all recommendations submitted by the Ombudsman within 3 months after submission.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Department regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to any other component of the Department contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by any other component of the Department.

**SEC. 408. SEAPORT SECURITY FUNCTIONS.**

(a) TRANSFERS.—In addition to the other transfers under this title, in accordance with title VIII there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the Department of Transportation relating to port security that are authorized by the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), the International Maritime and Port Security Act (46 App. U.S.C. 1807 et seq.), and chapter 37 of title 46, United States Code.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on whether or not efforts undertaken on the development of contingency plans and procedures to prevent or respond to acts of terrorism under section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226) meet the following goals:

(1) PORT OF ORIGIN GOALS.—

(A) Increasing proactive policing of international cargo.

(B) Increasing inspection of arriving cargo based on port of origin cargo screening capability and compliance with security standards.

(C) Increasing communications with foreign governments and recommend steps to improve foreign port security and cargo screening.

(2) TRANSIT GOALS.—

(A) Developing an improved cargo identification and screening system for containerized cargo.

(B) Developing standards to improve the physical security of the cargo containers themselves, including standards for seals and locks.

(C) Developing a plan to extend the seaward jurisdiction of the Coast Guard to a point farther than three miles from shore.

(3) PORT OF ENTRY GOALS.—

(A) Developing an improved import cargo information system enabling shippers and carriers of containerized cargo to provide import cargo information 24 hours before the container is loaded on a ship destined for the United States.

(B) Developing an improved system to require ocean carriers to provide crew and passenger manifests in advance of a vessel's arrival in the United States.

(4) PORT SECURITY TECHNICAL SECURITY GOALS.—

(A) Conducting vulnerability assessments at each seaport.

(B) Conducting regular mandatory security meetings at each seaport between Federal, State, and local law enforcement organizations, the trade, and port authorities.

(C) Developing a plan that assigns first responder duties and responsibilities among Federal, State, and local government agencies and sets minimum training, drills, and antiterrorism action standards for vessel and facility personnel.

(D) Establishing a system of surveillance to safeguard against and provide the earliest possible notice of a terrorist act.

(E) Developing a system of standard security cards to be used in identifying personnel with access to sensitive areas.

(F) Developing standardized guidelines for physical, procedural, and personnel security for seaports.

(G) Developing a central database of the individuals responsible for implementing antiterrorism actions at each seaport.

(5) INSPECTIONS GOALS.—

(A) Increasing inspections based on each ship's threat potential as assessed before it is allowed to enter a United States port.

(B) Creating teams of specifically trained inspectors to assess threats.

(C) Creating teams of specially trained incident managers to manage identified threats.

(D) Developing a plan to consolidate federal inspection facilities and colocate Federal inspectors in joint facilities.

(E) Develop a plan to move remotely located inspection facilities to the docks.

# TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

**SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.**

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall have responsibility for the following:

(1) Helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies.

(2) With respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.

(3) Providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster.

(4) Aiding the recovery from terrorist attacks and major disasters.

(5) Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.

(6) Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan while maintaining the programmatic integrity of existing Federal-State-local partnerships including under the FIRE Act and the COPS program.

(7) Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

(8) Providing direct assistance with amounts appropriated by the Congress to State and local emergency responders through a block grant program that—

(A) meets short- and long-term security needs and complies with applicable laws;

(B) funds, among other activities, additional law enforcement, fire, public health and emergency resources, improving cyber and infrastructure security, and devising a homeland security plan; and

(C) provides that grants may be used to cover costs incurred for eligible activities on or after September 11, 2001, so as to allow local communities a soft match of overtime and security expenses incurred as a result of the September 11, 2001, terrorist attacks and Federal directives to secure communities thereafter.

**SEC. 502. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

**SEC. 503. NUCLEAR INCIDENT RESPONSE.**

(a) NUCLEAR INCIDENT RESPONSE TEAM.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) DELIVERY OF POTASSIUM IODIDE.—In the event of a terrorist attack, major disaster, or other emergency, the Secretary shall devise a plan to deliver Potassium Iodide (KI) to the people for whom it is intended within 4 hours after exposure to radioactive iodines from a nuclear power plant, and as expeditiously as possible to persons beyond the immediate 20-mile radius of protection.

(c) COMMON INTERAGENCY RULES.—The Secretary shall issue common rules with the Nuclear Regulatory Commission with respect to matters relating to nuclear security.

(d) CONSTRUCTION.—Nothing in this title shall be understood to limit the ordinary responsibility of the Secretary of Energy, the Administrator of the Environmental Protection Agency, and the Nuclear Regulatory Commission for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

**SEC. 504. DEFINITION.**

For purposes of this title, "nuclear incident response team" means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as Oak Ridge National Laboratory, radiological assistance functions, and related functions;

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions; and

(3) those entities of the Nuclear Regulatory Commission that perform such support and related functions.

**SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) IN GENERAL.—Except as the President may otherwise direct, the Secretary shall carry out the following responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to such Secretary in connection with such agreements:

(1) All biological, chemical, radiological, and nuclear preparedness-related construction, renovation, and enhancement of security for research and development or other facilities owned or occupied by the Department of Health and Human Services.

(2) All public health-related activities being carried out by the Department of Health and Human Services on the effective date of this Act (other than activities under functions transferred by this Act to the Department) to assist State and local government personnel, agencies, or authorities, non-Federal public and private health care facilities and providers, and public and non-profit health and educational facilities, to plan, prepare for, prevent, identify, and re-

spond to biological, chemical, radiological, and nuclear events and public health emergencies, by means including direct services, technical assistance, communications and surveillance, education and training activities, and grants.

(b) PREPAREDNESS AND RESPONSE PROGRAM.—With respect to any responsibilities carried out through the Department of Health and Human Services under this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the preparedness and response program, including the setting of priorities.

**SEC. 506. MINIMUM REQUIREMENTS FOR PRIVATE SECURITY OFFICERS.**

(a) INCREASE OF GRANTS.—The Secretary shall increase grants awarded by the Federal Emergency Management Agency to a State for purposes other than emergency relief by 10 percent if the Secretary has certified that the State meets the requirements of subsection (b).

(b) MINIMUM REQUIREMENTS.—In order to be eligible under subsection (a), the following requirements shall apply with respect to private security officers employed within the State:

(1) Each private security officer shall receive 24 hours of training before any security assignment, an additional 16 hours within 90 days of the initial security assignment, and an additional 8 hours of training each year. All training described in this paragraph shall be certified by the State.

(2) The State shall perform criminal background checks on all private security officers, including State and Federal name and fingerprint checks.

(3) No private security officer may work in the State without a license that verifies that the officer has completed the requirements of this subsection.

(4) The State shall have an advisory council regarding requirements for private security officers representing various stakeholders, including private security officers.

(5) The State shall maintain a registry of all licensed private security officers which shall be open to public inquiry.

(6) The State shall establish enforcement mechanisms that include dedicated enforcement personnel, a complaint procedure open to any member of the public, open record keeping, and the ability to fine, suspend, and revoke private security officer licenses.

(7) Whistleblower protections shall be afforded to private security officers in the State.

(c) PRIVATE SECURITY OFFICER DEFINED.—In this section, the term "private security officer" means any individual working as a contract security officer or a proprietary security officer who—

(1) advertises as providing or performs bodyguard services or otherwise guards persons or property;

(2) attempts to prevent theft or unlawful taking of goods, wares, or merchandise; or

(3) attempts to prevent the misappropriation or concealment of goods, wares, or merchandise.

(d) USER FEE.—As specified in subsection (b)(2), an association of employers of private security officers, designated for the purposes of this section by the State Attorney General, may submit fingerprints or other methods of positive identification approved by the appropriate Federal authority to the appropriate Federal authority on behalf of any applicant for a State license or certificate of registration as a private security officer or employer of private security officers. In response to such a submission, the State Attorney General may, to the extent provided by State law conforming to the requirements of the second paragraph under the heading "Federal Bureau of Investigation" and the subheading "Salaries and Expenses" in title II of Public Law 92–544 (86 Stat. 1115), exchange, for licensing and employment purposes, identification and criminal history records with the appropriate Federal authority.

# TITLE VI—MANAGEMENT

**SEC. 601. DEPUTY SECRETARY FOR MANAGEMENT.**

The Secretary, acting through the Deputy Secretary for Management, shall have responsibility for the following with respect to the Department:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

**SEC. 602. CHIEF FINANCIAL OFFICER.**

Notwithstanding section 902(a)(1) of title 31, United States Code, the Chief Financial Officer of the Department shall report to the Secretary, or to the Deputy Secretary for Management, as the Secretary may direct.

**SEC. 603. CHIEF INFORMATION OFFICER.**

Notwithstanding section 3506(a)(2) of title 44, United States Code, the Chief Information Officer shall report to the Secretary, or to the Deputy Secretary for Management, as the Secretary may direct.

**SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES.**

The Secretary shall establish in the Department an Office for Civil Rights and Civil Liberties, the head of which shall be the Director for Civil Rights and Civil Liberties. The Director shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department;

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Office; and

(3) submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of the Congress on a semiannual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described in paragraph (1) and any actions taken by the Department in response to such allegations.

# TITLE VII—COORDINATION; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; GENERAL PROVISIONS; ACQUISITIONS; INFORMATION SHARING; PROPERTY

## Subtitle A—Coordination With Non-Federal Entities

**SEC. 701. RESPONSIBILITIES.**

In discharging his responsibilities relating to coordination (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, the responsibilities of the Secretary shall include—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

(4) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

**SEC. 702. INTERGOVERNMENTAL COORDINATING COUNCIL.**

(a) ESTABLISHMENT AND PURPOSES.—The Secretary shall establish an Intergovernmental Coordinating Council to serve as an ongoing advisory forum for promoting effective coordination and cooperation among Federal, State, and local governments on matters relevant to the work of the Department. The subjects to be addressed by the Council shall include—

(1) ensuring that State and local officials have the information they need to prepare for and respond to homeland security threats;

(2) ensuring the greatest possible coordination and consistent operation of Federal homeland security programs and activities;

(3) ensuring that State and local governments provide the greatest cooperation and support for the work of the Department and other Federal agencies with respect to homeland security;

(4) ensuring that the needs and perspectives of State and local government officials are integrated into all relevant aspects of the homeland security strategies and work of the Department and other Federal agencies; and

(5) such other subjects as the Chair or Vice Chair of the Council may suggest.

(b) CHAIR AND VICE CHAIR.—The Secretary shall chair the Council and shall designate an official of a State or local government to serve as Vice Chair of the Council.

(c) COMPOSITION.—The Council shall consist of officials of State and local governments as well as such officials of the Department and of other Federal agencies as the Secretary designates. The Secretary shall determine the size and composition of the Council in accordance with the criteria set forth in this subsection and in consultation with the Vice Chair. With respect to State and local government members, the Council shall be representative of—

(1) the full range of emergency response providers;

(2) the geographical regions of the country;

(3) different levels and sizes of governments; and

(4) jurisdictions that face different homeland security threats.

(d) MEETINGS.—The Council shall hold regular meetings at such times and locations as the Secretary determines, in consultation with the Vice Chair.

(e) DEFINITION OF STATE.—For the purposes of this section, "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

## Subtitle B—Inspector General

**SEC. 710. AUTHORITY OF THE SECRETARY.**

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation or from issuing any subpoena, or may delay the issuance of any report by the Inspector General, after the Inspector General has decided to initiate, carry out, or complete such audit or investigation, issue such subpoena, or issue such report, if the Secretary determines that such prohibition or delay, respectively, is necessary to prevent the disclosure of any

information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATIONS REQUIRED.—

(1) NOTIFICATION BY SECRETARY.—The Secretary shall, within 7 days after any exercise of authority under subsection (b), transmit a written statement of the reasons for the exercise of such authority to the President of the Senate, the Speaker of the House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate.

(2) NOTIFICATION BY INSPECTOR GENERAL.—The Inspector General shall provide written notification to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate of any exercise of authority by the Secretary under subsection (b) by not later than 7 days after receiving notice of such exercise of authority.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is further amended by inserting after section 8I the following:

"SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

"SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.".

# Subtitle C—United States Secret Service

**SEC. 720. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

# Subtitle D—General Provisions

**SEC. 730. HUMAN RESOURCE MANAGEMENT.**

(a) AUTHORITY TO ADJUST PAY SCHEDULES.—

(1) IN GENERAL.—Notwithstanding any provision of title 5, United States Code, the Secretary may, under regulations prescribed jointly with the Director of the Office of Personnel Management, provide for such adjustments in rates of basic pay as may be necessary to address inequitable pay disparities among employees within the Department performing similar work in similar circumstances.

(2) APPLICABILITY.—No authority under paragraph (1) may be exercised with respect to any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5.

(3) LIMITATIONS.—Nothing in this subsection shall constitute authority—

(A) to fix pay at a rate greater than the maximum amount of cash compensation allowable under section 5307 of title 5, United States Code, in a year; or

(B) to exempt any employee from the application of such section 5307.

(4) SUNSET PROVISION.—Effective 5 years after the effective date of this Act, all authority to issue regulations under this subsection (including regulations which would modify, supersede, or terminate any regulations previously issued under this subsection) shall cease to be available.

(b) SUSPENSION AND REMOVAL OF EMPLOYEES IN THE INTERESTS OF NATIONAL SECURITY.—The Secretary shall establish procedures consistent with section 7532 of title 5, United States Code, to provide for the suspension and removal of employees of the Department when necessary in the interests of national security or homeland security. Such regulations shall provide for written notice, hearings, and review similar to that provided by such section 7532.

(c) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Not later than 5 years after the effective date of this Act, the Secretary shall submit to Congress a proposal for a demonstration project, the purpose of which shall be to help attain a human resources management system which in the judgment of the Secretary is necessary in order to enable the Department best to carry out its mission.

(2) REQUIREMENTS.—The proposal shall—

(A) ensure that veterans' preference and whistleblower protection rights are retained;

(B) ensure that existing collective bargaining agreements and rights under chapter 71 of title 5, United States Code, remain unaffected;

(C) ensure the availability of such measures as may be necessary in order to allow the Department to recruit and retain the best persons possible to carry out its mission;

(D) include one or more performance appraisal systems which shall—

(i) provide for periodic appraisals of the performance of covered employees;

(ii) provide for meaningful participation of covered employees in the establishment of employee performance plans; and

(iii) use the results of performance appraisals as a basis for rewarding, reducing in grade, retaining, and removing covered employees; and

(E) contain recommendations for such legislation or other actions by Congress as the Secretary considers necessary.

(3) DEFINITION OF A COVERED EMPLOYEE.—For purposes of paragraph (2)(D), the term "covered employee" means a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code, respectively) who occupies a position within the Department which is in the General Schedule.

(d) MERIT SYSTEM PRINCIPLES.—All authorities under subsections (a) and (b) shall be exercised in a manner, and all personnel management flexibilities or authorities proposed under subsection (c) shall be, consistent with merit system principles under section 2301 of title 5, United States Code.

(e) REMEDIES FOR RETALIATION AGAINST WHISTLEBLOWERS.—

Section 7211 of title 5, United States Code, is amended—

(1) by inserting "(a)" before "The right"; and

(2) by adding at the end the following:

"(b) Any employee aggrieved by a violation of subsection (a) may bring a civil action in the appropriate United States district court, within 3 years after the date on which such violation occurs, against any agency, organization, or other person responsible for the violation, for lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages, and equitable, injunctive, or any other relief that the court considers appropriate. Any such action shall, upon request of the party bringing the action, be tried by the court with a jury.

"(c) The same legal burdens of proof in proceedings under subsection (b) shall apply as under sections 1214(b)(4)(B) and 1221(e) in the case of an alleged prohibited personnel practice described in section 2302(b)(8).

"(d) For purposes of this section, the term 'employee' means an employee (as defined by section 2105) and any individual performing services under a personal services contract with the Government (including as an employee of an organization).".

(f) NONREDUCTION IN PAY.—Nothing in this section shall, with respect to any employee who is transferred to the Department pursuant to this Act, constitute authority to reduce the rate of basic pay (including any comparability pay) payable to such employee below the rate last payable to such employee before the date on which such employee is so transferred.

**SEC. 731. LABOR-MANAGEMENT RELATIONS.**

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

**SEC. 732. REPORTING REQUIREMENTS.**

(a) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues;

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction; and

(3) a report assessing the emergency preparedness of each State, including an assessment of each State's coordination with the Department with respect to the responsibilities specified in section 501.

(b) ADDITIONAL REPORT.—Not later than 1 year after the effective date of this Act, the Secretary shall submit to Congress a report—

(1) assessing the progress of the Department in—

(A) implementing this Act; and

(B) ensuring the core functions of each entity transferred to the Department are maintained and strengthened; and

(2) recommending any conforming changes in law necessary as a result of the enactment and implementation of this Act.

**SEC. 733. REQUIREMENT TO DEVELOP COMPREHENSIVE RISK MANAGEMENT ASSESSMENT AND HOMELAND SECURITY STRATEGY.**

(a) REQUIREMENT TO DEVELOP STRATEGY.—The President shall develop a comprehensive strategy for homeland security under which Federal, State, and local government organizations coordinate and cooperate to meet homeland security objectives.

(b) COMPONENTS OF STRATEGY.—The homeland security strategy required to be developed under subsection (a) shall include the following components:

(1) Identification of specific homeland security threats based upon the results of the assessment under subsection (c).

(2) Development of a specific strategy with respect to antiterrorism activities and consequence management that includes specific, measurable objectives by which the efficacy of the execution of the strategy may be determined.

(3) Identification of the executive departments, agencies, and other organizations that should play a role in protecting homeland security and specification of the role of each such organization.

(4) Providing for the selective use of personnel and assets of the Armed Forces in circumstances in which those personnel and assets would provide unique capability and could be used without infringing on the civil liberties of the people of the United States.

(5) Optimization of the use of intelligence assets and capabilities, including improvement of the processes by which intelligence information is provided to State and local governments.

(6) Providing for augmentation of existing medical response capability and equipment stockpiles at the Federal, State, and local levels.

(7) Development of a multiyear plan for phased implementation of the strategy and a comprehensive projected budget.

(c) REQUIREMENT TO DEVELOP RISK ASSESSMENT.—The President shall conduct a comprehensive threat and risk assessment with respect to homeland security to be used as the basis for the identification of specific homeland security threats for purposes of subsection (b)(1). Not later than six months after the enactment of this Act, and annually thereafter, the President shall submit to Congress a comprehensive, national-level risk management assessment, which shall be submitted in unclassified form to the maximum extent possible, with a classified annex, if necessary.

(d) COMPONENTS OF RISK ASSESSMENT.—The assessment required to be developed under subsection (c) shall include the following components:

(1) A description of the most significant threats to the United States, including military, terrorist, State, non-State, foreign, domestic, conventional, and unconventional threats.

(2) A description of the most significant vulnerabilities of the United States, including those relating to population and infrastructure.

(3) A prioritization of the most significant risks to the United States, based on the likelihood of the threats identified under subsection (b)(1) and the potential damage they could cause by exploiting vulnerabilities identified under subsection (b)(2).

(e) PARTICIPATION OF EXECUTIVE AGENCIES.—The President shall direct the participation of any executive agencies, departments, or offices to develop the assessment required in subsection (c), including the provision of all necessary intelligence and other information.

**SEC. 734. MILITARY ACTIVITIES.**

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other traditional military activities.

**SEC. 735. REORGANIZATION; TRANSFER.**

(a) ALLOCATION OF FUNCTIONS.—The Secretary is authorized to allocate or reallocate functions among the officers of the Department, and to establish, consolidate, alter, or discontinue such organizational units within the Department, as the Secretary may deem necessary or appropriate, but such authority does not extend to the abolition of any entity established or required to be maintained as a distinct entity by this Act.

(b) TRANSFER OF APPROPRIATIONS.—Except as otherwise specifically provided by law, not to exceed five percent of any appropriation available to the Secretary in any fiscal year may be transferred between such appropriations, except that not less than fifteen days' notice shall be given to the Committees on Appropriations of the Senate and House of Representatives before any such transfer is made.

(c) LIMITATION.—Notwithstanding any other provision of this section, and except as otherwise specifically provided in this Act, the Secretary may not abolish any entity that is transferred to the Department, or terminate any function that is transferred to the Secretary, the Department, or any of the personnel of the Department, if such entity or function, respectively, is established or required by statute.

**SEC. 736. MISCELLANEOUS PROVISIONS.**

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) GIFTS, DEVISES, AND BEQUESTS.—With respect to the Department, the Secretary shall have the same authorities that the Attorney General has with respect to the Department of Justice under section 524(d) of title 28, United States Code.

(c) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of

Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(d) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

**SEC. 737. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for each of fiscal years 2003 through 2007 such sums as maybe necessary to carry out this Act.

# Subtitle E—Acquisitions

**SEC. 740. RESEARCH AND DEVELOPMENT PROJECTS.**

(a) AUTHORITY.—During the five-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1)(A) In carrying out basic, applied, and advanced research and development projects for response to existing or emerging terrorist threats, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f) of such section), after making a determination that—

(i) the use of a contract, grant, or cooperative agreement for such projects is not feasible or appropriate; and

(ii) use of other authority to waive Federal procurement laws or regulations would not be feasible or appropriate to accomplish such projects.

(B) The annual report required under subsection (h) of such section 2371, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2)(A) Under the authority of paragraph (1) and subject to the limitations of such paragraph, the Secretary may carry out prototype projects, in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) In applying the authorities of such section 845—

(i) subsection (c) thereof shall apply with respect to prototype projects under this paragraph, except that in applying such subsection any reference in such subsection to the Comptroller General shall be deemed to refer to the Comptroller General and the Inspector General of the Department; and

(ii) the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than one year after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term "nontraditional Government contractor" has the same meaning as the term "nontraditional defense contractor" as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

**SEC. 741. PERSONAL SERVICES.**

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

**SEC. 742. SPECIAL STREAMLINED ACQUISITION AUTHORITY.**

(a) AUTHORITY.—(1) The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) Not later than the date that is seven days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—(1) The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $5,000.

(2) The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be $175,000.

(2) Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended by adding at the end the following new subparagraph:

"(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 742(c) of the Homeland Security Act of 2002.".

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

**SEC. 743. PROGRAM TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish and promote a program to encourage and recognize contractor innovation and excellence in facilitating the mission of the Department (as described in section 101).

(b) ISSUANCE OF ANNOUNCEMENTS SEEKING INNOVATIVE SOLUTIONS.—Under the program, the Secretary shall issue announcements seeking unique and innovative solutions to advance the mission of the Department.

(c) TECHNICAL ASSISTANCE TEAM.—(1) The Secretary shall convene a multifunction technical assistance team to assist in screening proposals submitted to the Secretary to provide unique and innovative solutions to advance the mission of the Department. The team shall be composed of Department employees who have expertise in scientific and technical disciplines that would facilitate the assessment of the feasibility of the proposals.

(2) The technical assistance team shall—

(A) assess the feasibility, scientific and technical merits, and estimated cost of each proposal; and

(B) submit each proposal, and the assessment of the proposal, to each Under Secretary of the Department whose duties most coincide with the subject matter of the proposal and to any other executive agency whose mission would, in the opinion of the technical assistance team, be facilitated by the subject matter of the proposal.

(3) The technical assistance team shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(d) MONETARY AWARDS FOR INNOVATIVE SOLUTIONS.—(1) Under the program carried out under this section, the Secretary shall provide monetary awards in recognition of unique and innovative solutions with the potential to significantly advance the mission of the Department.

(2) The Secretary shall use a competitive process to select recipients of monetary awards under this subsection which shall include the widely advertised solicitation (including the announcements described in subsection (b)) of descriptive submissions on technology developments and prototypes, the substance of which are not otherwise available to the United States. The Secretary shall work with the technical assistance team described in subsection (c) in carrying out the competitive selection process.

(3) An award made under this subsection may not exceed $20,000. The total amount of awards made under this subsection in a fiscal year may not exceed $500,000.

(4) At least one quarter of the total amount awarded under this subsection during a fiscal year shall be awarded to small business concerns, within the meaning of such term as used in the Small Business Act (15 U.S.C. 632 et seq.).

**SEC. 744. RISK SHARING AND INDEMNIFICATION.**

(a) DEFINITIONS.—Section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) is amended by adding at the end the following new paragraphs:

"(16) The term 'anti-terrorism technology and services' means any product, equipment, service or device, including information technology as defined in section 5002 of the Clinger–Cohen Act of 1996, system integration and any other kind of services (including support services) related to technology, designed, developed, modified or procured for the purpose of preventing, detecting, identifying, or otherwise deterring acts of terrorism.

"(17) The term 'act of terrorism,' means the calculated attack or threat of attack against persons, property or infrastructure to inculcate fear, intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious or ideological grounds.

"(18) The term 'insurance carrier' means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

"(19) The term 'liability insurance' means insurance for legal liabilities incurred by the insured resulting from—

"(A) loss of or damage to property of others;

"(B) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

"(C) bodily injury (including death) to persons other than the insured or its employees; or

"(D) loss resulting from debt or default of another.

"(20) The term 'homeland security procurement' means any procurement of anti-terrorism technology and services, as determined by the head of the agency, procured for the purpose of preventing, detecting, or otherwise deterring acts of terrorism."

(b) FEDERAL RISK SHARING AND INDEMNIFICATION.—The Office of Federal Procurement Policy Act is further amended by adding at the end the following new sections:

**"SEC. 40. FEDERAL RISK SHARING AND INDEMNIFICATION.**

"(a) When conducting a homeland security procurement the head of an agency may include in a contract an indemnification provision specified in subsection (e) if the head of the agency determines in writing that it is in the best interest of the Government to do so and determines that—

"(1) the anti-terrorism technology and services are needed to protect critical infrastructure services or facilities;

"(2) the anti-terrorism technology and services would be effective in facilitating the defense against acts of terrorism; and

"(3) the supplier of the anti-terrorism technology is unable to secure insurance coverage adequate to make the anti-terrorism technology and services available to the Government.

"(b) The head of the agency may exercise the authority in this section only if authorized by the Director of the Office of Management and Budget to do so.

"(c) In order to be eligible for an indemnification provision specified in this section, any entity that provides anti-terrorism technology and services to an agency identified in this Act shall obtain liability insurance of such types and in such amounts, to the maximum extent practicable as determined by the agency, to satisfy otherwise compensable third party claims resulting from an act of terrorism when anti-terrorism technologies and services have been deployed in defense against acts of terrorism.

"(d) An indemnification provision included in a contract under the authority of this section shall be without regard to other provisions of law relating to the making, performance, amendment or modification of contracts.

"(e)(1) The indemnification provision to be included in a contract under the authority of this section shall indemnify, in whole or in part, the contractor for liability, including reasonable expenses of litigation and settlement, that is not covered by the insurance required under subsection (c), for:

"(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property, or economic losses resulting from an act of terrorism;

"(B) Loss of, damage to, or loss of use of property of the Government; and

"(C) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, provided that all such arrangements were entered into pursuant to the terms of this section.

"(2) Liabilities arising out of the contractor's willful misconduct or lack of good faith shall not be entitled to indemnification under the authority of this section.

"(f) An indemnification provision included in a contract under the authority of this section shall be negotiated and signed by the agency contracting officer and an authorized representative of the contractor and approved by the head of the agency prior to the commencement of performance of the contract.

"(g) The authority conferred by this section shall be limited to the following agencies:

"(1) The Department of Homeland Security;

"(2) The Department of Agriculture;

"(3) The Department of Commerce;

"(4) The Department of Defense;

"(5) The Department of Energy;

"(6) The Department of Health and Human Services;

"(7) The Department of the Interior;

"(8) The Department of Justice;

"(9) The Department of State;

"(10) The Department of the Treasury;
"(11) The Department of Transportation;
"(12) The Federal Emergency Management Agency;
"(13) The Federal Reserve System;
"(14) The General Services Administration;
"(15) The National Aeronautics and Space Administration;
"(16) The Tennessee Valley Authority;
"(17) The U.S. Postal Service;
"(18) The Central Intelligence Agency;
"(19) The Architect of the Capitol; and
"(20) Any other agency designated by the Secretary of Homeland Security that engages in homeland security contracting activities.

"(h) If any suit or action is filed or any claim is made against the contractor for any losses to third parties arising out of an act of terrorism when its anti-terrorism technologies and services have been deployed such that the cost and expense of the losses may be indemnified by the United States under this section, the contractor shall—

"(1) immediately notify the Secretary and promptly furnish copies of all pertinent papers received;
"(2) authorize United States Government representatives to collaborate with counsel for the contractor's insurance carrier in settling or defending the claim when the amount of the liability claimed may exceed the amount of insurance coverage; and
"(3) authorize United States Government representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the United States Government, when the liability is not insured.

The contractor may, at its own expense, be associated with the United States Government representatives in any such claim or litigation.".

(c) STATE AND LOCAL RISK SHARING AND INDEMNIFICATION.—(1) The Secretary may, upon the application of a State or local government, provide for indemnification of contractors who provide anti-terrorism technologies and services to State or local governments if the Secretary determines in writing that—

(A) it is in the best interest of the Government to do so;
(B) the State or local government is unable to provide the required indemnification; and
(C) the anti-terrorism technology and services are needed to protect critical infrastructure services or facilities, would be effective in facilitating the defense against acts of terrorism, and would not be reasonably available absent indemnification.

(2) The Secretary may exercise the authority in this subsection only if authorized by the Director of the Office of Management and Budget to do so.

(3) In order to be eligible for indemnification, any entity that provides anti-terrorism technology and services to a State or local government shall obtain liability insurance of such types and in such amounts to the maximum extent practicable, as determined by the Secretary, to satisfy otherwise compensable third party claims resulting from an act of terrorism when anti-terrorism technologies and services have been deployed in defense against acts of terrorism.

(4) The indemnification provided under the authority of this subsection shall indemnify, in whole or in part, the contractor for liability, including reasonable expenses of litigation and settlement, that is not covered by the insurance required under paragraph (3) for—

(A) claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property, or economic losses resulting from an act of terrorism;
(B) loss of, damage to, or loss of use of property of the Government; and
(C) claims arising—
(i) from indemnification agreements between the contractor and a subcontractor or subcontractors; or
(ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, provided that all such arrangements were entered into pursuant to the terms of this subsection.

Liabilities arising out of the contractor's willful misconduct or lack of good faith shall not be entitled to indemnification under the authority of this subsection.

(5) If any suit or action is filed or any claim is made against the contractor for any losses to third parties arising out of an act of terrorism when its anti-terrorism technologies and services have been deployed such that the cost and expense of the losses may be indemnified by the United States under this subsection, the contractor shall—

(A) immediately notify the Secretary and promptly furnish copies of all pertinent papers received;

(B) authorize United States Government representatives to collaborate with counsel for the contractor's insurance carrier in settling or defending the claim when the amount of the liability claimed may exceed the amount of insurance coverage; and

(C) authorize United States Government representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by the United States Government, when the liability is not insured. The contractor may, at its own expense, be associated with the United States Government representatives in any such claim or litigation.

(6) In this subsection, the definitions in paragraphs (16) through (20) of section 4 of the Office of Federal Procurement Policy Act shall apply.

(c) IMPLEMENTING REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be amended to ensure consistency between the Federal Acquisition Regulation and this section.

**SEC. 745. PROCUREMENTS FROM SMALL BUSINESSES.**

There is established in the Department an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of such office shall be vested in the manner described in section 15(k) of the Small Business Act (15 U.S.C. 644(k)) and shall carry out the functions described in such section.

# Subtitle F—Information Sharing

**SEC. 750. SHORT TITLE.**

This subtitle may be cited as the "Homeland Security Information Sharing Act".

**SEC. 751. FINDINGS AND SENSE OF CONGRESS.**

(a) FINDINGS.—The Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

**SEC. 752. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.**

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The Secretary shall prescribe procedures under which relevant Federal agencies determine—

(A) whether, how, and to what extent homeland security information may be shared with appropriate State and local personnel, and with which such personnel it may be shared;

(B) how to identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The Secretary shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the Secretary, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the Secretary, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the Secretary, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The Secretary shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term "homeland security information" means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization;

(D) would improve the response to a terrorist act; or

(E) does not include individually identifiable information collected solely for statistical purposes.

(2) The term "intelligence community" has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "State and local personnel" means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

**SEC. 753. REPORT.**

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 752. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 752, to increase the effectiveness of sharing of information among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

**SEC. 754. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out section 752.

**SEC. 755. AUTHORITY TO SHARE GRAND JURY INFORMATION.**

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ", or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6," after "Rule 6"; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting "or of a foreign government" after "(including personnel of a state or subdivision of a state";

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: "or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation";

(ii) in subclause (IV)—

(I) by inserting "or foreign" after "may disclose a violation of State";

(II) by inserting "or of a foreign government" after "to an appropriate official of a State or subdivision of a State"; and

(III) by striking "or" at the end;

(iii) by striking the period at the end of subclause (V) and inserting "; or"; and

(iv) by adding at the end the following:

"(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat."; and

(C) in subparagraph (C)(iii)—

(i) by striking "Federal";

(ii) by inserting "or clause (i)(VI)" after "clause (i)(V)"; and

(iii) by adding at the end the following: "Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

**SEC. 756. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.**

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

"(7) Any investigative or law enforcement officer, or attorney for the government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

"(8) Any investigative or law enforcement officer, or attorney for the government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information

pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

**SEC. 757. FOREIGN INTELLIGENCE INFORMATION.**

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: "It shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking "section 2517(6)" and inserting "paragraphs (6) and (8) of section 2517 of title 18, United States Code,"; and

(2) by inserting "and (VI)" after "Rule 6(e)(3)(C)(i)(V)".

**SEC. 758. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.**

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

**SEC. 759. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.**

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

## Subtitle G—Property

**SEC. 761. REAL PROPERTY MANAGEMENT.**

The Secretary, in accordance with this title and regulations prescribed jointly by the Secretary, the Administrator of General Services, and the Director of the Office of Management and Budget—

(1) may acquire replacement real property (including interests therein)—

(A) by transfer or exchange of real property under the jurisdiction, custody, and control of the Department with other executive agencies; or

(B) by sale to or exchange of such property with non-Federal entities, if—

(i) the transaction does not conflict with other applicable laws governing the acquisition of interests in real property by Federal agencies;

(ii) following consultation with the Administrator, the agency first made the property available for transfer or exchange to other Federal agencies; and

(iii) the transaction results in the agency receiving fair market value, which shall be based upon an appraisal;

(2) by lease, permit, license, or other similar instrument, may make available to other executive agencies and to non-Federal entities, on a fair market rental value basis, the unexpired portion of any Government lease for real property under the jurisdiction, custody, and control of the Director;

(3) may make available by outlease agreements with other executive agencies or with non-Federal entities, any unused or underused portion of or interest

in any real property and related personal property under the jurisdiction, custody, and control of the Department; and

(4) obligate or expend amounts received by the United States as a result of any exercise of the authority granted by paragraph (2) or (3) without regard to fiscal year limitations, for the capital asset expenditures of the Department.

**SEC. 762. CRITERIA FOR USING AUTHORITIES.**

(a) IN GENERAL.—Subject to the requirements of subsection (b), the Secretary may apply authority under section 761 to a real property interest only if—

(1) the Secretary has determined that such real property interest is not excess property, and includes as part of the documentation required under subsection (b)(3) a description of the need and mission requirement fulfilled by the Federal property;

(2) the real property interest is used to fulfill or support a continuing mission requirement of the Department; and

(3) the real property interest can, by the application of the authority, improve the support of such mission.

(b) CRITERIA FOR APPLICATION.—Before applying authority under section 761 to a real property interest, the Secretary, in consultation with the Administrator of General Services, must determine that such application meets all of the following criteria:

(1) The application supports the goals and objectives set forth in the Department's strategic plan under section 306 of title 5, United States Code.

(2) Use of the real property is economical, cost effective, and in the best interests of the United States.

(3) The application is documented in a business plan that, commensurate with the nature of the authority applied—

(A) analyzes all reasonable options for using the property;

(B) describes how the application will be in compliance with applicable provisions of law, including such provisions of—

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.), including by—

(I) describing the result of the determination under that Act by the Secretary of Housing and Urban Development of the suitability of the property for use to assist the homeless; and

(II) explaining the rationale for the Department's decision not to make the property available for use to assist the homeless; and

(C) establishes effective procedures for soliciting, assessing, and taking into account input from the local community.

**SEC. 763. OUTLEASES.**

(a) IN GENERAL.—The Secretary may make property available by an outlease agreement authorized by section 761 only if—

(1) the Secretary finds that—

(A) there is no long-term mission requirement for the property, but the Federal Government is not permitted to dispose of it; or

(B)(i) there is a continuing, long-term mission requirement of the Department for the property to remain in Government ownership; and

(ii) the use of the real property by the lessee will not be inconsistent with such mission;

(2) in the case of an outlease to a non-Federal entity, the outlease is conducted competitively; and

(3) the agreement—

(A) is for a term no longer than 50 years; and

(B) will result in the Department receiving fair market value which, in the case of an exchange or sale of Federal real property, shall be based upon an appraisal.

(b) CONSTRUCTION ON OUTLEASED PROPERTY; APPLICABLE LAW.—

(1) PROPERTY SUBJECT TO RETAINED AUTHORITY.—If the Secretary retains authority over any decision to construct or alter buildings on property outleased to a non-Federal entity under section 761, then any such construction or alteration shall comply with section 21 of the Public Buildings Act of 1959 (40 U.S.C. 619).

(2) PROPERTY NOT SUBJECT TO RETAINED AUTHORITY.—(A) If the Secretary does not retain authority over any decision to construct or alter buildings on property outleased to a non-Federal entity under section 761, then any such construction or alteration shall comply with all laws described in subparagraph

(B) that would apply to such construction or alteration if the property were not Federal property.

(B) The laws referred to in subparagraph (A) are all laws of a State, and of a political subdivision of a State, relating to zoning, landscaping, open space, minimum distance of a building from a property line, maximum building height, historic preservation, esthetic qualities of a building, building codes, and similar matters, and any other State or local laws relating to construction or alteration of a building, respectively, by the non-Federal entity on non-Federal lands.

(C) The Secretary may waive the application of subparagraph (A) if the Secretary determines that application of that subparagraph would hinder fulfillment of the mission of the Department under section 101(b).

(c) REPORTS.—The Comptroller General of the United States shall submit biennial reports to the Congress, including to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate, on the effectiveness of the use of outlease authority under section 761.

**SEC. 764. REVIEW AND REVISION OF TRANSACTIONS BY ADMINISTRATOR.**

The Administrator of General Services may, in the sole discretion of the Administrator, review any transaction of the Department undertaken utilizing authority under section 761. After such review, the Administrator may disapprove such transaction if the Administrator determines the transaction does not reflect due diligence by the Department, is not in the best interest of the United States, or does not comply with the requirements of this title.

**SEC. 765. TRANSACTIONAL REPORTS.**

(a) IN GENERAL.—For those transactions authorized under section 761 involving the sale, exchange, or outlease to a non-Federal entity of any asset valued in excess of $700,000 at the time of the transaction, the Secretary shall submit the business plan required by section 762(b)(3) to the Director of the Office of Management and Budget, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives at least 30 calendar days before the final execution of such transaction.

(b) DISPOSAL OF REAL PROPERTY BY NEGOTIATION.—The Secretary shall prepare and submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives, a statement explaining the circumstances of each disposal by negotiation, under section 761, of any real property that has an estimated fair market value in excess of $700,000.

(c) ADJUSTMENT OF THRESHOLD.—The Administrator of General Services may increase or decrease the dollar amounts in subsections (a) and (b) to reflect a percentage increase or decrease in the Department of Commerce Consumer Price Index.

# TITLE VIII—TRANSITION

**SEC. 801. DEFINITIONS.**

For purposes of this title—

(1) the term "agency" includes any entity, organizational unit, or function; and

(2) the term "transition period" means the 12-month period beginning on the effective date of this Act.

**SEC. 802. REORGANIZATION PLAN.**

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to sections 202, 302, 402, and 502.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to sections 202, 302, 402, and 502.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to sections 202, 302, 402, and 502 that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to

the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

**SEC. 803. TRANSITIONAL AUTHORITIES.**

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as he may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable or nonreimbursable basis, provide services or detail personnel to assist with the transition.

(c) TRANSFER OF FUNDS.—Until the transfer of an agency to the Department, the President is authorized to transfer to the Secretary not to exceed five percent of the unobligated balance of any appropriation available to such agency, to fund the purposes authorized in this Act, except that not less than 15 days' notice shall be given to the Committees on Appropriations of the Senate and House of Representatives before any such funds transfer is made.

(d) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(e) TRANSFER OF PERSONNEL, ASSETS, LIABILITIES, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and liabilities held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and notwithstanding the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

**SEC. 804. SAVINGS PROVISIONS.**

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term "completed administrative action" includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act, except that the rules, procedures, terms, and conditions relating to employment in the Transportation Security Administration before the effective date of this Act may be applied only to the personnel employed by or carrying out the functions of the Transportation Security Administration.

(2) Except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

**SEC. 805. TERMINATIONS.**

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

**SEC. 806. INCIDENTAL TRANSFERS.**

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

# TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

**SEC. 901. EXECUTIVE DEPARTMENT.**

Section 101 of title 5, United States Code, is amended by inserting after "The Department of Housing and Urban Development." the following:

"The Department of Homeland Security.".

**SEC. 902. EXECUTIVE SCHEDULE.**

Title 5, United States Code, is amended—

(1) in section 5312, by inserting "Secretary of Homeland Security." as a new item after "Affairs.";

(2) in section 5313, by inserting the following new items after "Affairs.":

"Deputy Secretary, Department of Homeland Security."

"Deputy Secretary for Policy, Department of Homeland Security."

"Deputy Secretary for Management, Department of Homeland Security."

(3) in section 5314, by inserting "Under Secretaries, Department of Homeland Security." as a new item after "Affairs." the third place it appears;

(4) in section 5315, by inserting after "Affairs." the first place it appears the following:

"Assistant Secretaries, Department of Homeland Security.

"General Counsel, Department of Homeland Security.

"Chief Financial Officer, Department of Homeland Security.

"Chief Information Officer, Department of Homeland Security.

"Inspector General, Department of Homeland Security.".

**SEC. 903. INSPECTOR GENERAL.**

(a) IN GENERAL.—Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting "Homeland Security," after "Transportation," each place it appears;

(2) by striking "; and" each place it appears and inserting ";";

(3) by striking ",," and inserting ","; and

(4) by striking ";;" and inserting ";".

(b) OVERSIGHT RESPONSIBILITY.—Section 8D of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (b) by striking ", the Office of Internal Affairs of the United States Customs Service, and the Office of Inspections of the United States Secret Service,";

(2) in subsection (c) by striking "and services"; and

(3) in subsection (d) by striking "or service" each place it appears.

**SEC. 904. CHIEF FINANCIAL OFFICER.**

Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting the following new subparagraph after subparagraph (F):

"(G) The Department of Homeland Security.".

**SEC. 905. CHIEF INFORMATION OFFICER.**

(a) CLINGER–COHEN ACT.—(1) The provisions enacted in section 5125 of the Clinger–Cohen Act of 1996 (division E of Public Law 104–106; 110 Stat. 684) shall apply with respect to the Chief Information Officer of the Department.

(2) Section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)) is amended by inserting "or appointed" after "the Chief Information Officer designated".

(b) TITLE 44.—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3506(a)(2)—

(A) in subparagraph (A) by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)"; and

(B) by adding at the end the following:

"(C) The Chief Information Officer of the Department of Homeland Security shall be an individual who is appointed by the President.";

(2) in each of subsections (a)(3), (a)(4), and (c)(1) of section 3506 by inserting "or appointed" after "the Chief Information Officer designated"; and

(3) in section 3507(i) by inserting "or appointed" after "the Chief Information Officer designated".

**SEC. 906. UNITED STATES SECRET SERVICE.**

(a) IN GENERAL.—The United States Code is amended in sections 202 and 208 of title 3, and in section 3056 of title 18, by striking "of the Treasury", each place it appears and inserting "of Homeland Security".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

**SEC. 907. COAST GUARD.**

(a) TITLE 14, U.S.C.—Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Public Law 104–201), 673 (as added by Public Law 104–324), 674, 687, and 688, by striking "of Transportation", each place it appears, and inserting "of Homeland Security"; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Public Law 104–324 as section 673a.

(b) TITLE 10, U.S.C.—Section 801(1) of title 10, United States Code, is amended by striking "the General Counsel of the Department of Transportation" and inserting "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

**SEC. 908. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.**

(a) IN GENERAL.—The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended—

(1) in section 121(a)(1)—

(A) by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security";

(B) by inserting "the Secretary of Health and Human Services and" between "in coordination with" and "the Secretary of Veterans Affairs"; and

(C) by inserting "of Health and Human Services" after "as are determined by the Secretary"; and

(2) in subsections 121(a)(2) and (b), by inserting "of Health and Human Services" after "Secretary" each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

**SEC. 909. SELECT AGENT REGISTRATION.**

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting "(as defined in subsection (l)(9))" after "Secretary";

(2) in section 351A(h)(2)(A), by inserting "Department of Homeland Security, the" before "Department of Health and Human Services";

(3) in section 351A(l), by inserting after paragraph (8) a new paragraph as follows:

"(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services."; and

(4) in section 352A(i)—

(A) by striking "(1)" the first place it appears; and

(B) by striking paragraph (2).

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

**SEC. 910. MEMBERSHIP OF SECRETARY ON NATIONAL SECURITY COUNCIL.**

Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence—

(1) in paragraph (6), by striking "and" at the end;

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following new paragraph:

"(7) the Secretary of Homeland Security.".

**SEC. 911. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

# TITLE X—INFORMATION SECURITY

**SEC. 1001. INFORMATION SECURITY.**

(a) SHORT TITLE.—The amendments made by this title may be cited as the "Federal Information Security Management Act of 2002".

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

## "SUBCHAPTER II—INFORMATION SECURITY

### "§ 3531. Purposes

"The purposes of this subchapter are to—

"(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

"(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

"(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

"(4) provide a mechanism for improved oversight of Federal agency information security programs;

"(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

"(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.".

### "§ 3532. Definitions

"(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

"(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

"(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

"(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

"(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

"(C) availability, which means ensuring timely and reliable access to and use of information; and

"(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

"(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

"(A) the function, operation, or use of which—

"(i) involves intelligence activities;

"(ii) involves cryptologic activities related to national security;

"(iii) involves command and control of military forces;

"(iv) involves equipment that is an integral part of a weapon or weapons system; or

"(v) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that

is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

"(B) is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; and

"(3) the term 'information technology' has the meaning given that term in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

**"§ 3533. Authority and functions of the Director**

"(a) The Director shall oversee agency information security policies and practices, including—

"(1) developing and overseeing the implementation of policies, principles, standards, and guidelines on information security, including through the oversight of standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(2) requiring agencies, consistent with the standards promulgated under such section 5131 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

"(A) information collected or maintained by or on behalf of an agency; or

"(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

"(3) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

"(4) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 5113(b)(5) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1413(b)(5)) to enforce accountability for compliance with such requirements;

"(5) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

"(6) coordinating information security policies and procedures with related information resources management policies and procedures; and

"(7) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

"(A) a summary of the findings of evaluations required by section 3535;

"(B) significant deficiencies in agency information security practices;

"(C) planned remedial action to address such deficiencies; and

"(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(e)(7) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).".

"(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

**"§ 3534. Federal agency responsibilities**

"(a) The head of each agency shall—

"(1) be responsible for—

"(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

"(i) information collected or maintained by or on behalf of the agency; and

"(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

"(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

"(i) information security standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441); and

"(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

"(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

"(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

"(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

"(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) for information security classifications and related requirements;

"(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

"(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

"(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

"(A) designating a senior agency information security officer who shall—

"(i) carry out the Chief Information Officer's responsibilities under this section;

"(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

"(iii) have information security duties as that official's primary duty; and

"(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

"(B) developing and maintaining an agencywide information security program as required by subsection (b);

"(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

"(E) assisting senior agency officials concerning their responsibilities under subparagraph (2);

"(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

"(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

"(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

"(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

"(2) policies and procedures that—

"(A) are based on the risk assessments required by subparagraph (1);

"(B) cost-effectively reduce information security risks to an acceptable level;

"(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

"(D) ensure compliance with—

"(i) the requirements of this subchapter;

"(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(iii) minimally acceptable system configuration requirements, as determined by the agency; and

"(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

"(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

"(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

"(A) information security risks associated with their activities; and

"(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

"(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

"(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

"(B) may include testing relied on in a evaluation under section 3535;

"(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

"(7) procedures for detecting, reporting, and responding to security incidents, consistent with guidance issued under section 3536, including—

"(A) mitigating risks associated with such incidents before substantial damage is done;

"(B) notifying and consulting with the Federal information security incident center established under section 3536; and

"(C) notifying and consulting with, as appropriate—

"(i) law enforcement agencies and relevant Offices of Inspector General;

"(ii) an office designated by the President for any incident involving a national security system; and

"(iii) any other agency or office, in accordance with law or as directed by the President; and

"(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

"(c) Each agency shall—

"(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

"(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

"(A) annual agency budgets;

"(B) information resources management under subchapter 1 of this chapter;

"(C) information technology management under the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.);

"(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

"(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

"(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

"(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

"(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

"(A) as a material weakness in reporting under section 3512 of title 31, United States Code; and

"(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

"(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

"(A) the time periods, and

"(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

"(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

"(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

**"§ 3535. Annual independent evaluation**

"(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

"(2) Each evaluation by an agency under this section shall include—

"(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

"(B) an assessment (made on the basis of the results of the testing) of compliance with—

"(i) the requirements of this subchapter; and

"(ii) related information security policies, procedures, standards, and guidelines; and

"(C) separate presentations, as appropriate, regarding information security relating to national security systems.

"(b) Subject to subsection (c)—

"(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

"(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

"(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

"(1) only by an entity designated by the agency head; and

"(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

"(d) The evaluation required by this section—

"(1) shall be performed in accordance with generally accepted government auditing standards; and

"(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

"(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

"(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

"(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

"(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

"(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign

Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

"(h) The Comptroller General shall periodically evaluate and report to Congress on—

"(1) the adequacy and effectiveness of agency information security policies and practices; and

"(2) implementation of the requirements of this subchapter.

**"§ 3536. Federal information security incident center**

"(a) The Secretary of Homeland Security shall cause to be established and operated a central Federal information security incident center to—

"(1) provide timely technical assistance to operators of agency information systems regarding security incidents, including guidance on detecting and handling information security incidents;

"(2) compile and analyze information about incidents that threaten information security;

"(3) inform operators of agency information systems about current and potential information security threats, and vulnerabilities; and

"(4) consult with agencies or offices operating or exercising control of national security systems (including the National Security Agency) and such other agencies or offices in accordance with law and as directed by the President regarding information security incidents and related matters.

"(b) Each agency operating or exercising control of a national security system shall share information about information security incidents, threats, and vulnerabilities with the Federal information security incident center to the extent consistent with standards and guidelines for national security systems, issued in accordance with law and as directed by the President.

**"§ 3537. National security systems**

"The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

"(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

"(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

"(3) complies with the requirements of this subchapter.

**"§ 3538. Authorization of appropriations**

"There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

**"§ 3539. Effect on existing law**

"Nothing in this subchapter, section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to the Congress or the Comptroller General of the United States.".

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading "SUBCHAPTER II" are amended to read as follows:

"3531. Purposes.
"3532. Definitions.
"3533. Authority and functions of the Director.
"3534. Federal agency responsibilities.
"3535. Annual independent evaluation.
"3536. Federal information security incident center.
"3537. National security systems.
"3538. Authorization of appropriations.
"3539. Effect on existing law.".

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking "(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)" and inserting "(b) OBJECTIVES OF THE PROGRAM.—";

(ii) in subsection 2224(b), by striking "(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code."; and

(iii) in subsection 2224(c), by inserting ", including through compliance with subtitle II of chapter 35 of title 44" after "infrastructure".

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

**SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.**

Section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) is amended to read as follows:

**"SEC. 5131. RESPONSIBILITIES FOR FEDERAL INFORMATION SYSTEMS STANDARDS.**

"(a)(1)(A) Except as provided under paragraph (2), the Secretary of Commerce shall, on the basis of proposed standards developed under paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Director of the Office of Management and Budget, promulgate standards pertaining to Federal information systems.

"(B) Standards promulgated under subparagraph (A) shall include—

"(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

"(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

"(C) Standards described under subparagraph (B) shall be compulsory and binding.

"(2) Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, United States Code, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

"(b) The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated under this section, if such standards—

"(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Secretary of Commerce; and

"(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44, United States Code.

"(c)(1) The decision regarding the promulgation of any standard by the Secretary of Commerce under subsection (a) shall occur not later than 6 months after the submission of the proposed standard to the Secretary of Commerce under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

"(2) A decision by the Secretary of Commerce to significantly modify, or not promulgate, a proposed standard developed as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Secretary of Commerce's proposed decision.".

"(d) In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44, United States Code.".

**SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.**

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

"(a) The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

"(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

"(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

"(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

"(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

"(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

"(B) guidelines recommending the types of information and information systems to be included in each such category; and

"(C) minimum information security requirements for information and information systems in each such category;

"(2) a definition of and guidelines concerning detection and handling of information security incidents; and

"(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

"(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

"(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, and the General Accounting Office) to assure—

"(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

"(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

"(2) provide the public with an opportunity to comment on proposed standards and guidelines;

"(3) submit to the Secretary of Commerce for promulgation under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441)—

"(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

"(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

"(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

"(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

"(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

"(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products."

"(d) The Institute shall—

"(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

"(2) provide assistance to agencies regarding—

"(A) compliance with the standards and guidelines developed under subsection (a);

"(B) detecting and handling information security incidents; and

"(C) information security policies, procedures, and practices;

"(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

"(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

"(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

"(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

"(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

"(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Secretary of Commerce with such standards submitted to the Secretary; and

"(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

"(e) As used in this section—

"(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

"(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

"(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

"(4) the term 'information technology' has the same meaning as provided in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401); and

"(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.

"(f) There are authorized to be appropriated to the Secretary of Commerce $20,000,000 for each of fiscal years 2003, 2004, 2005, 2006, and 2007 to enable the National Institute of Standards and Technology to carry out the provisions of this section.".

**SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.**

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking "Computer System Security and Privacy Advisory Board" and inserting "Information Security and Privacy Advisory Board";

(2) in subsection (a)(1), by striking "computer or telecommunications" and inserting "information technology";

(3) in subsection (a)(2)—

(A) by striking "computer or telecommunications technology" and inserting "information technology"; and

(B) by striking "computer or telecommunications equipment" and inserting "information technology";

(4) in subsection (a)(3)—

(A) by striking "computer systems" and inserting "information system"; and

(B) by striking "computer systems security" and inserting "information security";

(5) in subsection (b)(1) by striking "computer systems security" and inserting "information security";

(6) in subsection (b) by striking paragraph (2) and inserting the following:

"(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and";

(7) in subsection (b)(3) by inserting "annually" after "report";

(8) by inserting after subsection (e) the following new subsection:

"(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.";

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

"(h) As used in this section, the terms "information system" and "information technology" have the meanings given in section 20."; and

(11) by inserting at the end the following:

"(i) There are authorized to be appropriated to the Secretary of Commerce $1,250,000 for each of fiscal years 2003, 2004, 2005, 2006, and 2007 to enable the Information Security and Privacy Advisory Board to identify emerging issues related to information security and privacy, and to convene public meetings on those subjects, receive presentations, and publish reports and recommendations for public distribution.".

**SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) COMPUTER SECURITY ACT.—Sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 1441 note) are repealed.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X.

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)" and inserting "subchapter II of this title"; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end—

"(c)(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

"(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

"(3) Such inventory shall be—

"(A) updated at least annually;

"(B) made available to the Comptroller General; and

"(C) used to support information resources management, including—

"(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

"(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), the Clinger-Cohen Act of 1996, and related laws and guidance;

"(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

"(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

"(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

"(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.".

(3) Section 3506(g) of such title is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "the Computer Security Act of 1987 (40 U.S.C. 759 note)" and inserting "subchapter II of this title"; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

**SEC. 1006. CONSTRUCTION.**

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

**SEC. 1007. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect 30 days after the date of the enactment of this Act.

# TITLE XI—ADDITIONAL RESPONSIBILITIES OF SECRETARY

**SEC. 1101. HOMELAND SECURITY EVENTS.**

(a) IN GENERAL.—At the request of the Governor of the affected State, the Secretary may declare that a major disaster constitutes a homeland security event for the purposes of this section. Such a request shall be based on a finding that Federal assistance is necessary because the event poses a significant risk to the security of the people and property of the Nation and is of such severity and magnitude that effective response is beyond the capability of the effected State and local government.

(b) FEDERAL ASSISTANCE.—In any homeland security event, in addition to providing other assistance made available under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.) in a major disaster, the Secretary may—

(1) establish a coordinating office and appoint a disaster recovery director—

(A) to work with and coordinate efforts with the Federal coordinating officer appointed under section 302 of such Act;

(B) to oversee and coordinate the timely distribution of Federal compensation to persons injured in such disaster;

(C) develop methods to expedite claims for relief and assistance by individuals and businesses;

(D) coordinate long-term recovery efforts with State and local authorities; and

(E) work with Federal agencies to develop more effective methods to assist affected parties;

(2) require that if an office described in paragraph (1) is established, the disaster recovery director—

(A) shall consult with local officials in developing a recovery plan; and

(B) may appoint an independent claims manager to assist in providing assistance;

(3) in any case in which a Federal official issues a high security alert after a homeland security event, provide technical assistance and reimbursement to State and local governments in the disaster area for expenses incurred related to such alert, including overtime for law enforcement officers for a period of time that the Secretary determines is necessary;

(4) provide grants to a local government which may suffer a substantial loss of tax and other revenues;

(5) authorize reimbursement to a school system for—

(A) providing additional classroom instruction time and related activities to students who lost instructional time as a result of the homeland security event;

(B) providing mental health and trauma counseling and other appropriate support services to students suffering from trauma-related disorders resulting from the homeland security event;

(C) providing guidance and grief counseling and mental health services, including overtime payment for counselors and mental health professionals, for students and school staff;

(D) clean up and structural inspections and repairs of school facilities;

(E) textbooks and other school supplies and equipment used to support the relocation of students from schools in the disaster area;

(F) the cost of relocating students, including transportation of students to temporary school facilities; and

(G) loss of perishable food stock and revenue lost from food services; and

(6) provide grants, equipment, supplies, and personnel, to any non-profit medical facility that has—

(A) lost equipment or revenue due to a major disaster;

(B) incurred additional costs for security enhancements in anticipation of a homeland security event;

(C) purchased emergency supplies, medicine, or equipment, or contracted with medical specialists, in order to respond to casualties expected to be treated as a result of a major disaster; or

(D) complied with Federal and state requirements concerning maintenance of health service treatment procedures (such as dialysis facilities) that may not be used as a result of a major disaster;

(7) Provide reimbursement to for-profit telecommunications and phone services and for-profit utilities (including power, water (including water provided by an irrigation organization or facility), sewer, and wastewater treatment) except that these for-profit entities shall be reimbursed only for structures and property losses that occur during a homeland security event if such losses are not covered by such entity's insurance policies: and

(8) authorize testing of indoor air quality deemed necessary by the Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures and to undertake such remedial actions as may be necessary, in the discretion of the Under Secretary, to protect human health and safety from the contamination of indoor air quality following any such event.

**SEC. 1102. STANDARDS AND REPORTING.**

The Director of the Office of Management and Budget shall—

(1) establish standards for reporting information regarding disaster efforts made by each agency that assists in providing relief in a disaster that the Secretary has determined constitutes a homeland security event under section 1101;

(2) collect data from each such agency regarding the efforts of such agency for each major disaster described in paragraph (1) not less than once each year;

(3) report such data to the appropriate committees of Congress annually.

**SEC. 1103. SPECIAL COMMISSION TO REVIEW AIR QUALITY.**

The Secretary shall appoint a special commission to undertake a study of the authorities available to the Environmental Protection Agency following a major disaster that the Secretary determines constitutes a homeland security event under section 1101, particularly a terrorist attack using chemical, biological, or nuclear weapons. The Commission shall examine the agency's authorities to—

(1) monitor the environment,

(2) evaluate health risks associated with air pollutants that may be released into the environment as result of such a disaster; and

(3) communicate with affected communities and first responders.

The Commission shall submit a report to the Secretary and to the Congress containing the results of such study and including any recommendations of the special commission regarding the clarification and recommendation of Environmental Protection Agency authorities in such situations.

## PERMANENT SELECT COMMITTEE ON INTELLIGENCE

HOUSE OF REPRESENTATIVES,
PERMANANT SELECT COMMITTEE ON INTELLIGENCE,
*Washington, DC, July 12, 2002.*

Hon. DICK ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR CHAIRMAN ARMEY: Yesterday, in open session, the House Permanent Select Committee approvied the attached recommendations to H.R. 5005, by a recorded vote of 17 ayes to 1 no vote. The amendment to Title II of H.R. 5005 would establish an all-source Intelligence Analysis Center within the Department of Homeland Security headed by the Under Secretary for Information Analysis and Infrastructure Protection.

We also appreciate your invitation to testify on the Committee's recommendations next Wednesday before the Select Committee on Homeland Security and look forward to sharing the Committee's views on its recommendations.

Sincerely,

PORTER GOSS,
*Chairman,*
NANCY PELOSI
*Ranking Member.*

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Proposed Amendment to H.R. 5005

**(Recommended to the Select Committee on Homeland Security by the Permanent Select Committee on Intelligence)**

Amend title II to read as follows:

# TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

## Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

**SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.**

(a) IN GENERAL.—The Under Secretary for Information Analysis and Infrastructure Protection (hereinafter in this title referred to as the "Under Secretary") shall assist the Secretary with the responsibilities specified in section 101. The primary responsibility of the Under Secretary shall be to provide for information analysis and infrastructure protection to reduce the vulnerability of the United States to acts of terrorism.

(b) DUTIES.—In carrying out subsection (a), the Under Secretary shall—

(1) conduct analysis of information, including foreign intelligence and open source information, lawfully collected by Federal, State and local law enforcement agencies and by elements of the intelligence community with respect to threats of terrorist acts against the United States;

(2) integrate information, intelligence, and intelligence analyses to produce and disseminate infrastructure vulnerability assessments with respect to such threats;

(3) identify priorities for protective and support measures by the Department, by other executive agencies, by State and local governments, by the private sector, and by other entities;

(4) review, analyze, and recommend improvements in law, policy, and procedure for the sharing of intelligence and other information with respect to threats against the United States within the Federal Government and between the Federal Government and State and local governments;

(5) under the direction of the Secretary, develop a comprehensive national plan to provide for the security of key resources and critical infrastructures;

(6) coordinate with other executive agencies, State and local government personnel, agencies, and authorities, and the private sector, to provide advice on implementation of such comprehensive national plan;

(7) establish and administer a system to advise Federal, State, and local authorities, the private sector, other entities, and the public, of the likelihood of an act of terrorism committed in the United States (such system to be known as the Homeland Security Advisory System) under which the Under Secretary exercises primary responsibility for public threat advisories, and (in coordination with other executive agencies) provides specific warning information to such authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures;

(8) support the intelligence and information requirements of the Department;

(9) establish requirements for the collection of information or foreign intelligence by elements of the intelligence community authorized to undertake such collection, Federal law enforcement agencies, other executive agencies, and for the request of information from State and local law enforcement agencies or private sector entities as appropriate; and

(10) perform such other functions as the Secretary may direct.

## Subtitle B—Intelligence Analysis Center

**SEC. 211. INTELLIGENCE ANALYSIS CENTER**

(a) ESTABLISHMENT; NFIP AGENCY.—(1) There is established within the Department the Intelligence Analysis Center. The Under Secretary shall be the head of the Intelligence Analysis Center.

(2) The Intelligence Analysis Center is a program of the intelligence community for purposes of the National Foreign Intelligence Program (as defined in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6))).

(b) FUNCTIONS.—The Under Secretary, through the Intelligence Analysis Center, shall carry out the duties specified in paragraphs (1), (2), (3), (8), (9), and (10) of section 201(b).

(c) DETAIL OF CERTAIN PERSONNEL.—

(1) IN GENERAL.—The Secretary and the Director of Central Intelligence, the Secretary of Defense, the Attorney General, the Secretary of State, or the head of another agency or Department as the case may be, shall enter into cooperative arrangements to provide for an appropriate number of individuals to be detailed to the Under Secretary to perform analytical functions and duties with respect to the mission of the Department from the following agencies:

(A) The Central Intelligence Agency.

(B) The Federal Bureau of Investigation.

(C) The National Security Agency.

(D) The National Imagery and Mapping Agency.

(E) The Department of State.

(F) The Defense Intelligence Agency.

(G) Any other agency or department that the President determines appropriate.

(2) TERMS OF DETAIL.—Any officer or employee of the United States or a member of the Armed Forces who is detailed to the Under Secretary under

paragraph (1) shall be detailed on a reimbursable basis for a period of less than two years for the performance of temporary functions as required by the Under Secretary.

(d) INCLUSION OF OFFICE OF INTELLIGENCE AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) by striking "and" at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

"(J) the Intelligence Analysis Center of the Department of Homeland Security; and".

**SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CENTER.**

(a) IN GENERAL.—The mission of the Intelligence Analysis Center is as follows:

(1) ANALYSIS AND PRODUCTION.—

(A) Correlating and evaluating information and intelligence related to the mission of the Department collected from all sources available.

(B) Producing all-source collaborative intelligence analysis, warnings, tactical assessments, and strategic assessments of the terrorist threat and infrastructure vulnerabilities of the United States.

(C) Providing apprporiate dissemination of such assessments.

(D) Improving the lines of communication with respect to homeland security between the Federal Government and State and local public safety agencies and the private sector through the timely dissemination of information pertaining to threats of acts of terrorism against the United States.

(2) REQUESTS FOR THE COLLECTION AND COORDINATION OF INFORMATION.—

(A) Requesting the collection of information or national intelligence by elements of the intelligence community authorized to undertake such collection, Federal law enforcement agencies, other executive agencies, or request information from State and local law enforcement agencies or private sector entities as appropriate.

(B) Coordinating with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

(3) ADDITIONAL DUTIES.—Performing such other functions as the Secretary may direct.

(b) STRATEGIC AND TACTICAL MISSIONS OF THE INTELLIGENCE ANALYSIS CENTER.—The Under Secretary shall conduct strategic and tactical assessments and warnings through the Intelligence Analysis Center, including research, analysis, and the production of assessments on the following as they relate to the mission of the Department:

(1) Domestic terrorism.

(2) International terrorism.

(3) Counterintelligence.

(4) Transnational crime.

(5) Proliferation of weapons of mass destruction.

(6) Illicit financing of terrorist activities.

(7) Cybersecurity and cybercrime.

(8) Key resources and critical infrastructures.

(c) STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.—

(1) FUNCTIONS TRANSFERRED.—In accordance with title VIII, for purposes of carrying out this title, there is transferred to the Under Secretary the functions, personnel, assets, and liabilities of the following entities:

(A) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(B) The Critical Infrastructure Assurance Office of the Department of Commerce.

(C) The Computer Security Division of the National Institute of Standards and Technology.

(D) The Federal Computer Incident Response Center of the General Services Administration.

(E) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(F) The National Communications System of the Department of Defense.

(G) The intelligence element of the Coast Guard.

(H) The intelligence element of the United States Customs Service.

(I) The intelligence element of the Immigration and Naturalization Service.

(J) The intelligence element of the Transportation Security Administration.

(K) The intelligence element of the Federal Protective Service.

(L) The El Paso Intelligence Center of the Drug Enforcement Administration.

(2) STRUCTURE.—It is the sense of Congress that the Under Secretary should model the Intelligence Analysis Center on the technical, analytic approach of the Information Dominance Center of the Department of the Army to the maximum extent feasible and appropriate.

## Subtitle C—Additional Provisions

**SEC. 221. ACCESS TO INTELLIGENCE.**

(a) IN GENERAL.—To the extent approved by the President, the Secretary and the Under Secretary shall have access to all intelligence which is collected by any department, agency, or other entity of the United States that is related to threats of acts of terrorism against the United States and to other areas of responsibility described in section 101(b).

(b) IMMEDIATE PROVISION OF CERTAIN INTELLIGENCE.—Without regard to whether the Secretary or the Under Secretary has made any request or entered into any cooperative arrangement to receive material on a regular or routine basis, all executive agencies promptly shall provide to the Secretary and the Under Secretary—

(1) all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b);

(2) all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed;

(3) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary or the Under Secretary shall have access to such information; and

(4) such other material as the President may further provide.

(c) PROTECTION FROM UNAUTHORIZED DISCLOSURE.—The Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

**SEC. 222. PROTECTION OF INFORMATION.**

(a) INFORMATION VOLUNTARILY PROVIDED.—Information provided voluntarily by non-Federal entities or individuals that relates directly to the duties of the Under Secretary for Information Analysis and Infrastructure Protection to reduce the vulnerability of the United States to acts of terrorism and is or has been in the possession of the Department shall not be subject to section 552 of title 5, United States Code.

(b) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—Information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

**SEC. 223. CONFORMING AMENDMENTS.**

(a) INCLUSION OF UNDER SECRETARY ON THE COMMITTEE ON TRANSNATIONAL THREATS OF THE NATIONAL SECURITY COUNCIL.—Section 101(i)(2) of the National Security Act of 1947 (50 U.S.C. 402(i)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (G); and

(2) by inserting after subparagraph (E) the following new subparagraph:

"(F) The Under Secretary for Information Analysis and Infrastructure Protection of the Department of Homeland Security.

(b) TITLE 5, UNITED STATES CODE.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

"The Under Secretary for Information Analysis and Infrastructure Protection of the Department of Homeland Security.".

## COMMITTEE ON INTERNATIONAL RELATIONS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
*Washington, DC, July 12, 2002.*

Hon. DICK ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to H.Res. 449, the Committee on International Relations submits its recommendations on portions of the bill, H.R. 5005, the "Homeland Security Act of 2002," which were referred to it by the Speaker pursuant to Rule X of the House Rules. The text of these recommendations and supporting explanatory material are included herein.

Sincerely,

HENRY J. HYDE,
*Chairman.*

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HOUSE INTERNATIONAL RELATIONS COMMITTEE

SUBMISSION OF RECOMMENDATIONS TO THE HOUSE SELECT COMMITTEE ON HOMELAND SECURITY

## HOMELAND SECURITY ACT OF 2002

July 12, 2002

Mr. Hyde, from the Committee on International Relations,submitted the following

## RECOMMENDATIONS

to the Select Committee on Homeland Security

[TO ACCOMPANY H.R. 5005]

The Committee on International Relations, to whom was referred portions of the bill, H.R. 5005, the Homeland Security Act of 2002, hereby submits its recommendations to the Committee on Homeland Security.

# THE AMENDMENTS

Showing the Amendment to H.R. 5005

Offered by Mr. Hyde and Mr. Lantos

As Adopted by the Committee on International Relations

Page 18, beginning on line 18, strike "and activities of the assessment, detection, and cooperation program".

Page 23, strike line 10 and all that follows through line 6 on page 24, and insert the following:

**SEC. 403. VISA ISSUANCE.**

(a) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(b) AUTHORITY OF THE SECRETARY OF STATE.—

(1) The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(C) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(D) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(E) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6091; Public Law 104–114).

(F) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328; (Originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(G) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(H) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(3) PROCEDURE FOR ISSUANCE OF STUDENT VISAS.—Notwithstanding any other provision of law, an alien may not be granted a visa for study in the United States under subparagraphs (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act without review by the Secretary of State if the alien is a national of a country designated under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) as a country that has repeatedly provided support for acts of international terrorism, section 6(j) of the Export Administration Act (50 U.S.C. app. 2405(j)) as a country that supports acts of international terrorism, or section 40A of the Arms Export Control Act (22

U.S.C. 2781) as a country not cooperating fully with United States antiterrorism efforts.

(4) PROCEDURE FOR ISSUANCE OF DIVERSITY IMMIGRANT VISAS.—Notwithstanding any other provision of law, an alien may not be granted an immigrant visa under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) relating to diversity immigrants without review by the Secretary of State if the alien is a national of a country designated under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) as a country that has repeatedly provided support for acts of international terrorism, section 6(j) of the Export Administration Act (50 U.S.C. app. 2405(j)) as a country that supports acts of international terrorism, or section 40A of the Arms Export Control Act (22 U.S.C. 2781) as a country not fully cooperating with United States antiterrorism efforts.

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to diplomatic and consular posts abroad to perform the following functions:

(A) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department of Homeland Security or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) TRAINING AND HIRING.—

(A) The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) Prior to assigning employees of the Department to perform the functions described in paragraph (1), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described in paragraph (1) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(C) The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(d) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

## SECTION BY SECTION ANALYSIS

Section 302, as amended by the Committee, will transfer from the Department of Energy to the Department of Homeland Security certain programs related to nuclear safety, but not overseas assistance programs for the countries of the former Soviet Union relating to the protection of nuclear materials in these countries.

Section 403(a)(1), as amended in the Committee markup, provides that (with certain exceptions provided in subsection (b)), the Secretary shall be vested exclusively with regulatory, administra-

tive, and enforcement authority over immigration and nationality laws relating to the functions of consular officers in connection with the granting or refusal of visas. This paragraph further provides that the visa-related authorities conferred upon the Secretary of Homeland Security shall be exercised through the Secretary of State, and that the Secretary of Homeland Security shall not have authority to alter or reverse a decision of a consular officer to refuse a visa.

Section 403(a)(2) provides that the Secretary of Homeland Security may confer or impose the visa-related authorities specified in paragraph (1) on any officer or employee of the United States, with the consent of the head of the agency by which such person is employed. This could include, for instance, a delegation of some or all of these authorities back to the Secretary of State.

Section 403(b)(1) provides that the Secretary of State may direct a consular officer to refuse a visa on foreign policy or security grounds. This authority is similar to the authority currently provided the Secretary of State under section 212(a)(3)(c) of the Immigration and Nationality Act.

Section 403(b)(2) specifies a number of foreign policy-related authorities under the Immigration and Nationality Act which will be retained by the Secretary of State.

Section 403(b)(3) provides that no student visa may be issued to a national of a state that has been designated a sponsor of international terrorism, or that is not cooperating fully with United States antiterrorism efforts, without a review by the Secretary of State.

Section 403(b)(4) provides that no diversity immigrant visa may be issued to a national of a state that has been designated a sponsor of international terrorism, or that is not cooperating fully with United States antiterrorism efforts, without a review by the Secretary of State.

Section 403 (c)(1) provides that the Secretary of Homeland Security shall have authority to assign Homeland Security employees to diplomatic and consular posts abroad to advise consular officers on homeland security issues, to review visa applications, and to conduct investigations on threats to homeland security.

Section 403(c)(2) provides that the overseas assignments described in paragraph (1) may, where appropriate, be permanent assignments, and that the Secretary of Homeland Security may direct that employees on such permanent assignments shall participate in terrorist lookout committees at such posts.

Section 403(c)(3) provides that the Secretary of Homeland Security shall provide training for Homeland Security employees assigned abroad in foreign languages, country conditions, and other appropriate areas of study; shall establish foreign language requirements for such positions and employment preferences for persons who meet such requirements; and may use the National Foreign Affairs Training Center for the purpose of training described in subparagraph (a).

Section 403(d) provides that nothing in section 403 shall be construed to create a private right of action to challenge a decision of a consular officer to grant or deny a visa. This is to ensure that

the amendment provided by this section does not affect current law with respect to non-reviewability of visa decisions.

PURPOSE AND SUMMARY

*Sections 302 and 403 of H.R. 5005.*

The Speaker referred H.R. 5005 to the Committee on International Relations for action on provisions within its rule X jurisdiction. Those provisions are Section 302, dealing with the nonproliferation programs of the Department of Energy, and Section 403, dealing with issuance and denial of visas.

The Committee considered and adopted three amendments. An amendment to section 302(2)(C) was offered by Chairman Hyde at the request of the Administration. This amendment deletes a clause relating to certain assistance programs designed to reduce the risk of nuclear proliferation abroad. Under subsection 302(2)(c) certain programs and activities of the Department of Energy, including the Nuclear Assessment Program, would move to the new Department of Homeland Security. Subsection 302(c) of the bill as introduced also included a clause which would transfer to the new Department certain assistance programs to the countries of the former Soviet Union. These programs, which are currently part of the Cooperative Threat Reduction Program, are designed to prevent the proliferation of nuclear materials in the recipient countries.

The amendment adopted by the Committee strikes the clause that would have transferred these assistance programs based on the representation from the Administration officials that the transfer of such assistance programs was no longer contemplated.

The Committee also considered and adopted an substitute amendment to section 403. This amendment is intended to improve the President's proposal for reforming the processes by which applications for visas to the United States are considered at United States diplomatic and consular posts abroad. It preserves the fundamental recommendation of the President to transfer to the Secretary of Homeland Security exclusive authority to issue regulations with respect to, administer, and enforce provisions of the Immigration and Nationality Act and other immigration and nationality laws relating to the functions of consular officers of the United States in connection with the granting or refusal of visas. However, under both the bill as introduced and the amendment adopted by the Committee, the actual processing of visa applications will continue to be done primarily by consular officers and other employees of the Department of State. United States Ambassadors and other heads of United States missions abroad would also continue to exercise their authority as chiefs of mission under Section 207 of the Foreign Service Act of 1980.

The Committee amendment to Section 403 embodies a compromise between the Administration's original plan for visa processing, as reflected in H.R. 5005 as introduced, and a dramatically different proposal which was offered and ultimately rejected in the Committees on the Judiciary and Government Reform, under which all visa processing would have been performed by employees of the Department of Homeland Security. The amendment adopted

by the International Relations Committee explicitly authorizes the assignment of Homeland Security employees in U.S. diplomatic and consular posts abroad. Rather than assume all visa processing functions, however, these employees will concentrate on identifying and reviewing cases that present homeland security issues.

Under the amendment, Homeland Security officers at U.S. embassies and other overseas posts would provide expert advice and training to consular officers, ensure their access to appropriate information, investigate threats to the homeland security of the United States (including but not limited to participating in "terrorist lookout committees" mandated for each Embassy by the Enhanced Border Security and Visa Entry Reform Act of 2002), and review individual visa petitions. This will preserve the essence of the Administration's proposal while ensuring that security concerns will be central to key decisions made abroad.

The amendment makes clear that the Secretary of Homeland Security would have no authority to reverse a visa denial by a consular officer. It also provides that nothing in section 403 would create or authorize a private right of action to challenge such a decision. This change is designed to avoid an unintended consequence of the original language, which might have subjected denials of visas by consular officers to various types of administrative and judicial review that do not apply to such decisions under current law.

The amendment also preserves the authority of the Secretary of State to refuse a visa on foreign policy grounds, and extends this authority to cover security grounds.

The amendment also includes a provision that makes clear that nothing in section 403 shall be construed to affect the Secretary's authorities under certain laws. The Committee believes that these are some of the key authorities that the Secretary currently has, but that other authorities vested in the Secretary of State by the Immigration and Nationality Act and other relevant laws will continue to remain with the Secretary, consistent with Section 403(a)(1). The Committee believes that the list of provisions in its recommendation should be further refined as the legislative process moves forward and is prepared to work with the Select Committee in this regard.

The amendment also makes other technical and conforming changes, including requirements for language training of certain Homeland Security employees.

A perfecting amendment to the substitute amendment to section 403 was adopted by the Committee requiring that no application for a nonimmigrant student visa or a diversity lottery immigrant visa may be granted without a review by the Secretary of State if the applicant is a national of a country designated as supporting terrorism, or a country that is not fully cooperating with U.S. antiterrorism efforts. The substitute amendment as amended was adopted.

The Committee believes that the Secretary of Homeland Security should review the effectiveness of the student visa program with the goal of ensuring that no student visas be granted to nationals of: (1) countries on the State Department's list of state sponsors of terrorism; or (2) countries in which the governments or persons operating with the complicity or protection of such governments that

have been sanctioned for the proliferation of weapons of mass destruction or the means to deliver them for a period of at least five years from the date of imposition of such sanctions, if the visa applicant is seeking to engage in a commercial activity or academic pursuit related to one of the critical fields on the government's Technology Alert List. This list, which has been distributed to all of our consular posts, includes such subjects as: nuclear technology; missile technology, propulsion, and guidance systems; chemical and biotechnology engineering; and remote imaging technologies.

## BACKGROUND AND NEED FOR THE LEGISLATION

On June 6, 2002, President Bush proposed creating a new Department of Homeland Security. On June 18, 2002, the White House issued proposed legislative language, which was introduced on June 24, 2002 by Mr. Armey (by request) as H.R. 5005.

The September 11 terrorist attacks on the United States brought to light serious shortcomings in current United States visa adjudication processes and policies. While efforts to encourage courtesy and facilitate legitimate travel, such as the reunification of families, commercial activities, tourism, cultural and educational exchange, and the admission of those with needed skills, to the United States are entirely appropriate, they must be accompanied by an abiding commitment to security and by more vigorous and effected methods of investigation to help identify and exclude persons who threaten the security of the United States.

In order to identify persons who are known or reasonably believed to present security or other concerns for the United States, State Department consular officers must rely on a database the content of which is supplied by law enforcement and intelligence agencies. To the extent this database is insufficient, the consular officers will be at a disadvantage when making determinations on whether to issue or deny visas. The transfer of ultimate authority over visa processing to the Department of Homeland Security should facilitate the integration and sharing of information among intelligence and law enforcement agencies and with United States Government personnel charged with considering visa applications.

## HEARINGS

The Committee held one day of hearings on H.R. 5005 on June 26, 2002. Testimony was received from Under Secretary of State for Political Affairs Marc Grossman, representing the Department of State and the Bush Administration.Committee Consideration

On July 10, 2002 the Committee met in open session and recommended 3 amendments be submitted to the Committee on Homeland Security by voice vote, a quorum being present.

## CONGRESSIONAL BUDGET OFICE COST ESTIMATE

CBO estimates these amendments would not affect direct spending or revenues.

## COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, July 12, 2002.*

Hon. RICHARD ARMEY
*Chairman,*
Hon. NANCY PELOSI
*Ranking Member, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR CHAIRMAN ARMEY AND RANKING MEMBER PELOSI: Pursuant to H. Res. 449, we are pleased to transmit to the Select Committee on Homeland Security the Committee on the Judiciary's views and recommendations concerning H.R. 5005, the "Homeland Security Act of 2002." The recommendations represent the Judiciary Committee's bipartisan support for the creation of a Department of Homeland Security and reflect the Committee's judgment that H.R. 5005 can be further refined to ensure that this Department fulfills its fundamental purpose to prevent terrorist attacks on American soil.

On June 26, 2002, the Committee on the Judiciary received testimony from Homeland Security Director Tom Ridge concerning H.R. 5005. In addition, the Judiciary Committee Subcommittees on Crime, Terrorism, and Homeland Security, Immigration Border Security, and Claims, and Commercial and Administrative Law conducted separate hearings which examined this proposed legislation. The Committee recommendations reflect the views received at these hearings as well as extensive consultation with Administration officials, outside experts, and the conclusions of several congressionally-chartered antiterrorism commissions.

The proposed Department's central, predominate purpose is to assess, prevent, and respond to terrorism and other threats affecting America's internal security. The Judiciary Committee has a special responsibility to help effectuate this goal. As it has done repeatedly since September 11, 2001, the Committee has responded to the President's call to action by diligently and expeditiously discharging its responsibility to ensure the security of all Americans. Given the Committee's jurisdiction over subversive activities affecting the internal security of the United States, the nation's immigration and naturalization laws, federal civil and criminal procedure, and federal administrative practice and procedure, the Committee is uniquely positioned to assist the creation of a focused and effective Department of Homeland Security.

The amendments to H.R. 5005 discussed in this letter were favorably reported by the Judiciary Committee on July 10, 2002. Most of these changes were contained in a Manager's Amendment which we jointly introduced. We have included a summary of these recommendations and additional views presented by the members of the Judiciary Committee for your review. While consistent with the articulated mission of the Department of Homeland Security, the proposed amendments recommend important structural changes which would strengthen the Department's ability to effectively assess, deter, and respond to terrorist threats. Of no less importance, the Committee makes critical recommendations to help safeguard the civil liberties and freedoms cherished by all Americans.

The Judiciary Committee strongly supports the establishment of a federal Department primarily dedicated to homeland security. Our recommendations help advance this goal and should provide valuable guidance to the Select Committee as it completes the critical task of shaping the Department of Homeland Security.

Sincerely,

F. JAMES SENSENBRENNER, JR.,
*Chairman,*
JOHN CONYERS, JR.,
*Ranking Member.*

Amendments to H.R. 5005

Adopted by the Committee on the Judiciary

**(July 10, 2002)**

**(Page & line nos. refer to the text of the introduced bill)**

Strike "emergency response providers" each place it appears in the bill and insert "emergency responders".

Page 4, strike lines 2 and 3 and insert the following:

For purposes of this Act:

Page 4, strike lines 13 through 17 and insert the following:

(4) The term "emergency responder"—

(A) means those organizations that represent or support the first arriving agent or unit capable of moderating an emergency condition or administering to the needs created by an emergency event; and

(B) includes Federal, State, and local law enforcement, emergency medical services, emergency management, fire, hazardous materials response, public works, public safety communications personnel; public health and medical care personnel; and chief executive governmental officials.

Page 5, strike lines 3 through 6 and insert the following:

(7) The term "local government" means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under state law), or regional or interstate government.

(B) an Indian tribe or authorized tribal organization, or an Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity.

Page 5, strike lines 7 through 10.

Page 5, strike lines 15 through 21 and insert the following:

(11) The term "United States", when used in a geographic sense, means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

Page 5, after line 21, insert the following:

(12)(A) The term "crisis management"—

(i) means a function that is predominantly a law enforcement function;

(ii) includes measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, or resolve a threat or act of terrorism.

(B) With respect to a terrorist incident, the term—

(i) includes traditional law enforcement missions, such as intelligence, surveillance, tactical operations, negotiations, forensics, and investigations, as well as technical support missions, such as agent identification, search, render safe procedures, transfer and disposal, and limited decontamination;

(ii) in addition to the traditional law enforcement missions, also includes assurance of public health and safety.

(13) The term "consequence management" means a function that is predominantly emergency management and includes measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses, and individuals affected by the consequences of terrorism.

(14)(A) The term "terrorism" includes international terrorism or domestic terrorism.

(B) In this paragraph the term "international terrorism" means activities that occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum, and—

(i) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; or

(ii) appear to be intended—

(I) to intimidate or coerce a civilian population;

(II) to influence the policy of a government by intimidation or coercion;

(III) to affect the conduct of a government by mass destruction, assassination or kidnapping; or

(IV) to retaliate against a government or its civilian population.

(C) In this paragraph the term "domestic terrorism" means activities that occur primarily within the territorial jurisdiction United States, and—

(i) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; or

(ii) appear to be intended—

(I) to intimidate or coerce a civilian population;

(II) to influence the policy of a government by intimidation or coercion;

(III) to affect the conduct of a government by mass destruction, assassination or kidnapping; or

(IV) to retaliate against a government or its civilian population.

(15) The term "critical infrastructure" means physical and cyber-based public and private systems essential to the minimum operations of the economy and government, including information and telecommunications, energy, banking and finance, transportation, and water systems and emergency services.

Page 7, strike lines 1 through 3 and insert the following:

(C) coordinate Federal, State, and local government personnel, agencies, and authorities with each other and with the private sector to prevent, prepare, and disrupt terrorist activities."

Page 7, strike line 11 and insert the following:

(C) enforcement and security; and

Page 7, strike line 12 and insert the following:

(D) crisis and consequence training and coordination.

Page 7, strike lines 13 through 17.

Page 8, strike line 18 and insert the following:

(a) DEPUTY SECRETARY; UNDER SECRETARIES; GENERAL COUNSEL.—

Page 9, strike lines 7 through 8 and insert the following:

(4) An Under Secretary for Enforcement and Security.

Page 9, strike lines 9 through 10.

Page 9, after line 12, insert the following:

(8) A General Counsel, who shall be the chief legal officer of the Department.

Page 10, strike lines 1 and 2 (and redesignate provisions accordingly).

Page 10, strike line 4 (and redesignate provisions accordingly).

Page 12, line 4, after "countermeasures" insert "related to the warnings".

Page 12, strike "and" at line 5, strike the period at line 12 and insert "; and", and after line 12 insert the following:

(8) securing the people, infrastructures, property, resources, and systems in the United States from acts of terrorism involving chemical, biological, radiological, or nuclear weapons or other emerging threats.

Page 13, line 17, strike "The" and insert "(a) IN GENERAL.—The".

Page 13, line 17, strike "reports, assessments, and analytical".

Page 14, line 16, strike "reports, assessments, and analytical".

Page 15, after line 18, insert the following:

(b) INFORMATION SHARING.—The Secretary shall make regulations to provide that information required to be made available to the Secretary under subsection (a) is shared with Federal, State, and local agencies and employees as necessary to guard against threats to homeland security.

Page 15, after line 24 insert the following (and redesignate provisions and amend the table of contents accordingly):

**SEC. 205. PROCEDURES FOR SHARING INFORMATION.**

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

**SEC. 206. PRIVACY OFFICER.**

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including-

(1) assuring that the use of new technologies sustain, and do not erode, the protections provided in all statues relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974 and section 552a of title 5, United States Code;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal government for consistency with the Privacy Act of 1974 and section 552a of title 5, United States Code;

(4) conducting a privacy impact assessment of proposed rules when the Secretary deems such assessment appropriate; and

(5) preparing a report to the Congress on an annual basis that identifies any complaints received from the public as to privacy violations and how the Department addressed such complaints as well as internal controls implemented to improve privacy protections.

Page 16, strike lines 11 through 15.

Page 16, line 16, strike "(2)" and insert "(1)".

Page 16, line 25, insert "and" after the semicolon.

Page 17, line 1, strike "(3)" and insert "(2)".

Page 17, line 9, strike "; and" and insert a period.

Page 17, strike lines 10 through 14.

Page 21, after line 2, insert the following (and redesignate provisions and amend the table of contents accordingly):

**SEC. 305. COMPELLING NEED FOR SCIENCE AND TECHNOLOGY RESEARCH AND DEVELOPMENT.**

It is the sense of the Committee on the Judiciary of the House of Representatives that there is a compelling need for the Department of Homeland Security to carry out science and technology research and development in a robust and effective manner to prevent and detect terrorist attacks, including weapons of mass destruction and cyber security attacks.

Page 21, strike lines 3 through 4 and insert the following (and amend the table of contents accordingly):

# TITLE IV—ENFORCEMENT AND SECURITY

## Subtitle A—Assignment of Responsibilities for Enforcement and Security

Page 21, strike lines 5 through 6, and insert the following:

**SEC. 401. UNDER SECRETARY FOR ENFORCEMENT AND SECURITY.**

Page 21, beginning at line 9, strike "Border and Transportation" and insert with "Enforcement and".

Page 21, strike lines 18 through 24 and insert the following (and redesignate provisions accordingly):

(3) carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 411 takes effect;

(4) establishing and administering rules, in accordance with section 403, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States;

Page 22, line 2, strike "and".

Page 22, line 5, strike the period and insert a semicolon.

Page 22, after line 5, insert the following:

(7) developing a national program to enhance the capacity of State and local agencies in crisis and consequence management to prepare for and respond to incident of terrorism and other emergencies, through coordinated training, equipment acquisition, technical assistance, and support for Federal, State, and local exercises;

(8) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(9) coordinating other Federal response resources in the event of a terrorist attack and other emergencies;

(10) aiding the recovery from terrorist attacks and other emergencies;

(11) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and other emergencies;

(12) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(13) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

Page 22, strike lines 13 through 15 (and redesignate provisions accordingly).

Page 23, line 5, strike "and".

Page 23, line 9, strike the period and insert a semicolon.

Page 23, after line 9, insert the following:

(7) the Office of National Preparedness of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto;

(8) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto;

(9) the National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto;

(10) the Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto;

(11) the Office of the Assistant Secretary for Public Health Emergency Preparedness (including the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System) of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto; and

(12) the Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

Beginning on page 23, strike line 10 through page 24, line 6, and insert the following:

**SEC. 403. VISA ISSUANCE.**

(a) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(b) AUTHORITY OF THE SECRETARY OF STATE.—

(1) FOREIGN POLICY OR SECURITY INTERESTS OF THE UNITED STATES.—The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(C) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(D) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(E) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6091).

(F) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328; (Originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(G) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(H) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to diplomatic and consular posts abroad to perform the following functions:

(A) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department of Homeland Security or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) and, as appropriate, consular officers, shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, fraud detection techniques, and other skills required by such employees, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) FOREIGN LANGUAGE PROFICIENCY.—Prior to assigning employees of the Department to perform the functions described in paragraph (1), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described in paragraph (1) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(C) USE OF NATIONAL FOREIGN AFFAIRS TRAINING CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(d) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(e) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Governmental Affairs of the Senate.

Page 24, after line 6, insert the following (and amend the table of contents accordingly):

# Subtitle B—Immigration and Nationality Functions

## CHAPTER 1—IMMIGRATION ENFORCEMENT

### SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR ENFORCEMENT AND SECURITY.

In accordance with title VIII, there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Enforcement and Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

### SEC. 412. ESTABLISHMENT OF BUREAU OF IMMIGRATION ENFORCEMENT.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Homeland Security a bureau to be known as the "Bureau of Immigration Enforcement".

(2) DIRECTOR.—The head of the Bureau of Immigration Enforcement shall be the Director of the Bureau of Immigration Enforcement, who—

(A) shall report directly to the Under Secretary for Enforcement and Security; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Director of the Bureau of Immigration Enforcement—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Enforcement and Security by section 411 and delegated to the Director by the Under Secretary for Enforcement and Security; or

(ii) otherwise vested in the Director by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Enforcement and Security with respect to any policy or operation of the Bureau of Immigration Enforcement that may affect the Bureau of Citizenship and Immigration Services of the Department of Justice established under chapter 2, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Director of the Bureau of Immigration Enforcement shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 411 takes effect, the Director of the Bureau of Immigration Enforcement shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 411 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—In consultation with Bureau of Immigration Enforcement personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration enforcement policies and priorities;

(B) performing policy research and analysis on immigration enforcement issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2), and the Assistant Attorney General for Citizenship and Immigration Services, as appropriate.

(c) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Director of the Bureau of Immigration Enforcement. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Immigration Enforcement with respect to legal matters affecting the Bureau of Immigration Enforcement; and

(B) representing the Bureau of Immigration Enforcement in all exclusion, deportation, or removal proceedings before the Executive Office for Immigration Review, including in proceedings to adjudicate relief from exclusion, deportation, or removal, and in other legal or administrative proceedings involving immigration enforcement issues.

(d) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Immigration Enforcement;

(ii) financial management of the Bureau of Immigration Enforcement; and

(iii) collecting all payments, fines, and other debts for the Bureau of Immigration Enforcement.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—The Chief Budget Officer for the Bureau of Immigration Enforcement shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration enforcement to the Congress, including information on specific cases relating to immigration enforcement;

(B) serving as a liaison with other Federal agencies on immigration enforcement issues; and

(C) responding to inquiries from the media and the general public on immigration enforcement issues.

(f) CITIZENSHIP AND IMMIGRATION SERVICES LIAISON.—

(1) IN GENERAL.—There shall be a position of Citizenship and Immigration Services Liaison for the Bureau of Immigration Enforcement.

(2) FUNCTIONS.—The Citizenship and Immigration Services Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2) and the Bureau of Immigration Enforcement, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

**SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.**

(a) IN GENERAL.—The Under Secretary for Enforcement and Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Immigration Enforcement that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Immigration Enforcement and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Immigration Enforcement.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Immigration Enforcement, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

**SEC. 414. EMPLOYEE DISCIPLINE.**

The Under Secretary for Enforcement and Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Immigration Enforcement who willfully deceives the Congress or agency leadership on any matter.

**SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.**

(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Immigration Enforcement, after the transfer of functions specified under section 411 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Assistant Attorney General for Citizenship and Immigration Services, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

**SEC. 416. REPORT ON INTERIOR CHECKPOINTS.**

Not later than 6 months after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on whether all permanent interior checkpoints operated by the Immigration and Naturalization Service ought to be closed, and the funds that otherwise would be expended for the operation of such checkpoints ought to be reallocated for protecting and maintaining the integrity of the borders of the United States and increasing enforcement at other points of entry into the United States.

## CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

### Subchapter A—Transfers of Functions

**SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.**

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the "Bureau of Citizenship and Immigration Services".

(2) ASSISTANT ATTORNEY GENERAL.—The head of the Bureau of Citizenship and Immigration Services shall be the Assistant Attorney General for Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Attorney General; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government benefits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Assistant Attorney General for Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Assistant Attorney General by this section or this Act or otherwise vested in the Assistant Attorney General by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Attorney General with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Immigration Enforcement of the Department of Homeland Security, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman described in section 422 to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to the Congress within 3 months after its submission to the Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 427, the Assistant Attorney General for Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 427, the Attorney General shall submit a report to the Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Assistant Attorney General for Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of Immigration and Naturalization to the Assistant Attorney General for Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 427:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 427.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration services policies and priorities;

(B) performing policy research and analysis on immigration services issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Immigration Enforcement of the Department of Homeland Security.

(d) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Assistant Attorney General for Citizenship and Immigration Services. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Assistant Attorney General for Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative proceedings involving immigration services issues.

(e) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—The Chief Budget Officer for the Bureau of Citizenship and Immigration Services shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services issues;

(B) serving as a liaison with other Federal agencies on immigration services issues; and

(C) responding to inquiries from the media and the general public on immigration services issues.

(g) IMMIGRATION ENFORCEMENT LIAISON.—

(1) IN GENERAL.—There shall be a position of Immigration Enforcement Liaison for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Immigration Enforcement Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Immigration Enforcement of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

(h) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

**SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.**

(a) IN GENERAL.—Within the Department of Justice, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the "Ombudsman"). The Ombudsman shall report directly to the Deputy Attorney General. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the United States House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Attorney General, Deputy Attorney General, Assistant Attorney General for Citizenship and Immigration Services, or any other officer or employee of the Department of Justice or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Assistant Attorney General for Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Assistant Attorney General for Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such Assistant Attorney General by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department of Justice and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

**SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.**

(a) IN GENERAL.—The Assistant Attorney General for Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Department of Justice Office of the Inspector General;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

**SEC. 424. EMPLOYEE DISCIPLINE.**

The Assistant Attorney General for Citizenship and Immigration Enforcement may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives the Congress or agency leadership on any matter.

**SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS.**

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following:

"OFFICE OF IMMIGRATION STATISTICS

"SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

"(b) The Director of the Office shall be responsible for the following:

"(1) Maintenance of all immigration statistical information of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled 'Statistical Yearbook of the Immigration and Naturalization Service' prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 427 of the Homeland Security Act of 2002), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type.

"(2) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.

"(c) The Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.".

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Immigration Statistics established under section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service.

(c) CONFORMING AMENDMENTS.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)) is amended—

(1) by striking "and" at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting "; and"; and

(3) by adding at the end the following:

"(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.".

**SEC. 426. PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.**

(a) IN GENERAL.—Any function for which this subchapter vests responsibility in an official other than the Attorney General, or which is transferred by this subchapter to such an official, may, notwithstanding any provision of this subchapter, be performed by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(b) REFERENCES.—In a case in which the Attorney General performs a function described in subsection (a), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

**SEC. 427. EFFECTIVE DATE.**

Notwithstanding section 4, this subchapter, and the amendments made by this subchapter, shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

**SEC. 428. TRANSITION.**

(a) REFERENCES.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 by, the Assistant Attorney General for Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Assistant Attorney General for Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subchapter may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 427.

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 804 shall apply to a transfer of functions under this subchapter in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subchapter (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subchapter, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Assistant Attorney General for Citizenship and Immigration Services for allocation to the appropriate component of the Department of Justice. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subchapter for a period of 2 years after the effective date specified in section 427.

(4) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this subchapter, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subchapter. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subchapter.

## Subchapter B—Other Provisions

**SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.**

(a) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services.".

(b) AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157–1159). All funds appropriated under this subsection shall be deposited into the Immigration Examinations Fee Account established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended.

**SEC. 432. BACKLOG ELIMINATION.**

Section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)) is amended by striking "October 17, 2000;" and inserting "1 year after the date of the enactment of the Homeland Security Act of 2002;".

**SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.**

(a) IN GENERAL.—The Attorney General, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in subchapter 1 takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 421(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Assistant Attorney General for Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Director of the Bureau of Immigration Enforcement of the Department of Homeland Security, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 421(b) and related processes.

**SEC. 434. REPORT ON RESPONDING TO FLUCTUATING NEEDS.**

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in subchapter 1 takes effect, the Bureau of Citizenship and Immigration Services, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

**SEC. 435. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the United States House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the "Technology Advisory Committee") to assist the Attorney General in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

**SEC. 436. CHILDREN'S AFFAIRS.**

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services of the Department of Justice, and the Director of the Bureau of Immigration Enforcement of the Department of Homeland Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 804 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term "placement" means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term "unaccompanied alien child" means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

## CHAPTER 3—GENERAL PROVISIONS

**SEC. 441. ABOLISHMENT OF INS.**

The Immigration and Naturalization Service of the Department of Justice is abolished.

**SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

(a) DEFINITIONS.—For purposes of this section—

(1) the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term "covered entity" means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Immigration Enforcement of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Justice; and

(3) the term "transfer date" means the date on which the transfer of functions specified under section 411 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the "appropriate committees of Congress" are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term "final basic pay" means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Attorney General (for transfer to the appropriate component of the Department of Justice, if necessary) or the Under Secretary for Enforcement and Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

**SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.**

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) thereof).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term "covered entity" has the meaning given such term in section 442(a)(2).

**SEC. 444. SENSE OF CONGRESS.**

It is the sense of the Congress that—

(1) the missions of the Bureau of Immigration Enforcement of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services of the Department of Justice are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

**SEC. 445. REPORTS AND IMPLEMENTATION PLANS.**

(a) DIVISION OF FUNDS.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(b) DIVISION OF PERSONNEL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 411 takes effect, and every 6 months thereafter, until full implementation of this subtitle has

been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by chapters 1 and 2 have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by chapters 1 and 2 have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 411 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

Page 24, strike line 7 and all that follows through page 27, line 15.

Page 27, line 16, strike "**503**" and insert "**404**".

Page 28, line 10, strike "**504**"; and insert "**405**".

Page 29, line 1, strike "**505**" and insert "**406**".

Page 30, line 12, before "In" insert "(a) IN GENERAL.—

Page 31, after line 6, insert the following:

(b) IMMIGRATION ENFORCEMENT.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Immigration Enforcement. Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 411 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Enforcement.

(2) TRANSFER OF FUNCTIONS.—In accordance with title VIII, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy

and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.
(B) The detention and removal program.
(C) The intelligence program.
(D) The investigations program.
(E) The inspections program.

Page 31, strike lines 15 through 19 and insert the following:

# TITLE VII—INSPECTOR GENERAL; GENERAL PROVISIONS

Page 31, strike line 20 and all that follows through page 32, line 19.

Page 32, line 20, strike "**Subtitle B**" and insert "**Subtitle A**".

Page 33, line 2, insert "sensitive" before "information".

Page 34, strike lines 7 through 10 and insert the following:

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes (1) a statement as to whether the Inspector General agrees or disagrees with such exercise and (2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of the Congress.

(d) APPOINTMENT OF DEPUTY INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—The Inspector General of the Department of Homeland Security shall appoint a Deputy Inspector General for Civil Rights and Civil Liberties (hereinafter in this subsection referred to as the "Deputy").

(e) CIVIL RIGHTS AND CIVIL LIBERTIES REVIEW.—The Deputy shall—

(1) review information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department of Homeland Security;

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Deputy; and

(3) submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of the Congress on a semiannual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including the use of funds appropriated to carry out this subsection.

Page 34, beginning at line 11, strike subtitle C of title VII (and redesignate provisions accordingly)

Page 34, line 20, strike "**Subtitle D**" and insert "**Subtitle B**".

Page 35, line 5, insert "(a)" before "Notwithstanding".

Page 35, line 13, strike "; and", and after line 13 insert the following:

"(b) Notwithstanding any other provision of this title, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this title to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of the Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that

are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code."; and

Page 41, after line 6, insert the following (and redesignate provisions and amend the table of contents accordingly):

**SEC. 735. CONTINUING PROTECTION OF WHISTLEBLOWER PROTECTION ACT.**

It is the sense of the Committee on the Judiciary of the House of Representatives that employees transferred to the Department who, on the date of the enactment of this Act, are covered by section 2302(b)(8) of title 5, United States Code (popularly known as the Whistleblower Protection Act), should continue to receive that protection. However, recognizing that personnel in the Department will have access to substantial law enforcement information and intelligence, the Committee believes that such whistleblower protections should not compromise information or intelligence that would be protected if it remained in other agencies.

**SEC. 736. ESTABLISHMENT OF INTERNET SITE FOR REPORTING SUSPICIOUS ACTIVITIES.**

It is the sense of the Committee on the Judiciary of the House of Representatives that the Secretary of Homeland Security shall establish a site on the Internet, the purpose of which shall be to provide a single location at which may be found a direct connection to all other Internet sites established by Federal agencies for reporting suspicious activities. The Committee recommends that the Secretary take such action as is necessary to ensure that the domain name for the site is www.911.gov, or an equally identifiable domain name.

Page 44, after line 10 insert the following:

(f) TASK FORCE ON ADMINISTRATIVE PROCEDURE.—The Secretary shall appoint a task force to resolve conflicts among and harmonize the various administrative procedures of the agencies transferred to the Department. The task force should be composed of legal officers (or similarly qualified persons) made available for this purpose by the head of the executive agency from which the transferred agency came.

(g) ADMINISTRATIVE LAW JUDGES.—The Office of Personnel Management shall ensure that there are sufficient qualified administrative law judge resources available to the Department to conduct matters required to be conducted by administrative law judges in agencies transferred to the Department.

Page 45, line 1, strike "Subject" and insert "(1) Subject".

Page 45, line 3, strike "(1)" and insert "(A)".

Page 45, line 12, strike "(2)" and insert "(B)".

Page 45, after line 20, insert the following:

(2)(A) The Secretary's authority under paragraph (1) does not extend to a pending proceeding in or an order issued by an agency that has not yet been transferred to the Department.

(B) Unless the Secretary makes a determination in writing stating the reason it should not do so—

(i) a pending proceeding before an agency transferred to the Department shall continue to be pending;

(ii) an order issued by an agency transferred to the Department shall continue in force; and

(iii) the procedure applicable before the transfer shall continue to apply to such proceeding or order.

Page 47, after line 19, insert the following:

**SEC. 807. AUTHORIZATIONS.**

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

Page 48, line 8, before "Title" insert "(a) IN GENERAL.—".

Page 48, line 24, strike the period at the end and insert "; and".

Page 48, after line 24, insert the following:

(5) in section 5315, by striking "Commissioner of Immigration and Naturalization, Department of Justice.".

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

Page 49, line 4, strike "of the Treasury" and insert "Secretary of the Treasury".

Page 49, line 5, strike "of Homeland Security" and insert "Attorney General".

At the end of the bill add the following:

# TITLE —TRANSFERS TO THE DEPARTMENT OF JUSTICE

**SEC. ___01. TRANSFER OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.**

There shall be transferred to the Attorney General the functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center, including any functions of the Secretary of the Treasury relating thereto.

**SEC. ___02. TRANSFER OF THE UNITED STATES SECRET SERVICE.**

There shall be transferred to the Attorney General the functions, personnel, assets, and liabilities of the United States Secret Service, including any functions of the Secretary of the Treasury relating thereto.

**SEC. ___03. STUDY.**

Not later than 90 days after the effective date of this Act, the Attorney General shall submit a plan to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate regarding the integration of the United States Secret Service and the Federal Law Enforcement Training Center into the Department of Justice.

## COMMITTEE ON THE JUDICIARY

## U.S. HOUSE OF REPRESENTATIVES

## VIEWS AND RECOMMENDATIONS ON H.R. 5005

## "THE HOMELAND SECURITY ACT OF 2002"

## JULY 12, 2002

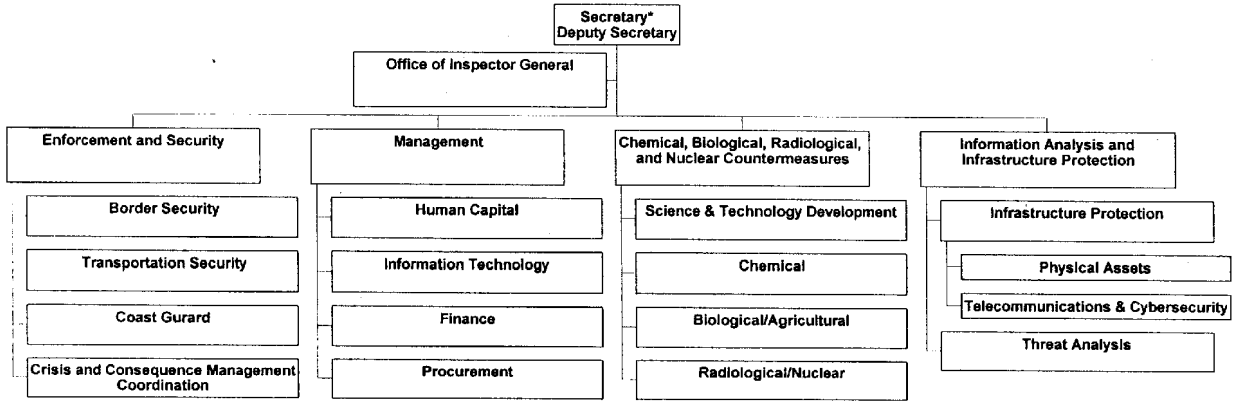
### PRINCIPAL PROVISIONS OF JUDICIARY COMMITTEE AMENDMENTS TO H.R. 5005

The Committee amendments to H.R. 5005 are fully consistent with the articulated mission of the proposed Department of Homeland Security (DHS). Reported amendments merely streamline the structure and focus the mission of the Department to help ensure its success. The Committee recommends modifying the mission statement of the Department to stress that its core mission should be the prevention, detection, disruption, and effective response to terrorist threats and activities. The Manager's Amendment to H.R. 5005 would enhance the effectiveness of the new Department and reduce bureaucracy by: (1) limiting the number of Under Secretaries to four; (2) transferring only a small component of the Federal Emergency Management Agency to the new Department; (3) transferring the Secret Service to the Department of Justice; and (4) ensuring that immigration services remain at the Department

of Justice. The amendments also make important recommendations to reduce potential abuses by the new Department, including the addition of a privacy officer, the creation of deputy Inspector General for civil rights and civil liberties, and the inclusion of strengthened whistleblower protection provisions. The following chart reflects the revised organizational structure the Committee recommends for the proposed Department.

# Organization of the Department of Homeland Security

Prepared by the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security




*Legal / Congressional / Public Affairs included in Office of the Secretary

## LAW ENFORCEMENT AND EMERGENCY RESPONSE AMENDMENTS

### CLARIFICATION OF KEY TERMS

The Committee recommends the statutory definition of terms which are critical to the effective functioning of the proposed Department. Accordingly, "critical infrastructure" and "terrorism" are clearly defined. The definition of critical infrastructures is based up Presidential Decision Directive 63. The definition of terrorism is derived from 18 U.S.C. § 2331 as amended by the PATRIOT Act of 2001. The Committee recommends clarification of these terms in order to provide definitional guidance and consistency to the Department. It also important to define these terms because the new Department will have authority to share and analyze intelligence information relating to terrorist threats. Providing a clear definition of terrorism will ensure that DHS will not obtain or misuse unrelated personal information.

### CRISIS MANAGEMENT AND CONSEQUENCE MANAGEMENT

As introduced, H.R. 5005 would make consequence management, not crisis management, the primary mission of the new Department. The Committee amendments clarify that crisis management is a central function of the proposed Department. The Committee amendment defines crisis management and consequence management to better delineate the functions of the new Department. "Crisis management" includes measures to identify, acquire and plan the use of resources needed to anticipate, prevent, or resolve a threat or act of terrorism. In contrast, "consequence management" is primarily concerned with the response and coordination of relief activities after an attack occurs. There is a clear and vital distinction between crisis and consequence management and this distinction must not be lost in the creation of the new Department.

### PRESERVATION OF FEMA AS AN INDEPENDENT AGENCY

The amendments reported by the Committee recommend modifying the provisions of H.R. 5005 that would transfer all of functions of the Federal Emergency Management Agency (FEMA) to the new Department. This is because FEMA's main mission as a consequence management agency is to respond to natural disasters. In most fiscal years, 75 to 95 percent of FEMA's budget is directed towards disaster relief assistance. Transferring FEMA in its entirety to DHS would detract from the agency's core mission. A terrorist attack is a federal crime and a crisis event, which requires a response different from that of a natural disaster. In addition, transferring all of FEMA to the new Department would divert FEMA from its vital and highly effective disaster relief role.

The Judiciary Committee's recommendation to maintain FEMA as a separate federal agency obviates the need for an Under Secretary for Emergency Preparedness and Response. Thus, the Committee's amendment eliminates the Under Secretary for Emergency Preparedness and Response, and transfers remaining functions to the Undersecretary for Border and Transportation Security. To re-

flect the centrality of law enforcement to this component, the Judiciary Committee amendment also changes the title of the Undersecretary for Border and Transportation Security to the Under Secretary for Enforcement and Security. This change properly reflects the comprehensive enforcement and security functions of this division, while acknowledging the primacy of other law enforcement functions and responsibilities which would be transferred. For example, the Coast Guard, Customs Service, and Border Patrol are charged with enforcing federal laws pertaining to drug interdiction, child pornography, intellectual property, and illegal immigration.

In addition, FEMA does not belong at DHS because directors of this agency have explicitly refused to provide first responders with training and assistance in crisis management functions. For example, in a March 13, 2002, letter to Chairman Sensenbrenner, the Director of FEMA stated that FEMA would not handle crisis management or law enforcement training, technical assistance, exercises, and equipment. The Director asserted that: "While FEMA will coordinate grants and assistance to first responders, it will not assume any law enforcement functions, nor will FEMA provide law enforcement training—training or investigative techniques, evidence collection techniques * * *". State and local emergency responders must receive crisis management training as it is an essential component of an effective, coordinated homeland security strategy.

DHS must serve all first responders through training and assistance in both consequence and crisis management to be adequately prepared for today's terrorist threat. As reported by the Judiciary Committee, H.R. 5005 would make the Under Secretary for Enforcement and Security responsible for training and coordinating state and local emergency responders in both crisis and consequence management. It must be stressed that investing the Under Secretary for Enforcement and Security with these responsibilities in no way detracts from the Federal Bureau of Investigation's lead role in investigating terrorist threats or events; nor does it undermine the role of FEMA, which would remain an independent agency charged with consequence management in the event of a natural disaster.

TRANSFER OF FEMA'S OFFICE OF NATIONAL PREPAREDNESS TO DHS

The Committee's amendment recommends the transfer of a small component of FEMA, the Office of National Preparedness (ONP), to the new Department. ONP's primary focus is to provide training and technical assistance for first responders in consequence management following a terrorist attack. Transferring ONP from FEMA would augment other training and emergency assistance functions transferred to DHS from other agencies. These include the Office for Domestic Preparedness (ODP) within the Department of Justice as well as offices within the Department of Health and Human Services which provide grants, technical assistance and equipment to first responders. The selective transfer of ONP from FEMA to DHS would strengthen the Department's ability to respond to terrorist events while averting the imposition of extraneous and burdensome responsibilities which would detract from the Department's central homeland security mission. This would

help guarantee a centralized crisis and consequence management function at the new Department.

TRANSFER OF THE SECRET SERVICE TO THE DEPARTMENT OF JUSTICE

As introduced, H.R. 5005 would transfer the Secret Service to DHS while preserving the Service as a "distinct entity." The Committee recommends streamlining and focusing the proposed Department by transferring Secret Service to the Department of Justice rather than DHS. The Judiciary Committee is the authorizing Committee for the Secret Service and has concluded that the Service does not properly belong at DHS. Crime prevention and law enforcement are central to the mission of the Secret Service. The Secret Service is charged with enforcing several federal statutes relating to counterfeiting, threats against governments officials such as the President and Vice President, credit card fraud, computer crimes, and fraud against financial institutions. Furthermore, unlike nearly all of the law enforcement agencies H.R. 5005 would transfer to DHS, the Service is not a border or transportation security agency. Finally, while the Service coordinates with federal and state agencies when providing security for national events, these activities comprise a fraction of its overall responsibilities.

TRANSFER OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER TO THE DEPARTMENT OF JUSTICE

The Committee further recommends transferring the Federal Law Enforcement Training Center (FLETC) from the Treasury Department to the Justice Department. FLETC was established in 1970 to provide an interagency law enforcement training program to train federal, state, local, and foreign law enforcement entities. FLETC's training curriculum closely resembles that provided by the Federal Bureau of Investigation. Its basic training course provides instruction in criminal investigation to uniformed law enforcement officers who possess authority to carry firearms and effect arrests. FLETC's transfer to the Department of Justice assures a greater level of consistency and coordination of federal law enforcement training procedures under the direction of the nation's chief law enforcement officer, the Attorney General. The rationale for shifting FLETC to the Department of Justice is even more pronounced given the fact that H.R. 5005's transfer of the Customs Service from the Treasury Department to DHS would leave Treasury with a greatly diminished law enforcement mission.

IMMIGRATION ENFORCEMENT AND SERVICES AMENDMENTS

STEPS TO ENSURE THE EFFECTIVE OPERATION AND INTEGRATION OF CERTAIN IMMIGRATION FUNCTIONS WITHIN DHS

The Committee recommends the incorporation of many of the immigration-related structural reform provisions contained in H.R. 3231, the "Barbara Jordan Immigration Reform and Accountability Act," which passed the House by a vote of 405-9. Like H.R. 3231, the Committee recommends the abolition of the Immigration and Naturalization Service (INS). In addition, the amendment retains H.R. 3231's requirements concerning: the Ombudsman; the Citizen-

ship Office; the requirement to utilize Internet-based technology to promote administrative efficiency; pilot initiatives for reduce administrative backlogs; voluntary separation incentive payments; the authority to conduct a demonstration project relating to disciplinary action of immigration officers; the managerial rotation program; a reporting requirement on interior checkpoints; and an assessment of shifting demands presented by fluctuating immigration needs.

SEPARATION OF IMMIGRATION ENFORCEMENT FROM IMMIGRATION SERVICES

The Committee recommends establishing the Bureau of Immigration Enforcement within the Department of Homeland Security's office of Border and Transportation Security (renamed the division of Enforcement and Security), while establishing the Bureau of Citizenship and Immigration Services in the Department of Justice. The Bureau of Immigration Enforcement recommended by the amendment would be nearly identical to the enforcement bureau created by H.R. 3231. The Bureau of Citizenship and Immigration Services, is also very similar to the services bureau contained H.R. 3231. Finally, the Committee amendment would create an Assistant Attorney General for Citizenship and Immigration Services who would report to the Deputy Attorney General.

These organizational reforms will help address widely-recognized, systemic "mission overload" problems within the INS, while helping to ensure that immigration services will receive the resources necessary to professionally respond to the needs of legal immigrants. By separating immigration enforcement from immigration services and elevating the status of immigration services within the Justice Department, the amendment gives legal immigration services the focus and attention they deserve. Maintaining immigration services in the Justice Department would also promote a closer examination of the financial needs of the service bureau to improve immigration services than if the component resided in the Department of Homeland Security. If the services bureau were transferred to DHS, appropriating funds for these services would be an afterthought.

Retaining responsibility for immigration services at the Department of Justice, which is responsible for administering immigration benefits, would also ensure the legitimate needs of legal immigrants are not subsumed by the massive size and scope of a Department which would be primarily dedicated to homeland security. It would affirm America's commitment to welcome legal immigrants to the United States in a timely and professional manner by personnel who will not assume that all legal immigrants present a security threat.

With respect to immigration enforcement, the Committee recognizes that several enforcement functions of the INS, such as inspections and the Border Patrol, naturally fit together with Customs and other border components. These units should be consolidated as a border security unit, which is an integral part of the Department of Homeland Security. Therefore, the Committee recommends that the immigration enforcement be transferred to DHS and established as the Bureau of Immigration Enforcement within the

Border and Transportation Security division (renamed the division of Enforcement and Security).

With the proposed transfer of immigration enforcement and services functions to two separate Departments, it is essential that the enforcement and service bureaus communicate effectively with one another. Many aliens must interact with both immigration services and enforcement officers; this overlap is unavoidable. Accordingly, the Committee Amendment would create a liaison in each bureau to communicate with the other bureau. To ensure that the two bureaus share information and coordinate their efforts, each liaison would be required to create a common access system to information technology, databases, records, files, and other administrative resources. Currently, the INS has systemic administrative and organizational problems, often misplacing or losing applications and other paperwork. Sending and receiving paper files between the two Departments would only compound the problem. The Committee Amendment, like H.R. 3231, would thus require the Attorney General to establish an Internet-based system so that aliens may apply for benefits and check the status of their applications online. The INS must move away from its antiquated paper filing system. Dividing the INS between DHS and the Justice Department would facilitate movement toward an electronic filing system so that both the service and enforcement bureaus can easily access and maintain the integrity of alien files. Most importantly, these changes would ensure that fewer files are lost.

OFFICE OF CHILDREN'S AFFAIRS

With respect to the Office of Children's Affairs, the Committee amendment would transfer the same functions created in H.R. 3231 to the Director of the Office of Refugee Resettlement within the Department of Health and Human Services. These functions include "unaccompanied alien childrens" care and placement that were exercised by the INS Commissioner prior to the effective date of the bill; coordinating and implementing the law and policy for unaccompanied alien children who come into federal custody; making placement determinations for all unaccompanied alien children in federal custody; identifying and overseeing the infrastructure and personnel of facilities that house unaccompanied alien children; annually publishing a state-by-state list of professionals or other entities qualified to provide guardian and attorney services; maintaining statistics on unaccompanied alien children; and reuniting unaccompanied alien children with a parent abroad, where appropriate.

The Committee amendment also gives the Director of the Bureau of Immigration Enforcement the responsibility for collecting information relating to nonimmigrant foreign students and other exchange program participants, including the Student and Exchange Visitor Information System, and using such information to carry out the enforcement functions of the bureau.

## PROTECTIONS AGAINST POTENTIAL ABUSES BY THE DEPARTMENT

### SAFEGUARDS TO PROTECT INDIVIDUAL PRIVACY

The amendments to H.R. 5005 add important provisions to protect against the unauthorized use or disclosure of private information. The amendment requires the appointment of a privacy officer to ensure the Department's compliance with the Privacy Act of 1974, and permits congressional oversight of such compliance. In addition to information technologies, the privacy officer would be responsible for assuring that all forms of technologies, are not employed by DHS to erode citizens' privacy protections.

The privacy officer will report to Congress on privacy violations and conduct privacy impact assessments of proposed rules when deemed appropriate by the Secretary. The Committee recommends that the DHS Secretary establish procedures ensuring the confidentiality and accuracy of personally identifiable information. These procedures would require the DHS Secretary to: (1) limit the redissemination of personally identifiable information (such as Social Security numbers) to ensure that it is not used for an unauthorized purpose; (2) ensure the security and confidentiality of such information; (3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and (4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information. The text of this provision is substantively identical to H.R. 4598, the "Homeland Security Information Sharing Act." In addition, the amendment contains a clear mandate that nothing in H.R. 5005 be construed to authorize the development of a national identification card or system. Finally, the amendment would require the Secretary of DHS to appoint a task force to harmonize the administrative procedures and adjudicative processes of the new Department.

### INSPECTOR GENERAL AMENDMENTS TO H.R. 5005

As introduced, section 710(a) and (b) of H.R. 5005 would allow the Secretary to restrict the activities of the Inspector General (IG) when those activities involve certain information, generally related to national security. Specifically, H.R. 5005 would permit the Secretary to exercise control over the Inspector General's authority to conduct audits or investigations or to issue subpoenas if these activities would require access to information concerning: (1) intelligence, counterintelligence, or counterterrorism matters; (2) ongoing criminal investigations or proceedings; (3) undercover operations; (4) the identity of confidential sources, including protected witnesses; (5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of certain persons or property; and (5) other matters that, in the Secretary's judgment, would constitute a serious threat to national security. Section 710(c) requires the Secretary to notify the President of the Senate and the Speaker of the House within 30 days of the exercise of that authority.

The proposed amendment conforms the Secretary's authority and responsibilities more closely to the corresponding provisions relating to the authority and responsibilities of other department heads

at the Departments of Defense, Justice, and Treasury and the Central Intelligence Agency. First, the language would amend subsection 710(a) to allow the Secretary to restrict the IG's authority when access to "sensitive" information—not just any information—concerning the specified matters is involved. Provisions governing other inspectors general specifically refer to "sensitive" information, not just any information. Second, the amendment alters and expands the reporting requirement in subsection 701(c) to require: (1) the Secretary to notify the IG and provide reasons for the exercise of the authority; (2) the IG to forward the Secretary's notification and reasons to the President of the Senate, the Speaker of the House, and appropriate committees and subcommittees of Congress; and (3) the IG to report to Congress whether he or she disagrees with the Secretary. If there is a disagreement, the amendment requires the IG to explain the reason for the disagreement in his report to Congress.

ESTABLISHMENT OF A DEPUTY IG FOR CIVIL RIGHTS AND CIVIL LIBERTIES

The amendment would also require the Inspector General to appoint a Deputy Inspector General to examine allegations of civil rights abuses, including allegations of racial or ethnic profiling, by employees of the Department of Homeland Security. The Deputy Inspector General must advertise his or her responsibilities and report to Congress on a semi-annual basis regarding his responsibilities.

ENHANCED WHISTLEBLOWER PROTECTIONS

The Manager's Amendment contains a sense of the Committee that employees transferred to DHS continue to receive existing whistleblower protections provided that sensitive intelligence or law enforcement information is not compromised. The general whistleblower statute broadly applies to federal employees. However, federal personnel are not protected by this statute if they work in an "excepted service" or are excluded from coverage by the President "based on a determination that [it] is necessary and warranted by conditions of good administration * * *". This statute specifically does not apply to the Federal Bureau of Investigation, Central Intelligence Agency, and other foreign intelligence or counter-intelligence agencies. Federal employees who handle sensitive and classified law enforcement and counter-intelligence information have been extended whistleblower protections, but are subject to special treatment because of the sensitive nature of the information that may be involved in any investigation or complaint brought forward by an employee.

The Committee's language seeks to ensure that when regulations are implemented by the Department they should reflect the procedures that have been adopted in other agencies to protect such information. Section 730 of the bill as introduced appeared to permit the Secretary to eliminate those protections. In response to Members questions, Governor Ridge testified that the bill was not intended to strip whistleblower protections from employees by moving them to the Department of Homeland Security. The amend-

ment expresses the sense of the Committee that the protections should be continued in the new Department, but that sensitive law enforcement information and intelligence need to continue to be protected as they are under current law in other agencies.

## ADDITIONAL AMENDMENTS

### HARMONIZATION AND RATIONALIZATION OF DEPARTMENT COMPENSATION

DHS would incorporate law enforcement personnel from a number of existing agencies. Disparate pay scales and retirement policies among similarly situated law enforcement personnel threatens to erode employee morale and jeopardize the success of the new Department's law enforcement mission. The Committee expresses concern that pay and benefit disparities among law enforcement agencies have resulted in substantial defections from agencies where the pay and benefit package appears to be low to agencies where the pay and benefit packages are perceived to The amendment requires the Secretary of Homeland Security, in consultation with the Director of the Office of Personnel Management, to submit a plan (within 90 days of the establishment of the Department) to the President and Congress to ensure, to the maximum extent practicable, the elimination of disparities in pay and benefits among employees (especially among law enforcement personnel) of the new Department. The Committee is particularly concerned that increased compensation provided to employees of the Transportation Security Administration (TSA) is causing qualified law enforcement personnel from the Secret Service, Capitol Hill Police, and Park Service to migrate to the TSA.

## ADDITIONAL CONCERNS

### EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

The Executive Office for Immigration Review (EOIR), located in the Justice Department, houses the immigration courts and the Board of Immigration Appeals. These units adjudicate the deportability of aliens and aliens' applications for relief from deportation in immigration proceedings. Although the Committee Amendment did not address EOIR, the Committee believes that it should remain in the Justice Department.

### IMPACT ON CIVIL SERVICE EMPLOYEES

The Committee is also concerned about the impact the bill has on civil service protections which currently exist for federal employees that would be transferred to DHS. Section 804(e)(2) notes only that current employment terms (pay, civil service protections) would remain in place until a new human resources management system is established by DHS. The Committee recommends that the Select Committee and other committees of jurisdiction address concerns regarding the potential loss of civil service protections by employees affected by the bill.

THE FEDERAL ADVISORY COMMITTEE ACT AND THE FREEDOM OF INFORMATION ACT

The Committee recognizes that the new Department will have a significant need to establish and use the services of advisory committees with respect to highly confidential and sensitive national security matters. In its current form, H.R. 5005 would exempt from the requirements of the Federal Advisory Committee Act (FACA) any advisory committees established by the Secretary of DHS. Although FACA currently exempts the Central Intelligence Agency and the Federal Reserve Board from its requirements, the Committee is concerned that such an exemption may substantially diminish the openness and public-access goals of the FACA. The bill also creates an exemption to the Freedom of Information Act (FOIA) for information that companies and individuals voluntarily provide that "relates to" infrastructure vulnerabilities and related matters. Because the FOIA is so important to preserving openness and accountability in government, the breadth of this new exemption also raises serious concerns.

The Committee recognizes, however, that public access to this information may have two unintended effects: (1) companies will be deterred from providing that information to the new Department; and (2) potential terrorists will have access to that information. It is worth noting that FOIA currently contains exemptions restricting the disclosure of national security information (see 5 U.S.C. 552(b)(1)), sensitive law enforcement information (see 5 U.S.C. 552(b)(7)) or confidential business information (see 5 U.S.C. 552 (b)(4)). That being the case, any additional exemption from FOIA must be demonstrably necessary and should be extremely narrow. The Committee recommends that the possibility of narrowing the scope of this provision be considered to make clear that material that would be exempt from disclosure may be segregated, to the extent feasible, from non-exempt, releasable material. Any exception to current FACA and FOIA requirements should be carefully considered with a view toward maintaining the sunshine safeguards needed to preserve an open and accountable governmental, while providing the Department with the needed flexibility to carry out its mission. The Committee recommends that the Select Committee and the other committees of jurisdiction address these concerns.

ADDITIONAL VIEWS OF CHAIRMAN F. JAMES SENSENBRENNER, JR.

I strongly believe that all visa granting functions of the Department of State should be transferred to the new Department of Homeland Security. The State Department has repeatedly demonstrated that it cannot perform this function with due regard for national security. In fact, its core mission as a diplomatic agency is incompatible with the responsibility to make grant and denial decisions on the millions of visa requests it receives each year.

While lapses at the Immigration and Naturalization Service and other federal agencies that increased America's vulnerability to the World Trade Center and Pentagon terrorists attacks have received attention, only recently has attention been given to equally if not more serious failures at the State Department.

Fifteen of the Saudi terrorists who launched the 9-11 attacks had been granted visas by State Department consular officers in Saudi Arabia. Twelve of the terrorists were personally interviewed by the consular officers. A large scale investigation has just come to light into the sale of 70 visas at the U.S. embassy in Qatar, including one to the roommate of two of the 9-11 terrorists. The State Department has come under intense criticism for the "Visa Express" program in Saudi Arabia, which raises disturbing questions about the role of Saudi travel agencies in pre-screening visa applicants and which continues in operation today. Just last month, Deputy Secretary of State Richard Armitage sent a letter to the Justice Department rejecting the Foreign Terrorist Tracking Task Force's (FTTTF) recommendations to deny visas to specific aliens because "the information we have received states only that the FTTTF believes the applicants may pose a threat to national security * * *" It seems as if the events of September 11 have gone unnoticed by the State Department.

At the State Department, visas are considered first and foremost a device to curry favor with foreign governments. The more visas issued, the happier the foreign government. Consequently, State Department consular officers are under intense pressure from the Secretary of State and their ambassador and superiors to approve as many visas as possible. Employee evaluations are often tied to the number of visas issued without regard to adequate screening. In other words, the quantity of visas issued is valued more highly than the quality of interviews given.

Besides being under pressure to approve visas, consular officers are sent out into the field with wholly inadequate training. They receive no more than a few hours training in interviewing techniques, probably the single most important skill they will need in their jobs. On the other hand, FBI agents are given 51 hours of training in interviewing techniques and many follow-up mock interviews at the academy. Compounding these problems is the crisis in motivation. Now, the talent and educational credentials of foreign service officers are not open to question. However, men and women are attracted to the foreign service because of their desire to be diplomats. They consider consular duty as "grunt work" to "pay their dues." They generally dislike their jobs and leave for political and economic posts as soon as they are allowed.

There is unanimity among former consular officers that the State Department's Visa Office should be transferred in its entirety to the Department of Homeland Security. What would be the benefits of such a move? First, the institutional pressures on consular officers to bias their visa decisions in favor of grants would evaporate. Consular officers would know that their job performance would in large part be graded based on their abilities to withhold visas from those aliens who would violate our immigration laws or do American harm. Second, consular staffs would be filled by law enforcement professionals who choose to perform this vital function, would take pride in and feel challenged by their jobs, and would want to make careers out of consular work.

The consular reforms contained in the Committee-approved bill unfortunately create an unwieldy hybrid consular office that will do nothing to remedy the office's current ills. Giving the Department

of Homeland Security only oversight authority over the consular service and the ability to issue regulations does nothing to change the fact that it will still be State Department foreign service officers who will have the responsibility of interviewing visa applicants and have the decision making power to grant visas. They will still be subject to inappropriate pressure to issue visas in order to comply with the diplomatic goals of their employer, the Secretary of State. Their career advancement will still be dependent on the good will of the ambassador. And, they will still be junior officers going through a rite of passage rather than seasoned law enforcement professionals with a zeal for uncovering fraud and deceit by aliens seeking visas. Thus, the Committee approved bill fails the fundamental test of true reform.

Now, there is one possible way in which the Committee-approved Visa Office can perform with appropriate regard for national security. A Department of Homeland Security law enforcement officer would have to review in-depth the file of every visa grant and also have to sit in on every interview and be able to ask questions. For, without doing so, how could he or she be able to personally observe the demeanor of the alien applicant, critical in determining the alien's true intent, and be able to ensure that all pertinent questions were asked? While this is theoretically allowed for by the Committee bill, it is clear that it will never happen. For in order to have it happen, we would need a massive and costly increase in the federal bureaucracy. We would have to add to the federal workforce a large force of Department of Homeland Security personnel, without at the same time decreasing the number of State Department consular officers. It is not even clear whether our embassies and consulates would be physically big enough to house all these new employees. And it would be hugely inefficient. We would have in essence two individuals performing the work of one. In each and every case, the State Department employee would be superfluous.

For the above stated reasons, I believe it is crucial that visa granting responsibilities be transferred to the Department of Homeland Security.

Let me answer one obvious question. How could the transfer of the consular function take place in a smooth manner without disruption to the process of issuing millions of visas a year? Those State Department foreign service officers who would prefer to remain as consular officers would certainly be given the opportunity. However, it is to be expected that most would decline because of their lack of interest in the task. We would clearly need a transition period in order to give the Department of Homeland Security time to train a new corps of consular officers in language skills, interviewing techniques, and other skills. Many would likely come with a background in law enforcement. INS inspectors and investigators would certainly find a foreign posting attractive. I have therefore proposed that for a two-year period, current consular officers would be detailed from the State Department to the Department of Homeland Security. Gradually, these officers would be replaced and returned to the State Department as new employees come on board.

F. JAMES SENSENBRENNER, JR.

## SEPARATE VIEWS OF MR. HYDE

I write separately to discuss two amendments that were adopted by the Committee at its markup of H.R. 5005.

### I. VISA PROCESSING

The President's homeland security plan, as reflected in the introduced version of H.R. 5005, would transfer to the Secretary of Homeland Security all responsibility for enforcing and administering the laws relating to processing of visa petitions at United States diplomatic and consular posts abroad. Section 403 of H.R. 5005 provides that the authority vested in the Secretary of Homeland Security shall be exercised through the Secretary of State.

A proposal was offered at the markup that would have dramatically altered the President's plan. This provision would have required Homeland Security personnel to do the actual adjudication of all visa applications at all our Embassies and consulates—over 10 million applications per year. It would have all but eliminated the role of the Secretary of State in granting and denying visa applications, which is among the most important responsibilities of our Embassies and consulates.

In my view, this provision was well-intentioned but ultimately self-defeating. It would ultimately have required the creation of a whole new bureaucracy, and it would have caused enormous practical difficulties in our Embassies and consulates abroad. Even more important, it would have risked overwhelming Homeland Security personnel with non-homeland security functions and thereby make it difficult or impossible for them to perform their central mission.

I therefore offerend an amendment with Mr. Berman to provide for a compromise on the issue of visa adjudication by Homeland Security employees. This amendment, which was adopted by the Committee, explicitly authorizes the assignment of Homeland Security employees in U.S. diplomatic and consular posts abroad. Rather than assume all visa processing functions, however, these employees will concentrate on identifying and reviewing cases that present homeland security issues.

Under the Hyde-Berman amendment, Homeland Security officers at U.S. Embassies and other overseas posts will investigate threats to the security of the United States and advise consular officers on these threats. They will ensure that these officers have access to information that would identify visa applications presenting possible homeland security questions, and Homeland Security employees would review these applications individually. This arrangement will preserve the essence of the Administration's proposal—the sensible division of labor under which homeland security officers will be allowed to concentrate on homeland security functions—while helping to ensure that security concerns are central to key decisions made abroad.

The Hyde-Berman amendment retains the requirement of the underlying Chairman's amendment for a study of the role of foreign nationals in visa processing and a report to Congress on this issue.

Finally, the Hyde-Berman amendment addresses a possible unintended consequence of turning over visa decisions to the Department of Homeland Security: the subjection of such decisions to various types of administrative and judicial review which do not apply to such decisions under current law. With over 3 million visa applications denied each year, this change would have enormous implications for our judicial system as well as for the security of our borders. The Hyde-Berman provision will ensure that denials of visa petitions in our overseas posts will continue to be non-reviewable.

By retaining a role for consular officers in adjudicating the millions of applications presenting no security-related issues, the President's plan will allow Homeland Security officers to perform their homeland security mission. By authorizing the presence of Homeland Security officers in our overseas posts to identify and deal with homeland security issues, the Hyde-Berman amendment will ensure that the President's plan works as intended.

II. LAW ENFORCEMENT INFORMATION SHARING.

The Committee also adopted an important amendment to section 203 of H.R. 2005, which gives the Secretary of Homeland Security access to information in the possession of other government agencies that is relevant to homeland security. The amendment adopted by the Committee takes the logical next step, by requiring the Secretary to promulgate regulations to ensure that this important information is shared with other federal, state, and local law enforcement agencies as necessary to guard against threats to homeland security.

The failure or inability of law enforcement and intelligence agencies to share information with one another prior to the September 11 attacks has been widely noted. Other legislation currently under consideration by Congress would take some tentative steps toward wider information sharing, but the problem is still very much with us. I am informed, for instance, that there are at least 41 federal and local law enforcement agencies with at least some jurisdiction in the District of Columbia, and that only a handful of these agencies are under any legal obligation to share information with any of the others.

The Committee amendment is simple and straightforward. It applies only to information to which the Secretary will have access under section 203, and it gives him the authority and the mandate to ensure that the information gets to the proper authorities so that it can be used to anticipate and counter threats to homeland security.

HENRY J. HYDE.

## ADDITIONAL VIEWS OF THE HONORABLE BOB BARR

### PRIVACY AND ADMINISTRATIVE PROCEDURE

The Subcommittee on Commercial and Administrative Law, which I chair, held an oversight hearing on July 9, 2002, with respect to H.R. 5005, the Homeland Security Act of 2002. The hearing focused on administrative law, adjudicatory issues, and privacy ramifications of the proposed legislation. Three witnesses testified,

including a representative on behalf of the Administration and two experts from academia.

The testimony received at the hearing, as well as the comments of the Subcommittee Members who attended the hearing, clearly highlighted the need for a privacy officer in the new Department of Homeland Security; the inclusion of procedural guidelines regarding the sharing of information; restrictions with respect to national identification card(s); and whistleblower protections, among other concerns. For example, the Administration's witness assured the Subcommittee that employees of the new Department of Homeland Security, "will retain whistleblower protection and other basic rights like equal pay for equal work and fair and equitable treatment."[1] Likewise, there was general support for implementing procedural safeguards with respect to personally identifiable information shared among governmental agencies, and to having a privacy officer appointed to ensure compliance with the Privacy Act and congressional oversight of such compliance.[2]

H.R. 5005, as reported by the House Judiciary Committee on July 10, 2002, includes provisions that adequately address these concerns, and I would urge their inclusion in the bill reported by the Select Committee. Specifically with respect to privacy concerns, the bill ensures the privacy officer will, in addition to information technologies, be responsible for assuring that all forms of technologies, including Carnivore-like surveillance systems, do not erode citizens' privacy protections. In addition, this officer will be charged with the responsibility to conduct privacy impact assessments of proposed rules when deemed appropriate by the Secretary.

The bill, as amended, contains a clear mandate that it not be construed to authorize the development of a national identification system or card. In light of the fact that the Administration witness would not issue a clear, definitive statement the Administration was not interested in, and would not pursue, a national identification card, I believe it is essential this Committee insist the final legislation include an unequivocal prohibition on a national identification card within the context or jurisdiction of the new Department of Homeland Security to be established by H.R. 5005.

Finally, the bill as reported by our Committee also includes important provisions intended to better effectuate the administrative procedures and adjudicative processes of the new Department.

BOB BARR.

## ADDITIONAL VIEWS OF REP. ZOE LOFGREN

I very much appreciate Chairman Sensenbrenner's acceptance of my amendment transferring to the Office of Refugee Resettlement in the Department of Health and Human Services oversight responsibility for care, placement and custody of unaccompanied

[1] *Adminstrative Law, Adjudicatory Issues, and Privacy Ramifications of Creating a Department of Homeland Security: Hearing on H.R. 5005 Before the Subcommittee on Commercial and Administrative Law of the House Comm. on Judiciary*, 107th Cong. (2002) (statement of Mark Everson, Controller of the Office of Federal Financial Management, Office of Management and Budget).

[2] *Id.* (Statements of Jefferey S. Lubbers, Professor of Law at the American University Washington College of Law, and Peter P. Swire, Professor of Law at Ohio State University).

alien children. I believe that the Chairman's bill has evolved significantly to take into consideration many of my concerns and I appreciate his cooperation and dedication to this immense undertaking.

I am pleased that this amendment has strong bipartisan support in the Judiciary Committee. Given the level of support from the Judiciary Committee, I fully expect any Homeland Security legislation emerging from further committee action to contain language on unaccompanied alien children that was accepted by the Judiciary Committee Chairman and the majority of the Members of the Committee. In accepting the amendment, the Judiciary Committee Members have expressed their belief that unaccompanied alien children would be better served in the Department of Health and Human Services than in the Department of Homeland Security. It is my sincere hope that as the members of further committees review the entirety of the Homeland Security legislative package that they consider the strong interests of the Members of the committee of jurisdiction.

ZOE LOFGREN.

## ADDITIONAL MINORITY VIEWS OF THE HONORABLE SHEILA JACKSON LEE

### TREATMENT OF MINORS DETAINED BY THE DEPARTMENT OF HOMELAND SECURITY

Minors may for unjustified reasons, come within the custody of the Department of Homeland Security. This Amendment would simply ensure that minors in custody of the DHS are provided access to independent counsel within 24 hours and the DHS endeavors to make contact with a parent or guardian as soon as possible. The Department of Homeland Security must take affirmative action towards assisting the minor in contacting the minor's parent or guardian.

Minors come to the U.S. for many reasons. Many are trying to establish some type of legal residency in order to be an anchor for other family members. Many children are coming to work and help support poverty stricken family members in the country of origin. Others are fleeing some type of oppression and are ultimately granted asylum and others are looking for an education and a future. Minors, both immigrant and nonimmigrant,, may come into the custody of the Department of Homeland Security—for example, through an unannounced raid. These minors should have these minimal procedural protections.

The INS houses approximately 450 to 600 juveniles at any one given time. An average daily population could be projected as 475 to 500. In FY 97, 3,149 unaccompanied juveniles were taken into custody; in FY 98, there were 5,323 custody events representing 4,457 different juveniles; and in FY 99, there were 5,644 custody events representing 4,607 different juveniles. Of May 25, 2000, there were 523 juveniles in INS custody nationwide. Of these, 87 were held in facilities in California. creasing numbers of children are trafficked by international criminal organizations for various

types of exploitation. Most frequently, they are used as a cheap source of labor.

Congress should ensure that these minors are provided adequate representation and ensure that the Department of Homeland Security does all that it can to facilitate contact with parents or guardians. I would ask members to support similar provisions in legislation creating the Department of Homeland Security.

CREATING A 5TH DIVISION OF IMMIGRATION AFFAIRS

Splitting the enforcement and service functions of the Immigration and Naturalization Service (INS) between two agencies raises concerns about coordination between the two separate functions that dictate that it be kept together in a single department. Splitting the services and enforcement functions raises serious concerns that the INS' service function will be left to wither on the vine in another agency without the attention and resources it deserves. An alternative proposal could have the entire INS (a) pulled from the Border and Transportation Security division; (b) placed in its own division headed by an Undersecretary for Immigration Security and Services; and (c) restructured as envisioned by H.R. 3231.

I offered ana amendment that would create a fifth division to the Department of Homeland Security. I presented the amendment to the committee but withdrew it in order to allow the Committee to move forward. The proposal would be consistent wit the INS in that it would incorporate the INS in whole into the Department of Homeland Security. It would It would accomplish this, however, in a manner different from the Administration's Proposal. The Jackson Lee Proposal would create a fifth division within the Department of Homeland Security titled the Division of Immigration Services and Security. This division would house three subdivisions titled; (1) Border Security; (2) Immigration Services and (3) Visa processing. This Division will separate the function of the INS allowing greater focus on the services component of this agency. This proposed Division would, however, preserve the unity of the Enforcement and Service function, as opposed to removing the service function out of the Homeland Security Department. Under this approach, the services and enforcement functions would be given equal priority within the new division. By raising this issue to the undersecretary level, the service function will have an advocate focused on the clear and defined mission of running the Immigration affairs of the nation. Additionally, the important coordination and communication that occurs between the enforcement and service functions of the INS will be maintained. The agency will be able to better share information and coordinate with other homeland security agencies and ensure a strong services function. This approach is also consistent with the President's goal of placing the entire INS in the DHS.

Also troubling is the prospect of placing the entire visa issuance function currently the responsibility of the State Department, within the exclusive authority of the Secretary of Homeland Security. Everyday, in consular posts around the world, issues arise as to how a policy or regulation should apply in a specific case. Cases often turn on questions that have a significant impact on U.S. foreign policy interests, U.S. business interests, or American values of

family unity and humanitarian protection. These issues all lie within the expertise of the state Department and therefore should be resolved in consultation with it.

Furthermore, there are functions of the current INS that require a presence outside the United States. Primarily, these are refugee processing, orphan/adoption processing and the adjudication of waivers. These functions need to be preserved as much as possible as functions of the State Department, which already possesses related expertise and has the needed infrastructure in the countries where these activities take place.

Placing the entire visa issuance function within the exclusive authority of the Secretary for Homeland Security will diminish the effectiveness of the this important function. The Hyde-Berman Amendment, which passed during full committee markup, is the preferred alternative which can be reconciled with the administration's proposal. I spoke in favor of this amendment during the markup, which allows the administration of visa issuance function by State Department employees with the oversight and regulatory guidance of the Department of Homeland Security. I am willing to comport my amendment with the Hyde-Berman Amendment.

I am also willing to comport my amendment with the Lofgren-Jackson Lee Amendment which will allow the Administration for Children and Families (ACF) within the Department of Health and Human Services to be the lead agency with responsibility for unaccompanied alien children. These children, pose no threat to the interests of the United States and the expertise ACF has demonstrated in dealing with similar issues will serve the needs of the children better than the Department of Homeland Security .

The creation of the Department of Homeland Security is a chief priority of the Administration and Congress to achieve in a very short time. This is a difficult task integrating functions between the Justice Department and the Department of Homeland Security and the Judiciary Committee's expertise is crucial to providing proper guidance.

SHELIA JACKSON LEE.

## ADDITIONAL VIEWS OF MS. WATERS

I am writing to request that the Members of the Select Committee consider a serious oversight in H.R. 5005. Specifically, I am concerned that the legislation does not explicitly refer to the Small Business Act and the protections it provides to minority- and female-owned small businesses.

As originally drafted, H.R. 5005 contains two procurement provisions. The first is in Section 301, "Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures." One of the responsibilities of the new Under Secretary for Chemical, Biological, Radiological, and Nuclear Countermeasures is "establishing priorities for, directing, funding, and conducting national research, development, and procurement of technology and systems" (emphasis added). The second place that refers to procurement is in Section 601 of H.R. 5005 as introduced. Section 601 sets out the primary responsibilities of the Under Secretary for Management. Among those responsibilities is procurement. However, there is no

language in the proposed legislation to ensure that procurement complies with the provisions of the Small Business Act.

The Small Business Act, first enacted in 1953, was created to protect small businesses and assist them in becoming viable contributors to our economy. Language from the Act itself confirm this, as where it says: "The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed."

The language goes on to say, "It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation."

The need for protecting small businesses hasn't changed. If anything, we need to protect small businesses even more in our current market situation, where the technology firms have gone bust and more and more large companies-like Enron and WorldCom-are cooking the books. We all have small businesses in our districts, businesses that provide good jobs and help maintain our economy. As we're developing the Department of Homeland Security, we must be sure to remember those businesses.

Therefore, I urge the Members of the Select Committee to make an amendment that would affect the two aforementioned sections of H.R. 5005. The suggested amendment language is as follows:

Page 17, after line 14, insert the following:

"(5) Nothing in this Act shall reduce the effect of Section 637 of Title 15 of the United States Code."

Page 30, line 12, insert at the beginning the following:

"(a)"

Page 31, after line 6, insert the following:

"(b) Nothing in this Act shall reduce the effect of Section 637 of Title 15 of the United States Code."

The goal of this amendment is simply to ensure that the provisions of the Small Business Act relating to procurement opportunities for minority- and female-owned small businesses apply to government contracts of the new Department of Homeland Security.

MAXINE WATERS.

## ADDITIONAL VIEWS OF MESSRS. FLAKE, GREEN, BARR, MS. HART, AND MR. PENCE

*Simultaneous termination of visas and drivers licenses*.—As cosponsors of a proposal to require states to issue driver's licenses that expire when a temporary visitor's legal stay concludes, we

urge the Select Committee on Homeland Security to adopt this policy into the Homeland Security Act of 2002. We note that the administration's Director for Homeland Security has publicly advocated such a policy change. In order to encourage compliance by states, driver's licenses or other comparable identification documents issued by a state would not be accepted by a federal agency for identification purposes unless the state issuing the license were in compliance with the law.

Simply having a valid state driver's license, which has become the de facto identification card in the U.S., has made it easy for non-citizen visa holders to remain in the U.S. past the expiration date on their visas. A driver's license facilitates many legal interactions in the United States, from boarding an airplane to entering a government building to opening a bank account.

JEFF FLAKE
MARK GREEN
BOB BARR
MELISSA HART
MIKE PENCE

ADDTIONAL VIEWS OF MR. SMITH OF TEXAS

As Chairman of the Subcommittee on Crime, Terrorism and Homeland Security, I fully support the actions taken by the Committee on Judiciary with regard to the transfer of only the Office of National Preparedness from the Federal Emergency Management Agency (FEMA). It is important that neither FEMA nor the new Department of Homeland Security are distracted from its core mission. FEMA has an important role to play when a natural disaster occurs. Its core mission is to provide assistance to states and local officials to address needs after a flood or hurricane. Moving the entire agency over to the Department of Homeland Security will also distract FEMA from this core mission.

FEMA is well-equipped to perform the duties and functions that it has traditionally performed, training first responders to address the aftermath of a disaster. However, it is not well-equipped to provide training for law enforcement and other first responders in how to recognize and disrupt possible terrorist threats.

Several first responders groups have expressed concerns about FEMA being the agency responsible for such training. The National Sheriff's Association testified before this Committee's Subcommittee on Crime, Terrorism and Homeland Security, "[t]he prevention, detection and apprehension of terrorists are law enforcement functions, and it is not appropriate for training and coordination to be assigned to the FEMA regime, where there are no such responsibilities. In the tragic event that there is a terrorist attack, that crisis is also a law enforcement responsibility. Sheriffs and Chiefs of Police are shocked that OMB would propose that FEMA should assume responsibility in these areas, where there is neither experience nor legal authority to act."[1]

These same views have been reiterated by the International Brotherhood of Police Officers (IBPO). In a March 8, 2002 letter to

[1] This is a test of the footnote.

the Subcommittee on Crime, Terrorism and Homeland Security the IBPO stated that it "is concerned that FEMA does not have the experience or understanding that a law enforcement agency has when investigating terrorism."

Additionally, the Police Executive Research Forum (PERF), a national organization of police executive professionals, that serves more than 50 percent of the country's population, explained that while it respects and values FEMA's role in disaster mitigation, it was troubled about FEMA assuming a new role in training in antiterrorism efforts by state and local law enforcement. PERF explained:

> [t]he mission of FEMA and its area of expertise are based on disaster response and mitigation. While law enforcement, firefighting, emergency medical services, and HAZMAT agencies could all be first responders to a critical incident, the role of law enforcement is unique in its crisis prevention, detection activities, and apprehension of suspects. Police agencies have primary responsibility for local intelligence gathering, public safety and maintaining public order before and during a crisis. They do this through combinations of community policing, criminal investigation, and emergency response. All of this must be done while meeting the day-to-day demands of a local police department. These efforts require [F]ederal support that is based on extensive experience and knowledge of local police operations and challenges* * * . The knowledge that comes from this experience cannot be easily transferred to an agency that is relatively new to law enforcement issues.

FEMA's experience and expertise have traditionally been in other areas of public safety and welfare than law enforcement. They have little history of effective partnership with local law enforcement on proactive efforts. Additionally, FEMA has indicated that regardless of where it is transferred in the Federal government, it will not provide training in crisis management for first responders; it will continue to provide training in consequence management only.

Last week, an article in the New York Times outlined in detail how the lack of a coordinated response, or coordinated communication systems, between state and local law enforcement and firefighters could have caused additional avoidable tragedies on September 11. We must make sure that any future terrorist threats are addressed with a coordinated response. The Department of Homeland Security can ensure this type of response by allowing the transferred Office of Domestic Preparedness to continue to provide the coordinated training for all state and local first responders in both crisis and consequence management.

I support the decision by the Committee on Judiciary to allow FEMA to continue to perform its mission as a separate agency. This will ensure that the creation of the new Department of Homeland Security will not detract from the important services the Federal government has traditionally provided for the American people after a natural disaster.

LAMAR SMITH.

## COMMITTEE ON SCIENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
*Washington, DC, July 12, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR MR . CHAIRMAN: The Committee on Science was referred the bill, H.R. 5005, the Homeland Security Act of 2002, and reports its recommendations and views thereon.

The Committee reported its recommendations by voice vote on July 10, 2002. The Committee is looking forward to working with you and your staff to bring the bill to a successful markup in the Select Committee and passage on the floor of the House.

Thank you for your consideration.

Sincerely,

SHERWOOD L. BOEHLERT,
*Chairman,*
RALPH M. HALL,
*Ranking Minority Member.*

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## AMENDMENTS TO H.R. 5005 AS ADOPTED BY THE COMMITTEE ON SCIENCE ON JULY 10, 2002

Amendments to H.R. 5005

as Adopted by the Committee on Science

on July 10, 2002

Page 4, after line 10, insert the following and renumber subsequent paragraphs accordingly:

(3) The term "critical infrastructure" means physical and cyber-based public and private systems essential to the minimum operations of the economy and government, including information and telecommunications, energy, banking and finance, transportation, and water systems and emergency services.

Page 5, after line 2, insert the following and renumber subsequent paragraphs accordingly:

(8) The term "key resources" means publicly or privately controlled resources essential to the minimal operations of the economy and government.

Page 7, line 12, strike "; and" and insert a semicolon.

Page 7, line 17, strike the period and insert "; and".

Page 7, after line 17, insert the following new subparagraph:

(F) research, development, demonstration, testing, evaluation, and deployment in support of subparagraphs (A) through (E).

Page 8, after line 16, insert the following new subsection:

(c) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and OMB Circular A–119.

Page 9, after line 11, insert the following new paragraph and redesignate the subsequent paragraphs accordingly:

(7) An Under Secretary for Science and Technology.

Page 12, line 14, strike "title VIII" and insert "title IX".

Page 13, lines 4 through 7, strike paragraph (4) and redesignate the subsequent paragraphs accordingly.

Page 13, strike "and" at the end of line 11.

Page 13, strike the period at the end of line 15 and insert "; and".

Page 13, after line 15, insert the following new paragraph:

(6) the Energy Security and Assurance Program and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto.

Page 15, after line 24, insert the following new sections:

**SEC. 205. INFORMATION SECURITY.**

(a) RESPONSIBILITIES.—In carrying out his duties under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to Federal, State, and local government entities, and, upon request, to private entities that own or operate critical information systems and communications networks—

(A) analysis and warnings related to threats to, and vulnerabilities of, information systems and communications networks; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on information systems and communications networks;

(2) develop, in concert with the private sector and with other government entities and in coordination with the Under Secretary for Emergency Preparedness and Response, emergency recovery plans to respond to major failures of critical information systems and communications networks; and

(3) promulgate information security standards for Federal information systems, except for national security and national intelligence information systems, developed by the National Institute of Standards and Technology under subsection (b).

(b) FEDERAL COMPUTER SECURITY.—In developing the standards for promulgation under subsection (a)(3), the Director of the National Institute of Standards and Technology shall—

(1) emphasize the development of technology-neutral policy guidelines and standards for computer security and electronic authentication practices by Federal agencies;

(2) develop qualitative and quantitative measures appropriate for assessing the quality and effectiveness of information security and privacy programs at Federal agencies;

(3) promote the development of accreditation procedures for Federal agencies based on the measures developed under paragraph (2);

(4) consult with, and provide assistance to, Federal agencies regarding the selection by agencies of security technologies and products and the implementation of security practices;

(5) develop uniform testing procedures suitable for determining the conformance of commercially available security products to the guidelines and standards developed under paragraph (1);

(6) establish procedures for the certification of private sector laboratories to perform the tests of commercially available security products developed in accordance with paragraph (5);

(7) promote the testing of commercially available security products for their conformance with guidelines developed under paragraph (1); and

(8) develop technology-neutral guidelines and standards, or adopt existing technology-neutral industry guidelines and standards, for electronic authentication infrastructures to be made available to Federal agencies so that such agencies may effectively select and utilize electronic authentication technologies in a manner that is adequately secure to meet the needs of those agencies and their transaction partners and interoperable to the maximum extent possible, and ensure that those guidelines and standards include—

(A) protection profiles for cryptographic and noncryptographic methods of authenticating identity for electronic authentication products and services;

(B) a core set of interoperability specifications for the use of electronic authentication products and services in electronic transactions between Federal agencies and their transaction partners; and

(C) validation criteria to enable Federal agencies to select cryptographic electronic authentication products and services appropriate to their needs.

(c) DEFINITIONS.—As used in this section—

(1) the term "information system" means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

(A) computers and computer networks;

(B) ancillary equipment;

(C) software, firmware, and related procedures;

(D) services, including support services; and

(E) related resources;

(2) the term "Federal information system" means an information system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using an information system) on behalf of the Federal Government to accomplish a Federal function;

(3) the term "electronic authentication" means cryptographic or noncryptographic methods of authenticating identity in an electronic communication; and

(4) the term "electronic authentication infrastructure" means the software, hardware, and personnel resources, and the procedures, required to effectively utilize electronic authentication technologies.

**SEC. 206. NET GUARD.**

(a) IN GENERAL.—The Under Secretary for Information Analysis and Infrastructure Protection, in coordination with the Under Secretary for Emergency Preparedness and Response, shall establish a national technology guard, known as NET Guard, comprising teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks (if requested by a local community and approved by the Under Secretary for Information Analysis and Infrastructure Protection). In carrying out this responsibility, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) establish procedures for the deployment of NET Guard teams;

(2) establish criteria for the certification of such teams, including—

(A) the types of expertise, capabilities, and equipment required; and

(B) minimum training and practice requirements;

(3) issue credentials and forms of identification, as appropriate, identifying each such team and its members and may suspend or terminate certification of, and recover credentials and forms of identification from, any NET Guard team, or any member thereof, when the Under Secretary deems it appropriate; and

(4) disseminate to local communities information about the capabilities of NET Guard.

(b) DEPLOYMENT.—The Under Secretary for Information Analysis and Infrastructure Protection, in coordination with the Under Secretary for Emergency Preparedness and Response, may—

(1) activate NET Guard teams in an emergency (as defined in section 102(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act), or a major disaster;

(2) authorize the payment to a member of a NET Guard team for the period that member is engaged in performing duties as such at the request of the United States by—

(A) compensating them as employees for temporary or intermittent services as experts or consultants under section 3109 or title 5, United States Code; and

(B) providing travel or transportation expenses, including per diem in lieu of subsistence, as provided by section 5703 of title 5, United States Code;

(3) assign, on a voluntary basis, NET Guard teams to work, on a temporary basis, on such other technology-related projects that the Under Secretary for Information Analysis and Infrastructure Protection deems appropriate; and

(4) conduct such additional activities as the Under Secretary for Information Analysis and Infrastructure Protection deems necessary to fulfill the purpose of this section.

Page 16, line 15, through page 17, line 3, strike "threats" and all that follows through "technology and systems" and insert "threats, including establishing priorities".

Page 17, line 10, redesignate paragraph (4) as paragraph (2).

Page 17, line 16, strike "title VIII" and insert "title IX".

Page 18, lines 4 though 7, strike subparagraph (A).

Page 18, lines 8 and 18, redesignate subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

Page 18, line 17, insert "and" after "Secretary of Energy;".

Page 18, line 21, insert "and" after "and cooperation program;".

Strike page 18, line 22, through page 19, line 9.

Page 19, line 13, strike "; and" and insert a period.

Page 19, strike lines 14 through 17.

Page 19, line 18, through page 20, line 21, strike section 303, and renumber the subsequent section accordingly.

Page 22, line 2, strike "and".

Page 22, line 5, strike the period and insert "; and".

Page 22, after line 5, insert the following new paragraph:

(6) promulgating identification and security standards and measures for use by the Department in carrying out paragraphs (1), (2), and (5).

Page 22, line 7, strike "title VIII" and insert "title IX".

Page 23, line 2, insert "(except its research and development activities)" after "of the Department of Transportation".

Page 24, after line 6, insert the following new subsection:

(c) REPORT.—Not later than December 31, 2002, or 30 days after the date of the enactment of this Act, whichever is later, the Director of the Office of Science and Technology Policy shall submit to the Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

Page 25, line 22, insert ", including interventions to treat the psychological consequences of terrorist attacks or major disasters and provision for training for mental health workers to allow them to respond effectively to such attacks or disasters" after "major disasters".

Page 26, line 11, strike "title VIII" and insert "title IX".

Page 26, line 17, insert ", and the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration" after "relating thereto".

Page 30, after line 9, insert the following new section:

**SEC. 506. UNITED STATES FIRE ADMINISTRATION.**

(a) STATUTORY AUTHORITY.—The United States Fire Administration shall continue to exist as a distinct entity within the Department, and shall continue to carry out the activities specified in the Federal Fire Prevention and Control Act of 1974.

(b) ASSISTANCE TO FIREFIGHTERS GRANTS PROGRAM.—

(1) IN GENERAL.—The Under Secretary for Emergency Preparedness and Response, through the United States Fire Administration, shall administer the grant program under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229).

(2) AMENDMENTS.—Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(A) in subsection (b)(2)(B)(i), by inserting ", including a requirement for peer review of the selection process" after "under this section";

(B) in subsection (b)(3)(N), by inserting "including funding to enable training described in subparagraph (B)" after "that utilize volunteers";

(C) in subsection (b)(5)(B)(i), by inserting "In allocating funds under this section, the Administrator shall not discriminate against an applicant whose funding jurisdiction places a high budget priority on fire department needs." after "for which applied."; and

(D) in subsection (b)(11), by striking "professional" and inserting "career".

(c) CONSULTATION.—The Under Secretary for Emergency Preparedness and Response shall consult with the Administrator of the United States Fire Administration on the implementation of programs that involve firefighters or emergency medical personnel, including the First Responder Grant Initiative.

Page 31, after line 14, insert the following new title and renumber the subsequent titles and sections accordingly:

# TITLE VII—SCIENCE AND TECHNOLOGY

**SEC. 701. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(F), the primary responsibilities of the Under Secretary for Science and Technology shall include—

(1) establishing and administering the primary research and development activities of the Department;

(2) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all units of the Department, through both intramural and extramural programs;

(3) serving as the chief scientist and chief technology officer of the Department, providing advice to the Secretary on all matters relating to science and technology;

(4) coordinating all research, development, demonstration, testing, and evaluation activities of the Department;

(5) facilitating the deployment of technology that will serve to enhance homeland security;

(6) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department;

(7) developing guidelines for the dissemination of research conducted or sponsored by the Department; and

(8) coordinating with the Office of Science and Technology Policy and the White House Office of Homeland Security and other appropriate Federal agencies in developing and carrying out the science and technology agenda of the Department.

**SEC. 702. FUNCTIONS TRANSFERRED.**

(a) IN GENERAL.—In accordance with title IX, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities—

(1) the following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States)—

(A) the chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program;

(B) such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department;

(C) the Environmental Measurements Laboratory; and

(D) the advanced scientific computing research program and activities, and the intelligence program and activities, at Lawrence Livermore National Laboratory;

(2) the Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto; and

(3) the research and development activities of the Transportation Security Administration.

(b) NOTIFICATION.—(1) At least 60 days before effecting any transfer pursuant to subsection (a)(1)(A), the President shall transmit to the Congress a report describing—

(A) which national laboratories will be affected by the transfer, and the estimated number of employees and amount of expenditures that would be transferred at each affected national laboratory;

(B) any changes to the contracts between the Department of Energy and the operators of national laboratories necessary for the Department to carry out activities at the national laboratories, and any other agreements necessary to carry out such activities;

(C) any changes to the physical plant of any national laboratory and any transfer of workers to a different location that will result from the transfer under subsection (a)(1)(A);

(D) how the transfer under subsection (a)(1)(A) will affect the duties of workers at affected national laboratories who work on both homeland security issues and other matters; and

(E) what impact the transfer under subsection (a)(1)(A) will have on the ability of the national laboratories to carry out their other duties.

(2) At least 60 days before effecting any transfer pursuant to subsection (a)(1)(B), the President shall notify the Congress of the proposed transfer and shall include the reasons for the transfer and a description of the impact of the transfer on the activities of the Department of Energy.

(3) At least 60 days before effecting any transfer pursuant to subsection (a)(1)(D), the President shall submit a report to the Congress describing—

(A) any changes to the contract between the Department of Energy and the operator of Lawrence Livermore National Laboratory necessary for the Department to carry out activities at Lawrence Livermore National Laboratory, and any other agreements necessary to carry out such activities;

(B) any changes to the physical plant or transfers of workers to different sites at Lawrence Livermore National Laboratory being made to enable the Department to carry out activities at the Laboratory;

(C) how the transfer under subsection (a)(1)(D) will affect the duties of workers at Lawrence Livermore National Laboratory who work on both homeland security issues and other matters; and

(D) any relationships the Department intends to develop with other national laboratories of the Department of Energy.

(4) At least 180 days before any change in the biosafety level at the facility described in subsection (a)(2), the President shall notify the Congress of the change and describe the reasons therefor. No such change may be made until at least 180 days after the completion of the transition period defined in section 901(2).

**SEC. 703. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

(a) CERTAIN ACTIVITIES CARRIED OUT THROUGH HHS.—(1) Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the De-

partment of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(2) With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

(b) TRANSFER OF FUNDS.—With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as he may elect to carry out through the Department of Health and Human Services (including the Public Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

(c) REPORT.—Not later than 30 days after the end of each fiscal year, beginning with the first fiscal year in which the Department is in operation, the Under Secretary for Science and Technology shall submit to the Congress a report describing the responsibilities of the Department that have been carried out in accordance with this section and listing all transfers of funds carried out under subsection (b) along with the specific purpose of each transfer.

**SEC. 704. HOMELAND SECURITY INSTITUTE.**

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the "Homeland Security Institute" (in this section referred to as the "Institute").

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Assistance for disaster decisionmaking to enhance skill in making decisions by public safety and other crisis management personnel, in order to keep Americans safe before, during, and after terrorist incidents and natural disasters.

(7) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(8) Design of and support for the conduct of homeland security-related exercises and simulations.

(9) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, and nonprofit institutions.

(e) ANNUAL REPORTS.—The Institute shall transmit to the Secretary and the Congress an annual report on the activities of the Institute under this section.

**SEC. 705. INQUIRIES.**

(a) OFFICE.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish an office to serve as a point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such office shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) FUNCTIONS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate;

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government; and

(4) develop and oversee the implementation of homeland security technology demonstration events, held at least annually, for the purpose of improving contact among technology developers, vendors, and acquisition personnel.

**SEC. 706. MISCELLANEOUS PROVISIONS.**

(a) AUTHORITY TO REORGANIZE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the responsibilities of the Under Secretary for Science and Technology under section 701 may not be reassigned to any other Under Secretary, or to any person under the authority of any other Under Secretary.

(2) NOTICE TO CONGRESS.—(A) As soon as practicable after the date of enactment of this Act, but not later than December 31, 2002, the President shall submit to the Congress a plan regarding how the science and technology functions of the Department, including those functions transferred to the Department from other departments and agencies, are to be organized. Such plan shall not take effect until 90 days after the President has submitted the plan to the Congress.

(B) The President shall notify the Congress of any subsequent changes to the plan, and no proposed changes shall take effect until 90 days after the notification has been submitted to the Congress.

(b) CLASSIFICATION.—(1) To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(2) The Under Secretary for Science and Technology shall—

(A) decide whether classification is appropriate prior to the award of a research grant, contract, or cooperative agreement by the Department and, if so, shall control the research results through standard classification procedures; and

(B) periodically review all classified research grants, contracts, or cooperative agreements issued by the Department to determine whether classification is still necessary.

No restrictions shall be placed upon the conduct or reporting of federally-funded fundamental research that has not received national security classification, except as provided in applicable provisions of law.

(c) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(d) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(e) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should consult with the National Aeronautics and Space Administration in developing computer security systems and processes, capitalizing on their expertise developed through International Space Station and satellite technology research.

**SEC. 707. COORDINATION COUNCIL.**

(a) ESTABLISHMENT AND COMPOSITION.—There is established within the Department a Homeland Security Science and Technology Coordination Council (in this section referred to as the "Coordination Council"). The Coordination Council shall be composed of all the Under Secretaries of the Department and any other Department officials designated by the Secretary, and shall be chaired by the Undersecretary for Science and Technology. The Coordination Council shall meet at the call of the chair.

(b) RESPONSIBILITIES.—The Coordination Council shall—

(1) establish priorities for research, development, demonstration, testing, and evaluation activities conducted or supported by the Department;

(2) ensure that the priorities established under paragraph (1) reflect the acquisition needs of the Department; and

(3) assist the Under Secretary for Science and Technology in carrying out his responsibilities under section 701(4).

**SEC. 708. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.**

(a) ESTABLISHMENT.—There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the "Advisory Committee"). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENTS.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of one year, one a term of two years, and the other a term of three years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when one of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary for Science and Technology for transmittal to the Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to the Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

**SEC. 709. UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.**

(a) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish up to 4 university-based centers for homeland security to provide a coordinated, university-based approach to enhance the Nation's homeland security.

(b) SELECTION.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(1) Demonstrated expertise in the training of first responders.

(2) Demonstrated expertise in responding to incidents involving weapons of mass destruction.

(3) Demonstrated expertise in health sciences.

(4) Demonstrated expertise in emergency medical services.

(5) Demonstrated expertise in the area of biological and life sciences.

(6) Strong affiliations with animal and plant diagnostic laboratories.

(7) Demonstrated expertise in food safety.

(8) Affiliation with Department of Agriculture laboratories or training centers.

(9) Demonstrated expertise in water and wastewater operations.

(10) Nationally recognized programs dealing with environment and public health in both urban and rural areas.

(11) Demonstrated expertise in port and waterway security.

(12) Demonstrated expertise in multi-modal transportation.

(13) Nationally recognized programs in information security.

(14) Nationally recognized programs in engineering.

(15) Demonstrated expertise in educational outreach and technical assistance.

(16) Demonstrated expertise in border transportation and security.

(17) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology and public policy.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

Page 36, strike lines 12 through 25.

Page 37, strike lines 1 through 10 and renumber the subsequent subsections accordingly.

Page 52, after line 11, add the following new sections:

**SEC. 1008. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

The National Science and Technology Policy, Organization, and Priorities Act is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting "homeland security," after "national security,"; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting "the Office of Homeland Security," after "National Security Council,".

**SEC. 1009. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.**

Section 7902 (b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

"(13) The Under Secretary of Homeland Security for Science and Technology.

"(14) Other Federal officials the Council considers appropriate.".

**SEC. 1010. CONDUCT OF CERTAIN MEASUREMENT AND STANDARDS DEVELOPMENT ACTIVITIES.**

The National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.) is amended—

(1) by redesignating section 32 as section 34; and

(2) by inserting after section 31 the following new section:

"CONDUCT OF CERTAIN MEASUREMENT AND STANDARDS DEVELOPMENT ACTIVITIES

"SEC. 32. (a) ACTIVITIES BY INSTITUTE.—Except as the President may otherwise direct, the Institute, in accordance with cooperative agreements entered into with the Secretary of Homeland Security, shall carry out—

"(1) a program of measurement and standards development activities related to the detection of chemical, biological, radiological, nuclear, and explosive threats; and

"(2) a program to develop standards and guidelines with respect to border and transportation security technologies, which shall include conformity assessment and related activities.

The Secretary of Homeland Security shall transfer funds to the Director in connection with such programs.

"(b) REPORT.—Not later than 30 days after the end of each fiscal year, beginning with the first fiscal year in which the Department of Homeland Security is in operation, the Director shall transmit to the Congress a report describing the activities carried out under this section, and listing all transfers of funds carried out under subsection (a), along with the specific purpose of each transfer.".

**SEC. 1011. STANDARDS REVIEW.**

The National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.), as amended by section 1010 of this Act, is further amended by adding after section 32 the following new section:

"STANDARDS REVIEW

"SEC. 33. The Director, in accordance with an agreement entered into with the Secretary of Homeland Security, and in consultation with standards development organizations as appropriate, shall prepare a list of United States homeland security-related voluntary consensus standards needs. Within one year after the date of the enactment of the Homeland Security Act of 2002—

"(1) the Director shall transmit to the Congress a 3-year plan outlining research priorities to assist in the development of the listed standards; and

"(2) the Secretary of Homeland Security shall transmit to the Congress a Government-wide plan for expediting the development, revision, and promulgation of these standards, including specific steps that Federal agencies should take to provide the resources to voluntary standards development organizations needed to have the standards in place as soon as is practicable.".

## SECTION-BY-SECTION DESCRIPTION OF SCIENCE COMMITTEE AMENDMENTS TO H.R. 5005

*Amendments to Section 2.* DEFINITIONS.

*Provision*: defines "critical infrastructure" as physical and cyber-based public and private systems essential to the minimum operations of the economy and government, including information and telecommunications, energy, banking and finance, transportation, and water systems and emergency services.

*Rationale*: the term "critical infrastructure" is used throughout the bill but is not defined.

*Provision*: defines "key resources" as publicly or privately controlled resources essential to the minimal operations of the economy and government, including reservoirs.

*Rationale*: the term "key resources" is used in Title II but is not defined.

*Amendment to Section 101.* EXECUTIVE DEPARTMENT; MISSION.

*Provision*: adds "research, development, demonstration, and testing and evaluation" related to homeland security to the responsibilities of the Department of Homeland Security.

*Rationale*: science and technology are widely recognized as among the principal tools with which the mission of the department will be realized. Accordingly, research and development should be included explicitly in the department's responsibilities.

*Provision*: requires that all standards activities of the Department shall be conducted in accordance with the National Technology Transfer Advancement Act of 1995 and OMB Circular A-119.

*Rationale*: the Science Committee wants to assure that any standards-setting functions transferred to the Department of Homeland Security continue to conform to the voluntary, consensus-based standards development process that is the norm for most standards activities in the U.S.

*Amendment to Section 103.* OTHER OFFICERS.

*Provision*: adds an Under Secretary for Science and Technology to the roster of departmental officers.

*Rationale*: science and technology for homeland security will require both high-level attention and management. The cross-cutting nature of homeland security technical challenges suggest that the department will need a central research and development organization (led by the Under Secretary for S&T).

*Amendment to Section 202.* FUNCTIONS TRANSFERRED. (to the Secretary of Homeland Security within Title II—Information Security and Infrastructure Protection)

*Provision*: transfers the Energy Security and Assurance Program and activities of the Department of Energy to Title II (Information Analysis and Infrastructure Protection), rather than to Title III (Chemical, Biological, Radiological, and Nuclear Countermeasures).

*Rationale*: this program is related to infrastructure protection, particularly protection of power generation and distribution systems.

AMENDMENTS TO TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

*Provision*: strikes the paragraph in H.R. 5005 that transfers the Computer Security Division of the Information Technology Laboratory at the National Institute of Standards and Technology (NIST) to the Department of Homeland Security.

*Rationale*: The NIST Computer Security Division develops information security standards, and testing and evaluation tools for use in federal agencies and in the private sector. The effectiveness of the division is directly related to its tight integration with other NIST laboratories, including the other divisions of the Information Technology Laboratory, the Physics Laboratory, and the Electronics and Electrical Engineering Laboratory. The effectiveness of the Computer Security Division is further enhanced by its close relationship with NIST's industrial customers. For example, the Advanced Encryption Standard, recently certified by NIST and widely used in both government and industry, was developed largely through the coordinated efforts of private sector and academic computer security experts with the NIST Computer Security Division acting as an honest broker that also provided technical support and test and evaluation services. It is the view of the Committee that the expertise of the Computer Security Division could best be harnessed in the service of homeland security if the division remains within NIST.

*Provision*: adds a new section (Section 205) on information security that gives the Under Secretary for Information Analysis and Infrastructure Protection responsibility for

(1) providing analysis and warnings related to information and communications threats and vulnerabilities;

(2) providing crisis management support in response to threats to, or attacks on information systems and communications networks;

(3) promulgating information security standards for Federal information systems, except for national security and national intelligence information systems (the National Security Agency is responsible for information security standards for these systems). The information security standards will be developed by the National Institute of Standards and Technology (NIST).

In elaborating NIST's responsibilities for developing technology-neutral information security standards, the new section includes most of the relevant provisions of the Computer Security Enhancement Act, H.R. 1259, passed by the House of Representatives on November 27, 2001.

*Rationale*: the vulnerability of critical information and communication systems has been identified as one of the most serious security threats facing the United States, yet cybersecurity is not specifically addressed in H.R. 5005 as introduced. The amendment lays out explicit responsibility and authority for addressing information threats directed at non-military systems.

*Provision*: adds a new section (Section 206) establishing a volunteer corps of technical experts, known as NET Guard, to assist local communities to respond and recover from attacks on information systems and communications networks. The section requires the Under Secretary to establish procedures for deploying NET Guard teams and criteria for certifying teams, including expertise, training, and practice requirements. The Under Secretary for Information Analysis and Infrastructure Protection, in coordination with the Under Secretary for Emergency Preparedness and Response, is authorized to deploy NET Guard teams in the event of an emergency (as defined by the Stafford Disaster Relief and Emergency Assistance Act) or major disaster. The Under Secretary is also authorized to temporarily assign volunteer NET Guard teams to technology-related projects deemed appropriate by the Under Secretary.

*Rationale*: most of the nation's expertise in information security and information infrastructure protection resides outside of the public sector. This section establishes a mechanism whereby technical experts in academia and the private sector can offer their services to a national "volunteer fire department" organized by the Department of Homeland Security and dedicated to responding to information and communications attacks (putting out cyber "fires").

*Amendment to Section 301.* UNDER SECRETARY FOR CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR COUNTERMEASURES.

*Provision*: strikes the paragraphs that give the Under Secretary responsibility for research, development, and procurement of science and technology for homeland security.

*Rationale*: as mentioned above, the Science Committee would give these responsibilities to a new Under Secretary for Science and Technology. In the Committee's view, science and technology should be organized within a dedicated secretariat that serves the needs of the entire department. The research and development requirements cut across the four functional areas established by the bill-information and infrastructure, chem-bio-nuclear, border and transportation, and emergency preparedness and response. The Committee believes it would be unwise to house responsibility for research and development within just one of these functional areas.

In addition, the research and development language in section 301 of H.R. 5005 is too vague and general to give the Department clear responsibility for homeland security research and development.

*Amendments to Section 302.* FUNCTIONS TRANSFERRED. (to the Secretary of Homeland Security within Title III-Chemical, Biological, Radiological, and Nuclear Countermeasures)

*Provision*: strikes the paragraphs that transfer a number of research and development programs in the Department of Energy, including:

(1) the chemical and biological national security and supporting programs and activities of the non-proliferation and verification research and development program,

(2) life science activities of the biological and environmental research program related to microbial pathogens,

(3) the Environmental Measurements Laboratory,

(4) and the advanced scientific computing research program and activities, and the intelligence program and activities, at Lawrence Livermore National Laboratory.

*Rationale*: these are research and development programs and facilities that properly should be housed within the under-secretariat for science and technology created in a subsequently listed Science Committee amendment.

*Provision*: strikes the paragraph that transfers the energy security and assurance program in the Department of Energy.

*Rationale*: this is a critical infrastructure assurance program that properly belongs in the under-secretariat for information analysis and infrastructure protection (transferred there by a previously-listed Science Committee amendment).

*Provision*: strikes the paragraph that transfers the Plum Island Animal Disease Center of the Department of Agriculture.

*Rationale*: this is a scientific research facility that properly belongs in the under-secretariat for science and technology (transferred there by a subsequently-listed Science Committee amendment).

*Amendment to Section 303.* CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

*Provision*: strikes the paragraphs directing the Secretary of Homeland Security to carry out civilian human health-related biological, biomedical, and infectious disease defense research and development through the Department of Health and Human Services.

*Rationale*: these paragraphs relate to research and development. They are transferred in their entirety into the new Title VII establishing an under-secretariat for science and technology by a subsequently listed Science Committee amendment.

*Amendment to Section 401.* UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

*Provision*: adds "promulgating identification and security standards and measures" for border and transportation security to the responsibilities of the Under Secretary for Border and Transportation Security.

*Rationale*: standards and measures will be required for the development and deployment of border and transportation security technologies such as biometric identification technology, explosives detection technology, etc. The Science Committee wants to assure that this is an explicit responsibility of the Under Secretary.

*Amendment to Section 402.* FUNCTIONS TRANSFERRED. (to the Secretary of Homeland Security within Title IV-Border and Transportation Security).

*Provision*: qualifies the transfer of the Transportation Security Administration by excluding transfer of its research and development activities. Those activities are transferred within Title VII the under-secretariat for science and technology by a subsequently listed Science Committee amendment.

*Rationale*: the Science Committee's view is that research and development functions should be housed under the Under Secretary for Science and Technology.

*Amendment to Section 403.* VISA ISSUANCE.

*Provision*: adds a requirement that the Director of the Office of Science and Technology Policy submit a report to Congress on how the transfer of administrative and regulatory responsibility for visa issuance to the Secretary of Homeland Security will affect the issuance of student visas.

*Rationale*: early draft plans for implementing new security rules for student visas caused some justified consternation in academic circles at the time those plans were made public. Subsequently, the Director of the Office of Science and Technology Policy created the Interagency Panel on Advanced Science Security (IPASS) to review the implementation plans and propose revisions. A new implementation plan for improving the security of the student visa process, developed by IPASS, has relieved most of the previously expressed concerns of the academic institutions that would be responsible for enforcing student visa regulations. The Science Committee wants to assure that a robust and workable security regime for student visas survives intact in the transfer of the visa function to Homeland Security.

*Amendments to Title V*—EMERGENCY PREPAREDNESS AND RESPONSE

*Provision*: adds "interventions to treat the psychological consequences of terrorist attacks or major disasters" to the responsibilities of the Under Secretary for Emergency Preparedness and Response in aiding in the recovery from terrorist attacks and major disasters.

*Rationale*: the primary goal of terrorist attacks is to cause widespread psychological distress in order to demoralize the civilian population of the United States. With that in mind, the Science Committee deems it appropriate to address psychological consequences in any response to incidences of terrorism or other major disasters.

*Provision*: transfers the Integrated Hazard Information System of the National Oceanic and Atmospheric Administration to the Department of Homeland Security.

*Rationale*: the Science Committee views the system as an emergency preparedness asset that can contribute to the effectiveness of the other functions transferred to the Department within the under-secretariat for emergency preparedness and response.

*Provision*: adds a new section (Section 506) on the U.S. Fire Research Administration specifying that the Fire Administration shall continue to exist as a distinct entity within the Department of Homeland Security (H.R. 5005 transfers the Fire Administration to the Dept. of Homeland Security) and shall continue to carry out the activities specified in the Federal Fire Prevention and Control Act of 1974. The amendment also requires the Under Secretary for Emergency Preparedness and Response to administer the Assistance to Firefighters Grants Program.

*Rationale*: in the view of the Science Committee, the U.S. Fire Research Administration and the associated Assistance to Firefighters Grants Program are important national resources that aid in the prevention and control of fire. They should be preserved as distinct entities within their new home in the Homeland Security Department.

*Amendment establishing a new Title VII*—SCIENCE AND TECHNOLOGY

*Provision*: adds a title to the bill (Title VII, the existing Title VII and subsequent titles are renumbered) establishing an Under Secretary for Science and Technology and transferring within that title most of the research and development functions transferred to the Department of Homeland Security by H.R. 5005. The Under Secretary for Science and Technology would be responsible for conducting basic and applied research, development, demonstration, and testing and evaluation relevant to any or all units of the Department. The Under Secretary would also serve as the chief scientist and chief technology officer of the Department. Individual elements of this new title are discussed below.

*Rationale*: just as it was in the Cold War, scientific and technological research and development will confer differential advantage to the United States in its war against terrorism. Carrying out a research and development agenda focused on countering terrorism will be one of the most important responsibilities of the new department. The scientific and technical challenges posed by the threat of terrorism cut across science and engineering disciplines and cut across the functional units established by H.R. 5005. The Science Committee believes, therefore, that scientific and technological research and development must be centrally organized at a high level within the department.

*Provision*: transfers research and development functions within the under-secretariat for science and technology. Functions already transferred by H.R. 5005-and identified as research and development activities-are moved into the science and technology division.

*Rationale*: in order to maximize the effectiveness of the department's homeland security science and technology development efforts, the Science Committee believes that research and development functions should be consolidated within the under-secretariat for science and technology.

*Provision*: requires Congressional notification prior to effecting the transfer of Department of Energy's chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program. The report to Congress must describe which national laboratories will be affected and how, how the contract between the Department of Energy and the relevant laboratory operator will be changed, and whether any change to the physical plant or transfer of personnel to a different location will be involved.

*Rationale*: the Science Committee has received contradictory information regarding the precise identity of these programs, their location within the national laboratory system, their budgets, and the number of personnel involved. In the exercise of its normal oversight responsibilities, the Committee wants to assure that any transfer or reorganization of civilian research programs conducted at the Department of Energy's national laboratories are both orderly and well justified.

*Provision*: requires Congressional notification prior to effecting the transfer of "such life sciences activities of the biological and environmental research program [at the Department of Energy] related to microbial pathogens as may be designated by the President for transfer to the Department."

*Rationale*: both H.R. 5005 and the Science Committee's amendments thereto authorize, at the President's discretion, the transfer of research related to microbial pathogens from the Department of Energy to the Department of Homeland Security. The Science Committee believes that, prior to any transfer, the Administration notify Congress and provide reasons for the transfer and an assessment of its impact on the Department of Energy.

*Provision*: requires Congressional notification prior to effecting the transfer of any programs, personnel, or facilities of the Lawrence Livermore National Laboratory to the Department of Homeland Security. The provision also requires Congressional notification prior to any changes to the contract between the Department of Energy and the operator of Lawrence Livermore National Laboratory.

*Rationale*: several programs at Lawrence Livermore National Laboratory are transferred to the Department of Homeland Security by H.R. 5005, but the programs listed in the bill are not specified in such a way as they may be easily identified with actual programs at the laboratory. Moreover, the Science Committee has received contradictory testimony, as well as contradictory information in private briefings, regarding the nature of the programs slated for transfer and the plans for reorganizing the laboratory. In the exercise of its normal oversight responsibilities, the Committee wants to assure that any transfer or reorganization at Livermore both orderly and well justified.

*Provision*: requires Congressional notification prior to changing the maximum biosafety level of the biological containment facilities of the Plum Island Animal Disease Center.

*Rationale*: the Science Committee wishes to assure proper Congressional oversight of biological containment at the Plum Island Center.

*Provision*: moves text directing the Secretary of Homeland Security to carry out civilian human health-related biological, biomedical, and infectious disease defense research and development through the Department of Health and Human Services. The text is moved in its entirety from Title III to Title VII.

*Rationale*: these provisions relate to research and development and should appear within Title VII where all of the department's research and development functions are consolidated.

*Provision*: requires the Under Secretary for Science and Technology to submit an annual report to Congress on how the Department's responsibilities with regard to human health-related biomedical research have been carried out. The provision requires a listing all funds transferred from the Department to any other federal agency for the purposes of conducting human health-related biomedical research. The provision also requires an explanation of the specific purpose of each inter-agency transfer.

*Rationale*: assures Congressional oversight of inter-agency (interdepartmental) transfers of funds.

*Provision*: establishes a Homeland Security Institute, a federally funded research and development center to provide independent analysis to the Secretary of Homeland Security.

*Rationale*: the top-level recommendation of the National Academy of Sciences with regard to homeland security was to establish a Homeland Security Institute, a federally funded research and development center that would provide independent technical advice and analysis.

*Provision*: establishes an office that would act as a single point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security.

*Rationale*: both Congress and the Executive Branch have been overwhelmed with unsolicited proposals related to homeland security products and technologies. Currently, there is no central clearinghouse where proposals can be received and evaluated. In the view of the Science Committee, the creation and operation of such a clearinghouse is an appropriate role for the Department of Homeland Security.

*Provision*: prevents the reassignment, under any future departmental reorganization, of the responsibilities of the Under Secretary for Science and Technology to any other Under Secretary or any person under the authority of any other Under Secretary.

*Rationale*: given that scientific and technological research and development for homeland security will be among the most important activities of the new department, the Science Committee want to assure that this function remains undiluted in any future reorganization.

*Provision*: requires the Administration to submit a plan to Congress on how the science and technology functions of the Department of Homeland Security are to be organized-and stipulates that the plan shall not take effect until 90 days after the plan has been submitted to Congress. The Administration is required to notify Congress of any subsequent changes to the plan and any proposed changes cannot take effect until 90 days after Congress has been notified.

*Rationale*: assures Congressional oversight of the organization and possible reorganization of the department's scientific and technological research and development.

*Provision*: requires that, to the greatest extent practicable, homeland security research should remain unclassified.

*Rationale*: clearly some homeland security research must be classified, but experience suggests that classified research may not always be subject to the same level of scientific scrutiny that unclassified published research is subject to. It is the Science Committee's observation that unclassified research has a greater number of quality checks associated with it because a broader community of scientists and engineers has access to the results and, through the normal scientific process, has the opportunity to comment or offer criticism.

*Provision*: makes it clear that other Under Secretaries in the Department my carry out research, development, demonstration, and deployment activities as long as those activities are coordinated through the Under Secretary for Science and Technology.

*Rationale*: the Science Committee doesn't want to preclude the conduct of research and development within other under-secretariats of the Department, as appropriate.

*Provision*: grants the Secretary of Homeland Security authority to issue regulations, as necessary, with respect to the conduct of research, development, demonstration, and testing and evaluation carried out by the Department.

*Rationale*: in order to carry out his responsibilities, the Secretary will need authority to issue regulations concerning the conduct, funding, and review of intramural and extramural research, development, demonstration, and testing and evaluation related to homeland security science and technology.

*Provision*: declares that it is the sense of Congress that the Secretary of Homeland Security should consult with the National Aeronautics and Space Administration (NASA) in developing computer security systems and processes and utilizing NASA's expertise developed through space station and satellite technology research.

*Rationale*: the new Department should draw upon the relevant expertise and experience of other technology-intensive federal agencies whenever it is feasible to do so.

*Provision*: establishes a Homeland Security Science and Technology Coordinating Council, composed of the all of the Under Secretaries of the Department and chaired by the Under Secretary for Science and Technology, to establish priorities for research and development and to assure that those priorities reflect the acquisition needs of the Department.

*Rationale*: provides a mechanism to coordinate research and development throughout the department.

*Provision*: establishes a Homeland Security Science and Technology Advisory Committee to help identify research areas of potential importance to the nation's security.

*Rationale*: the Science Committee believes that an advisory committee of outside experts can help assure a comprehensive, high-quality research agenda for the Department.

*Provision*: requires the Secretary of Homeland Security to establish up to 4 university-based centers for extramural homeland security research.

*Rationale*: to explicitly recognize the importance of university-based research in developing security-related science and technology.

*Provision*: strikes the "other transactions authority" granted to the Secretary of Homeland Security in H.R. 5005.

*Rationale*: other transactions authority enables the authorized party to bypass federal procurement regulations. The General Accounting Office has indicated that use of this authority has been problematic in the Department of Defense, the only federal agency that currently has such authority.

*Provision*: amends the National Science and Technology Policy, Organization, and Priorities Act to add homeland security to the list of issues that the Director of the Office of Science and Technology Policy (OSTP) should advise the President on and adds the Office of Homeland Security to list of offices OSTP is required to coordinate with.

*Rationale*: OSTP has responsibility for overall coordination of federal science and technology programs and homeland security will have a substantial science and technology component.

*Provision*: amends Section 7902(b) of Title 10, USC, to add the Under Secretary of Homeland Security for Science and Technology to the National Ocean Research Leadership Council of the National Oceanic Partnership Program.

*Rationale*: the Council coordinates ocean research, a significant portion of which is related to coastal and port security.

*Provision*: amends the National Institute of Standards and Technology Act (NIST Act) to authorize NIST to develop measurements and standards related to the detection of chemical, biological, radiological, nuclear, and explosive threats, and to support border and transportation security.

*Rationale*: credible technical standards and measurement tools will facilitate the rapid deployment of new detection, and border and transportation security technologies.

*Provision*: amends the National Institute of Standards and Technology Act (NIST Act) to require the Director of NIST to assess the nation's needs with regard to voluntary consensus standards that could promote greater security. The amendment also requires the Director to deliver to Congress a 3-year research plan to develop those standards, and requires the Secretary of Homeland Security to deliver to Congress a plan to disseminate those standards throughout the government.

*Rationale*: the development and promulgation of security-related voluntary consensus standards can improve our domestic security posture.

## COMMITTEE VIEWS

(In order of Appearance in the Amendment)

### STANDARDS

The Amendment requires that all standards activities of the Department of Homeland Security be conducted in accordance with the National Technology Transfer Advancement Act of 1995 and OMB Circular A-119. The Committee wants to assure that any standards-setting functions transferred to the Department continue to conform to the voluntary, consensus-based standards development process that is the norm for most standards activities in the U.S. By requiring conformity with the Act and with the OMB Circular, the Committee is assuring that the private sector will maintain its leading role in developing standards.

By law and under OMB Circular A-119, the Federal government is required to use voluntary consensus standards in its regulations and in its procurement activities and is encouraged to lend expertise to, but not to dominate, the standards development process. Our private sector-led standards development process has given the U.S. the world's most robust standards.

### NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST)

The Amendment strikes section 202(4) transferring the Computer Security Division of NIST to the Department of Homeland Security. The NIST Computer Security Division develops information security standards, testing and evaluation tools for use in federal agencies and the private sector. The effectiveness of the Division is directly related to its tight integration with other NIST laboratories, including the other divisions of the Information Technology Laboratory, the Physics Laboratory, and the Electronics and Electrical Engineering Laboratory. The effectiveness of the Computer Security Division is further enhanced by its close relationship with NIST's industrial customers. For example, the Advanced Encryption Standard, recently certified by NIST and widely used in both government and industry, was developed largely through the coordinated efforts of private sector and academic computer security experts with the NIST Computer Security Division acting as an honest broker that also provided technical support and test and evaluation services. The Committee has received extensive comments from the information technology community expressing concern that the Computer Security Division's close working relationship with industry likely would not survive if the division were transferred out of NIST. In addition, a bipartisan group of 16 Members of Congress, led by Representatives Goodlatte and Boucher, wrote to the Committee to express their opposition to the transfer. It is the view of the Committee that the expertise of the Computer Security Division could best be harnessed in the service of homeland security if the division remains within NIST.

### ENERGY SECURITY AND ASSURANCE PROGRAM

The Amendment transfers the Energy Security and Assurance (ESA) program of the Department of Energy (DOE) to the Depart-

ment of Homeland Security under the management of the Undersecretary for Information Analysis and Infrastructure Protection (Title II), rather than to the Undersecretary for Chemical, Biological, Radiological, and Nuclear Countermeasures (Title III), as proposed by the Administration, or the new Undersecretary for Science and Technology (Title VII), established by the Amendment. Both ESA and the National Infrastructure Simulation and Analysis Center (NISAC) are components of the DOE's Energy Security program. H.R. 5005 proposes to transfer NISAC into Title II but would transfer the ESA program into Title III. Keeping the ESA and NISAC programs together will maintain program coherence, since ESA provides analysis and support for NISAC. Furthermore, ESA's mission of providing threat and vulnerability assessment, response planning, emergency support, and multi-sector coordination for the nation's critical energy infrastructure is an operational role that fits more closely with the Information Analysis and Infrastructure Protection mission outlined in Title II.

INFORMATION SECURITY

The Science Committee views the vulnerability of critical information and communication systems as being one of the most serious security threats facing the United States, yet cybersecurity is not specifically addressed in H.R. 5005. The Amendment adds a new section 205 on information security that gives the Under Secretary for Information Analysis and Infrastructure Protection explicit responsibility and authority to address information threats directed at non-military information and communications systems in federal agencies. The Committee believes that the Under Secretary should establish an Office of Cyber Security to fulfill these responsibilities (although the Amendment does not set up such an office).

Section 205 also requires NIST to develop information security standards that would be promulgated to civilian federal agencies by the Department. In elaborating NIST's responsibilities for developing technology-neutral information security standards, the new section includes most of the relevant provisions of H.R. 1259, the Computer Security Enhancement Act, that was approved by the House of Representatives on November 27, 2001.

NET GUARD

The Committee recognizes that most of the nation's expertise in information security and information infrastructure protection resides within the private sector. The Amendment establishes a mechanism whereby technical experts in academia and the private sector can volunteer their services to state and local governments to assist them in responding to natural disasters or terrorist attacks that disrupt information and communications systems. The Amendment emphasizes that this is a volunteer program and that participating experts may not be compelled to participate in any given response effort. In addition, the Department need not pay any of the volunteers for their services.

BEHAVIORAL SCIENCE

The Under Secretary for Emergency Preparedness and Response will aid the recovery from terrorist attacks and major disasters. The Committee adopted an amendment that explicitly authorizes the Under Secretary to provide interventions to treat the psychological consequences of these events and provide for appropriate training for mental health workers who must deal with the aftermath of these events.

U.S. FIRE ADMINISTRATION

The Committee expects that the U.S. Fire Administration (USFA) will play an important role in the homeland security effort. However, many of USFA's most important activities are not directly related to homeland security. These activities include: 1) educating the public on fire and fire prevention issues; 2) supporting technological advancement through the development and testing of new tools that result in improved fire suppression technology and equipment; 3) compiling and maintaining a comprehensive database for publication, analysis, and dissemination of information related to fire prevention and control; and 4) conducting research on all aspects of fire with the aim of reducing the loss of life and property from fires.

The Committee believes it is important that these activities, as well as the Assistance to Firefighters Grants Program currently administered by USFA, continue to be performed by USFA. The Amendment requires that USFA be preserved as a distinct entity in the Homeland Security Department, retaining its responsibilities as outlined in the Federal Fire Prevention and Control Act of 1974 as amended.

NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM

The National Earthquake Hazards Reduction Program, an interagency research effort led by the Federal Emergency Management Agency (FEMA) and established under P.L. 95-124, plays an important role in the effort to better understand earthquakes and thus reduce the damage to life and property caused by them. The Committee expects that FEMA will continue to fulfill this responsibility after it is transferred to the Department of Homeland Security. The Committee will carefully review this situation next year when the program is reauthorized.

ORGANIZATION OF RESEARCH AND DEVELOPMENT

The Committee believes strongly that securing the homeland will depend upon science and technology. As in past wars, maintaining a technological edge against the enemy will be critical. Recognizing the important role that will be played by science and technology in detecting and countering chemical, biological, nuclear, or radiological weapons, H.R. 5005 included significant research and development activities within the Under Secretariat for Chemical, Biological, Radiological, and Nuclear Countermeasures.

The Committee believes, however, that science and technology will have an important role to play in virtually every aspect of

homeland security-not just in countering tools of mass destruction such as chemical or biological weapons. For example, borders will be made more secure when biometric technologies can be reliably used to identify bad actors from good. New technologies for detecting explosives and other weapons will make travel safer. 'Data mining' technologies that enable the rapid identification of important data from among the vast quantities collected will help law enforcement identify terrorist activities. Advances in cyber security will help protect the nation's critical infrastructures, as they are intrinsically intertwined with, and dependent on, networks such as the Internet. Technologies that enable first responders to communicate more effectively during a crisis will improve disaster response.

To ensure that science and technology are effectively mobilized in all aspects of the war against terrorism, the Committee believes that the Department must have, at its core, a robust research and development enterprise headed up by an Under Secretary whose expertise and primary responsibilities will be science and technology. As such, the Committee believes that research and development should be centrally organized and placed at a high level within the Department. The Amendment places primary responsibility for research and development in a distinct unit, overseen by an Under Secretary for Science and Technology who is responsible for basic and applied research, development, demonstration, testing and evaluation relevant to any and all of the missions of the Department.

The Amendment moves most of the research and development functions transferred from existing agencies to the new Department in the Under Secretariat for Science and Technology. At the same time, however, the Committee believes that certain functions, such as the Department of Energy's nuclear assessment program and the Department of Defense's National Bio-Weapons Defense Analysis Center, should be retained within Title III, given their clear links to the operations of that unit.

The organizational changes recommended by the Committee will maximize the effectiveness of the Department's overall science and technology development efforts while still allowing each unit to conduct some research and development efforts on activities closely related to the unit's specific function.

DEPARTMENT OF ENERGY (DOE) PROGRAMS

The Amendment accepts the President's proposed transfers of DOE research programs to the Department even though the Administration has been unable to answer several fundamental questions about the impact and mechanics of these transfers.

The Committee has accepted the proposed transfers because the Department will clearly need some laboratory facilities and related research programs from which to build the research and development programs it will need to carry out its mission. However, the Committee was unwilling to see those transfers proceed before basic questions about them can be answered.

Therefore, the Amendment requires reports before the transfers can occur that must address such fundamental issues as how the transfer will affect the contractual relationships between the na-

tional labs and DOE; how scientists who work on both homeland security matters and other issues will be affected by the transfer; and how the transfer will affect the physical plant of the labs. In the report, DOE should describe the effect of the transfer not only on the laboratories from which programs are being transferred, but also on any other DOE labs whose mission and work may be affected because of the transfer.

The Committee retained language in H.R. 5005 that leaves some of the transfers up to the President, but the Amendment requires the President to notify Congress of his decision. Also, because the programs described in H.R. 5005 do not correspond exactly to program names used in DOE budgets or other documents, the Amendment requires notification of all DOE transfers so Congress can know precisely what is being transferred. The Committee believes that the President should not transfer programs that primarily support destruction of foreign weapons of mass destruction or intelligence analysis of weapons of mass destruction because such programs are not directly related to homeland security.

The Committee expects, however, that the Department will continue to interact with many national labs on a wide variety of research matters, regardless of whether their programs are transferred to the Department.

### HOMELAND SECURITY INSTITUTE

The Committee adopted an amendment that establishes a Homeland Security Institute, as recommended in the National Research Council's June 2002 report entitled Making the Nation Safer: The Role of Science and Technology in Countering Terrorism. The Secretary should create the Institute as a federally funded research and development center administered separately from the Department. The Institute would provide technical analysis and support for the Secretary including in areas such as bioterrorism agents.

The Committee intends for the Institute to be a dedicated, contract, not-for-profit organization funded by the Department. This type of structure is necessary because the depth and breadth of technical expertise needed cannot be supplied by the new Department or other existing federal agencies. The primary advantage to this type of quasi-governmental organization is a structure and management that can quickly provide deep understanding of technical issues for decision-making by government officials. Another advantage is its ability to hire highly specialized talent required to perform its duties.

### FIELDS OF RESEARCH

The Committee intends that the research activities supported by the Department not be limited to the physical and biological sciences and engineering, but also include the behavioral and social sciences. Relevant topics of inquiry would include research on psychological stresses on victims of, and responders to terrorist acts, human factors associated with the interface between technology and human behavior, the root causes of terrorism, and decision-making and management under extreme conditions.

INQUIRIES

The Amendment provides for establishment of an office to serve as a point of entry for those seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. The Committee adopted an amendment that further refined this idea and directs the Department, in conjunction with the existing inter-agency group known as the Technical Support Working Group (TSWG), to screen promising unsolicited ideas or white papers; assess their feasibility, technical merits, and costs; pursue proposals that adapt and deploy existing technologies; and match promising technologies with appropriate acquisition personnel. The provision will help eliminate bottlenecks that thwart the development and deployment of new homeland security technologies.

CLASSIFICATION

The Committee believes that research conducted or supported by the Department should, "to the maximum extent possible," be unclassified. This policy was implemented by President Ronald Reagan in National Security Decision Directive 189 in 1985, and it has mediated the tension between the need for openness as a fundamental principle of scientific research and the need to keep secret certain information that can be employed to support attacks on the U.S.

Consistent with this Directive, the Committee adopted an amendment that requires the Under Secretary, before issuing research and development grants, contracts or other agreements, to determine whether the research should be classified. The Under Secretary must also use existing statutes when deciding whether to reclassify an existing research program. Finally, the Under Secretary must review the Department's classified research programs at regular intervals to determine whether classification continues to be necessary. These additional provisions are intended give researchers some certainty as to whether their research will be classified before the grant is awarded.

STUDENT VISAS/IPASS

The U.S. depends on foreign graduate students in many science and technology fields. The Committee believes it is important that procedures for granting student visas balance the need to improve homeland security with the benefits that are gained when talented students from other countries study in the U.S.

Earlier this year, draft plans for new security rules for student visas caused concern among academic institutions. However, an implementation plan for improving the security of the student visa process by establishing an Interagency Panel on Advanced Science Security (IPASS), relieved most of these concerns. Recognizing the role that the Director of the Office of Science and Technology Policy (OSTP) played in creating IPASS, the Amendment requires the OSTP Director to report to Congress regarding how the provisions of section 403 will affect procedures for the issuance of student visas.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

The Committee adopted an amendment expressing the Sense of Congress that the Secretary should consult NASA on matters related to computer security systems and processes. The Committee recognizes that NASA has developed significant expertise in this area that could be of value in the fight against terrorism. In addition, NASA has recently partnered with computer companies and Carnegie Mellon University in an initiative to develop software that will meet the higher standards of reliability and security that the Nation will need in the future. The Committee believes that the new Department could benefit from the computer security expertise resident in NASA and encourages the Secretary to seek it out as appropriate.

HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE

The Committee adopted an amendment establishing an advisory committee to review and make recommendations with respect to general policy issues (including budget priorities) within the purview of the Undersecretary for Science and Technology. The 20-member Advisory Committee will consist of experts in science and technology. One or more of those members must be a representative of the users of the Department's research activities such as emergency responders. In addition, one or more members must be representative of citizen groups, including groups from economically disadvantaged communities.

The Committee feels that it is important to include the end-user community on the Advisory Committee. Inclusion of the emergency response and citizen group communities will help ensure that research agendas are firmly tied to the actual needs of those who will be on the front lines if the nation is subjected to a terrorist attack.

The Committee believes that the Advisory Committee can play a significant role in strengthening the Department of Homeland Security's research agenda and focus. The Advisory Committee will provide an independent and unbiased review by which the Department and Congress can assess the efficacy and utility of its science and technology activities.

OSTP

The Amendment changes the National Science and Technology Policy, Organization, and Priorities Act to add homeland security to the list of issues on which the Director of the Office of Science and Technology Policy (OSTP) should advise the President and adds the Office of Homeland Security to the list of offices with which OSTP is required to coordinate.

OSTP has responsibility for overall coordination of Federal science and technology programs. When coordinating science and technology activities that may benefit homeland security, the Committee believes OSTP should consult with the Office of Homeland Security and the Under Secretary for Science and Technology in the Department of Homeland Security.

NATIONAL OCEANIC PARTNERSHIP PROGRAM

National Ocean Research Leadership Council of the National Oceanic Partnership Program coordinates ocean research, a significant portion of which is relevant to coastal and port security. The Science Committee believes the Under Secretary for Science and Technology should be a statutory member of the Council.

NIST ORGANIC ACT

The Committee adopted an amendment that changes the NIST Organic Act to allow that agency to use its expertise to assist the Department. Section 1010 requires NIST, working through a cooperative agreement with the Secretary of Homeland Security to (1) carry out measurement and standards activities related to chemical, biological, radiological, nuclear, and explosive threats and (2) support the development of standards and guidelines with respect to border and transportation security technologies. This section requires an annual report to Congress of the activities carried out under this section.

Section 1011 requires the new Department and NIST to engage in a systematic review and upgrading of voluntary consensus standards related to homeland security. In consultation with standards development organizations (SDO), NIST and the Department shall prepare a list of homeland security-related voluntary consensus standards. It further requires NIST to develop a research plan to aid in the development of the necessary standards while requiring the Secretary to develop a Government-wide plan to help SDOs accelerate the development, revision, and promulgation of these standards.

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
*Washington, DC, July 11, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C. 20515*

DEAR MR. CHAIRMAN: On June 24, 2002, H.R. 5005, that proposes to establish a department of homeland security, was referred to the Committee on Transportation and Infrastructure. On July 11, 2002, the Committee met and, in open session, unanimously approved, by voice vote, amendments to the bill. Pursuant to H. Res. 449, the Committee herewith transmits its recommendations on H.R.5005 to the Select Committee on Homeland Security for consideration.

Sincerely,

DON YOUNG,
*Chairman*

LEGISLATIVE RECOMMENDATIONS SUBMITTED TO THE HOUSE SELECT COMMITTEE ON HOMELAND SECURITY FOR

## H.R. 5005 - HOMELAND SECURITY ACT OF 2002

JULY 12, 2002

The Transportation and Infrastructure Committee met on July 11, 2002, to consider H.R. 5005. The Committee adopted two amendments to the bill. Chairman Don Young and Ranking Member Jim Oberstar offered an en bloc manager's amendment which was adopted by voice vote by the Committee and Congresswoman Eddie Bernice Johnson offered an amendment to the amendment, which was also adopted by voice vote. The amendments contained the following legislative recommendations.

*Issuance of Regulations (Section 102(c) )*[1]

The amendment clarifies that any regulation adopted by the Secretary must be subject to the Administrative Procedure Act (APA), except as specifically provided in H.R. 5005, if enacted or some other law granting regulatory authority transferred to the Department of Homeland Security.

The Committee is concerned that H.R. 5005 is not clear as to the applicability of other existing laws to the rule making authority of the Secretary of Homeland Security. Unless Congress has specifically provided otherwise, the Committee believes that the public notice and comment requirements of the APA are essential components of governing.

*Transfer of Transportation Security Programs (Section 404)*

The amendment recognizes that transportation security is undergoing a transition. A new agency, the Transportation Security Administration (TSA), was created only last November. It is still in the process of getting organized at the same time that it is being pressed to meet some very tight deadlines for overhauling the aviation security system.

The underlying goal of this amendment is to ensure that the transfer to a new Department does not interfere with that overhaul.

Therefore, the amendment would—

a. Require that the transportation security functions transferred by this Act be maintained within a distinct unit under the Under Secretary of Border and Transportation Security. An Assistant Secretary for Transportation Security would head this separate unit.

b. Require that notwithstanding Title 8 of this Act, the transfer of the transportation security functions shall not occur until --

i. the Secretary of Homeland Security, the Under Secretary of Border and Transportation Security, and the Assistant Secretary of Transportation Security have taken office.

ii. the Secretary of Transportation certifies that explosive detection systems are deployed at all U.S. airports where they are required and that these systems are screening all checked

[1] Refers to Section in H.R. 5005 as included in the Committee Print showing the Amendment Adopted by the Committee on Transportation and Infrastructure.

baggage, as required under the Aviation and Transportation Security Act. This Act mandates that such systems must be deployed by the end of 2002.

iii. the Secretary certifies that a sufficient number of federal screeners, security managers, security personnel, and law enforcement officers have been deployed by November 19, 2002 at all airports in the United States where screening is required, except the five airports participating in the pilot program.

c. Establish a liaison office within the Department of Homeland Security to provide a mechanism for consulting with the FAA on any action that might affect aviation safety, air carrier operations, aircraft airworthiness or the use of airspace. There is a close nexus between aviation security and other aspects of the aviation system. The Committee wants to make sure that when aviation security is moved to a separate Department, it does not result in a degradation of aviation safety due to a lack of coordination between the aviation security regulator and the aviation safety regulator.

d. Make clear that nothing in this Act gives the Secretary of Homeland Security any additional authority over transportation security beyond that previously exercised by the DOT Secretary under Chapter 449 of Title 49 or by the TSA Under Secretary.

e. Prohibit the new Department from spending any Airport Improvement Program (AIP) funds. Only the FAA can make AIP grants.

With the Transportation Security Administration (TSA) impending transfer to the Department of Homeland Defense, the Committee is concerned that TSA may lose sight of its responsibility to ensure both effective security and an efficient transportation system. In light of this, it is important that in any final legislative product, Congress make clear that the Transportation Security Administration should use all reasonable measures to ensure efficiency and a viable transportation system in all modes as it fulfills its security responsibilities.

*Clarification of transfer authority (Section 404(e))*

H.R. 5005 as introduced authorizes the transfer of the TSA from the DOT to the Department of Homeland Security.

The Aviation and Transportation Security Act that was enacted in November 2001 (P.L. 107-71) created the TSA and gave it responsibility for civil aviation security as well as security for other modes of transportation. To date, the TSA has focused on aviation security, so it is not yet known what other security-related programs may eventually be transferred to the TSA from other areas of the DOT.

The amendment would only authorize the transfer of those programs in the TSA that are included in the Administration's FY 2003 budget request for the Transportation Security Administration (TSA). However, the amendment also requires the Administration to notify Congress before transferring any other security-related programs from the Department of Transportation (DOT) to the Department of Homeland Security.

The proposed amendment would provide Congress with an opportunity to review any proposal to transfer additional programs from the DOT to the Department of Homeland Security. Under the pro-

posed amendment, such additional programs may not be transferred before the last day of a 30-day period of continuous session of Congress following the date of transmittal by the President to Congress of a notice of the President's intent to make such a transfer. This language should not be misinterpreted to authorize the transfer of existing functions, agencies, personnel, authorities, or programs in the Department of Transportation that are not specifically authorized for transfer.

It is essential that Congress exercise its oversight role and approve any additional transfers of existing programs within the DOT and that such transfers are not encouraged.

*Report to Congress on checked baggage deadline (Section 404(f))*

The amendment also directs the DOT to report to Congress within 60 days on how it plans to meet the deadline in current law that all checked baggage be screened by the end of the year. The report is desirable because concerns have been expressed about whether TSA will meet the deadlines and we must make every effort to oversee it's progress and prevent unnecessary delays.

*Functions of the Administrator of GSA (Section 405)*

The amendment provides limited authority to the Administrator of GSA and gives him the flexibility to meet the security needs of federal agencies under special circumstances and permits the Administrator to respond to routine building maintenance situations (for example if someone is stuck in an elevator) without having to call in the DHS. In addition, the amendment allows GSA to retain the ability to collect fees for protection services under its current rent billing structure and to reimburse DHS for FPS protection, which eliminates the need for DHS to establish its own billing structure for building security.

*Interagency Security Committee (Section 407)*

The amendment codifies Executive Order 12977 which established an Interagency Security Committee. The Committee establishes policies for building security, develops security standards, ensures compliance with the standards, and takes actions as necessary to enhance the quality and effectiveness of security and protection of federal facilities. The executive order establishes GSA as the Chair of the Committee. The amendment allows GSA to remain as Chair or Co-Chair of the Committee.

*Federal Emergency Management Agency (FEMA) (Section 506)*

The amendment strikes those portions of the homeland security bill that transfer FEMA to the DHS, keeping FEMA as an independent agency. The amendment would also strike those portions of the bill that would transfer preparedness and response functions presently handled by FEMA, but unrelated to homeland security.

The Federal Emergency Management Agency (FEMA), is an independent agency reporting to the President that has as its mission ". . .to reduce the loss of life and property and protect the nation from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program of mitigation, preparedness, response, and recovery." At its inception,

FEMA was created to consolidate and coordinate the efforts of over 15 different agencies and departments that were responsible for responding to and preparing for disasters. Created by President Carter with an Executive Order in 1979, FEMA is tasked with carrying out the authorities contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et. seq., as amended), which is an amalgamation of previous disaster relief acts, including the National Flood Insurance Act of 1968, the Disaster Relief Acts of 1970 and 1974, the Flood Disaster Protection Act of 1973, and the Federal Fire Prevention and Control Act of 1974.

Through his executive order, President Carter also merged many separate federal government disaster-related responsibilities and agencies into one agency. Among others, FEMA absorbed the Federal Insurance Administration, the National Fire Prevention and Control Administration, the National Weather Service Community Preparedness Program, the Federal Preparedness Agency of the General Services Administration and the Federal Disaster Assistance Administration activities from HUD. Civil defense responsibilities were also transferred to the new agency from the Defense Department's Defense Civil Preparedness Agency.

While recognizing the important role that FEMA would play in responding to any terrorist attack regardless of where it is administratively situated, the Transportation and Infrastructure Committee believes that this role would best be served if FEMA retains its independent status, with an increased emphasis on coordination with the newly created Department of Homeland Security (DHS). Retaining this independence will allow FEMA to continue to effectively carry out its mission of reducing "the loss of life and property and protecting the nation from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program of mitigation, preparedness, response and recovery", unencumbered by a new bureaucracy which will be focused on security activities. Only by allowing FEMA to retain its independent coordinating role can we ensure that the government will be able to effectively respond to and help the nation recover from all disasters.

FEMA's role in responding to the attacks of September 11th has become the most high profile of its activities. However, preparing for and responding to terrorist acts is a small part of FEMA's preparedness and response activities. Since 1976, there have been only four federally declared disasters for terrorism[2], yet during the same time frame, there have been 927 federally declared disasters and 77 emergency declarations resulting from such natural hazards as fires, earthquakes, floods, hurricanes, and tornados. In none of the federally declared disasters resulting from terrorism was the ability of FEMA to respond ever diminished by its independent status. For example, in responding to the attacks on New York, FEMA effectively coordinated the efforts of Federal, State and local first

[2] Declaration 1391 for the attack in New York City on September 11, 2001; declaration 1392 for the attack at the Pentagon on September 11, 2001; Declaration 1048 for the attack at the Murrah Federal Building in Oklahoma City on April 26, 1995; and Declaration 984 for the attack at the World Trade Center in New York City on April 2, 1993.

responders, non-profit social service groups, and individual providers.

Through the existing Federal Response Plan and cooperative agreements with many state and local agencies, FEMA's independence has allowed it to effectively marshal all necessary assets from across the government to respond effectively and efficiently to each of these disasters. During the development of the Federal Response Plan, developed in 1992, and signed by the heads of 27 agencies and organizations, FEMA was vital in coordinating and organizing the myriad roles and responsibilities of each signatory agency. Since its inception, it has been vital in the Federal response effort, yet it is a flexible document, and from time to time has been updated. Each time this has occurred, FEMA has led the way and effectively updated the plan to reflect changing conditions and laws. By retaining FEMA as the lead agency in the Federal Response Plan, we are ensuring a continuity of knowledge and using an existing framework to shape future efforts to ensure seamless provision of federal assistance.

Under this amendment, FEMA retains its role as the lead agency under the Federal Response Plan in responding to disasters caused by natural hazards, such as fires, earthquakes, floods, hurricanes, and tornados and DHS would be the lead agency for disasters caused by terrorist attacks. The amendment directs DHS, in consultation with FEMA, to develop a coordinated preparedness and response program to terrorist attacks that will become a part of the Federal Response Plan. In order to effectuate this plan, FEMA and DHS will sign a memorandum of understanding to clarify the circumstances under which each agency would respond, similar to agreements that FEMA already has in place relating to other agencies for disasters. To ensure that there is no legislative overlap, references to ″Major Disaster,″ as defined by the Stafford Act, were stricken. The Committee would like to work with the Select Committee to develop a definition of ″terrorist attack″ that does not overlap or conflict with the ″Major Disaster″ definition in the Stafford Act.

Besides coordinating the response activities of as many as 27 Federal Agencies and numerous non-governmental groups such as the American Red Cross, FEMA is also responsible for the delivery of a myriad of disaster assistance programs, including Disaster Unemployment Assistance, Temporary Housing Assistance, the Individual and Family Grant Program, Disaster Legal Assistance, Home Repair Assistance, and its Debris Removal Program. Following the provision of assistance in the aftermath of a disaster to individuals, FEMA is also responsible for the provision of prospective mitigation assistance to communities through its Hazard Mitigation Grant Program, which helps to make these communities more disaster resistant.

In addition to these response and recovery roles, FEMA is also responsible for such diverse preparedness activities as the Emergency Food and Shelter program, maintenance of floodplain maps, provision and maintenance of the National Flood Insurance Program, and the U.S. Fire Administration, which teaches basic firefighting skills under a ″train the trainer″ model and also works to develop new methodologies and equipment. Under the Administra-

tion's proposal, each of these non-homeland security activities would become a part of the DHS. The Committee believes that it is essential to preserve these non-security related functions by keeping FEMA independent from the DHS.

In addition to its preparedness, response, and recovery responsibilities, FEMA will retain all of its responsibilities covered by the Floodplain Management Program, National Flood Insurance Program, Dam Safety Program, Hazard Mitigation Grant Program, Emergency Management Institute, Urban Search and Rescue, and U.S. Fire Administration. Each of these programs is geared towards mitigating the effects of traditional disasters, yet they also serve a role in homeland security. The amendment makes clear that increased coordination will allow DHS to benefit from FEMA's vast experience, while at the same time, preserving these programs and their founding missions. The amendment also makes clear that H.R. 5005 will have no effect on FEMA's authority to independently administer, make policy relating to, or promulgate regulations for its many grant programs. In those grant programs where some overlap may occur (i.e., provision of assistance to fire fighters) FEMA will be required to coordinate its activities with the Secretary of Homeland Security to ensure that no efforts are duplicated.

The Transportation and Infrastructure Committee believes that the best way to improve the delivery of federal disaster assistance is to allow FEMA to remain the independent coordinating agency that it has always been. It is the position of the Committee that the best way to accomplish both consolidation and coordination is to preserve FEMA's core mission and to keep FEMA as a distinct entity.

Considering the important role that FEMA serves in the nation's ability to prepare for and effectively deal with disasters, it is vital that it not be given secondary status or absorbed within a large bureaucracy which has little or no experience addressing these issues. Prior to the creation of FEMA in 1979, the federal government had no centralized, coordinated or effective response to disasters. Breaking FEMA up and separating its employees throughout DHS, an agency whose primary role will be security, would have the effect of diluting its ability to effectively carry out its mandate of preparing the nation to mitigate the effects of a disaster, preparing first responders, ensuring the adequacy of the federal response, and assisting in the recovery from disasters. By keeping FEMA as an independent agency and as a ″distinct entity″, FEMA's core mission will be protected and the nation will be a safer place.

*Homeland Security Department Headquarters (Section 732(c))*

The amendment strikes the authority of the Secretary to undertake real property arrangements not consistent with existing law and requires the Administrator of GSA to construct a new headquarters facility for the Department of Homeland Security consistent with the Public Buildings Act of 1959. The Committee is concerned about the broad reach of several real property provisions in H.R. 5005 that could be undertaken without Congressional oversight. Included in these provisions is authority to acquire real property by transfer or exchange, or by sale to or exchange with non-

Federal parties. Further, the Committee is gravely concerned these real estate activities will necessitate the creation of a bureaucracy within the new Department solely for the purpose of conducting real estate transactions, thus draining much needed resources away from the legitimate activities of homeland security.

Under the amendment, the Secretary will be responsible for homeland security, while the government's landlord, GSA, is responsible for acquiring the appropriate space for the agency to properly carry out its intended mission. The Public Building Service (PBS) of GSA operates and maintains 1,993 Federal buildings with more than 184 million square feet of office, storage and special space in the United States for use by civilian employees of the Federal government. PBS also acts as the leasing agent for the Federal government, and currently has in place over 7,400 leases in 6,300 buildings with over 150 million square feet of space.

The Committee on Transportation and Infrastructure recognizes the importance of establishing a new headquarters facility for the Department of Homeland Security by direct federal construction, lease-purchase, or other arrangements using the Federal Financing Bank. However, the Committee does not recommend providing the Secretary of the Department of Homeland Security authority beyond the Public Buildings Act of 1959 to undertake real property functions. The Secretary should be responsible for homeland security, while the government's landlord, GSA, should be responsible for acquiring the appropriate space for the agency to properly carry out its intended mission.

The amendment authorizes the Administrator to construct through direct appropriation, or through lease-purchase, or through a loan by the Federal Financing Bank appropriate headquarters space. The amendment further exempts any of these activities from current scoring rules so the cost of the headquarters will be amortized over a set period of time and scored on an annual basis. It also allows for appropriate Congressional oversight through the prospectus process established under section 7 of the Public Buildings Act of 1959.

*Congressional Oversight of Organizational Plan (Section 802(b))*

The amendment would require the Secretary, before any agency can be transferred, to submit an organizational plan to Congress for oversight review for a continuous 60-day period.

The purpose of this amendment is to insure that Congress has an adequate opportunity to insure that the transfer of agencies and functions is being carried out consistent with the intent of the Act.

*Prohibition on Use of Transportation Trust Funds (Section 803(f))*

The amendment would prohibit funds derived from the transportation trust funds from being transferred to or otherwise made available to the new Department of Homeland Security. The amendment would not apply to certain security related funds made available to the Federal Aviation Administration for fiscal years preceding 2003.

H.R. 5005 as proposed by the Administration provides broad authority to transfer the assets ″held by or available in connection with″ each agency that is transferred to the new Department of

Homeland Security. The term ″assets″ is broadly defined to include ″unexpended balances of appropriations, and other funds or resources″.

The Committee is concerned that this broad authority could be used to transfer funds derived from the transportation trust funds to the new Department of Homeland Security. The Department of Homeland Security is being established in response to national security concerns; therefore, the costs of its activities are inherently national security costs. National security costs should be funded by the general fund, not the transportation trust funds. The balances in the transportation trust funds are barely sufficient to maintain our transportation systems, and cannot be relied upon to meet the extraordinary security costs of the post 9/11 era as well.

*Revision of Transportation Security Oversight Board (Section 907)*

The amendment revises the Transportation Security Oversight Board by moving the Board into the Department of Homeland Security, making the Secretary of Homeland Security a Member of the Board and the Chairperson of the Board.

The Transportation Security Oversight Board plays an important role in reviewing orders issued by the Undersecretary of the Transportation Security Administration (TSA). Congress gave the Undersecretary very strong and broad authority to issue security directives and regulations relative to all Transportation security matters without providing notice or opportunity for comment. The Board has authority to review and disapprove any regulations or security directives issued by the Undersecretary within 30 days of issuance. Therefore, the Board plays an important appellate role.

It is important that the Board operate effectively and promptly to review the orders and regulations of the Undersecretary and that it vigorously exercise its review function, as well as the other statutory functions given to it by Congress. This amendment, while somewhat technical in nature, will insure the continued smooth functioning of the Board.

*FAA Consultation Requirements (Section 907(b))*

The amendment revises Chapter 471 of Title 49 to require the Federal Aviation Administration to consult with the new Department before it makes an AIP grant for security equipment or terminal modification to accommodate that equipment. It is important that after the TSA is transferred out of DOT, the close working relationship that it currently has with the FAA and vice versa, continue.

*Transfer of Federal Protective Service (Sec. 908)*

The amendment retains the transfer of the Federal Protective Service (FPS) and enhances the authority, responsibility, pay, and benefits of FPS officers by granting them Law Enforcement Officer (LEO) status. The amendment gives the Secretary special pay authority to compensate FPS officers equal to other federal law enforcement officers. The amendment clarifies that the Act does not impact the current functions and authority of the Administrator of GSA with regard to the protection of federal buildings or limit the Administrator's authority to collect fees for protective services. The

amendment also sustains limited authority for the Administrator of GSA with regard to the protection of federal buildings and facilitates the continuation of GSA's billing structure and authority to collect fees for related building expenses. The amendment also establishes an Interagency Security Committee with GSA as the chair or co-chair, which was previously authorized by Executive Order 12977, signed October 19, 1995.

While recognizing the important role the FPS plays in protecting federal buildings, the Transportation and Infrastructure Committee believes that this role is best served if FPS officers are given similar authorities as other police organizations that are being transferred to the Department of Homeland Security (DHS). Recently, the FPS has shifted its emphasis from a fixed guard post concept to a mobile police patrol and response concept. FPS officers perform all duties attendant to the normal interpretation of a police officer function, including maintaining law and order, preventing or deterring disturbances, and investigating both felonies and misdemeanors. The increased authorities and responsibilities provided under the amendment will allow current FPS officers to participate as an equal partner on task forces and commissions related to homeland security activities or be incorporated into any newly created police force.

At present, FPS officers can only make arrests (including arrests during the commission of a crime), serve warrants, and detain suspects on federal property. This puts FPS officers in the awkward position of having to call 911 and stand idly by as crimes are committed off federal property, even though they may be in a position to apprehend a suspect or stop a crime. Additionally, there are inconsistent jurisdictional policies with regard to state and local law enforcement authorities entering Federal facilities to serve warrants and make arrests. Under provisions of the amendment, the Secretary will have the authority to clarify and resolve these inconsistent and sometimes conflicting policies by entering into cooperative agreements with state and local entities.

The current FPS force is composed of both uniformed and non-uniformed officers, including criminal investigators and physical security specialists. All officers receive eight weeks of instruction at the Federal Law Enforcement Training Center in Glynco, Georgia, with additional periodic in-service and refresher training courses. Physical security specialists receive further training to conduct security surveys and provide recommendations pertaining to federal facilities.

The FPS has been a part of the Public Buildings Service (PBS) since 1949. Originally known as the Public Buildings Administration, PBS is the real property arm of GSA. PBS operates and maintains 1,993 Federal buildings with more than 184 million square feet of office, storage and special space in the United States for use by civilian employees of the Federal government. PBS also acts as the leasing agent for the Federal government, and currently has in place over 7,400 leases in 6,300 buildings with over 150 million square feet of space. The amendment maintains that the Administrator will retain current authorities for the protection of federal buildings and the ability to collect fees for protection services and

prohibits DHS from using the Federal Building Fund for anything other than building security.

The amendment is similar to H.R. 4770 approved by the Committee on May 22, 2002. The amendment enhances the FPS, provides for the continued protection of federal buildings, and requires that payments to the Federal Building Fund by agencies for building security be limited to reimbursements for building protection services.

*Preservation of the Coast Guard within the Department of Transportation (Title X and Section 406)*

The amendment includes provisions that strike all references to the transfer of the U.S. Coast Guard and ensures that Coast Guard core missions are performed at adequate levels.

The amendment establishes a new Under Secretary of Transportation for the Coast Guard. The provision creates a hierarchy within the Department of Transportation that is similar to the civilian leadership structure in the Department of Defense. Under this amendment, the Coast Guard will have the advice and support of a civilian leader, to the same extent as the military services within the Department of Defense. The Coast Guard Under Secretary will also be the same level as the five Under Secretaries in the new Department of Homeland Security, which will enable the head of the Coast Guard to work and coordinate effectively with the new Department. The Under Secretary will be responsible for coordinating with Homeland Security on security matters affecting the Coast Guard.

Finally, the amendment requires the Coast Guard to continue to devote an adequate amount of resources to core Coast Guard missions of search and rescue, fisheries law enforcement, drug interdiction, migrant interdiction, marine environmental protection, and marine safety. This will ensure that the Coast Guard has the flexibility to address all homeland security and port security threats, and also perform other important maritime missions.

The amendment specifies the levels of funding for each mission by a minimum percentage that must be obligated. This is intended to be a minimum level of commitment of resources to those missions and should be adjusted for inflation to allow those levels of resources to rise.

After thorough consideration of the proposal to move the Coast Guard from the U.S. Department of Transportation to the new Department of Homeland Security, the Transportation and Infrastructure Committee has concluded that it would be in the best interest of the citizens of the United States for the Coast Guard to remain a part of the Department of Transportation. The Committee is very concerned that moving the Coast Guard to the new Department of Homeland Security will force the Coast Guard to place less emphasis on its vital traditional missions.

The U.S. Coast Guard currently has primary responsibility for the promotion of safety of life and property at sea, the enforcement of all applicable Federal laws on, under, and over the high seas and United States waters. The agency also is charged with protecting the marine environment, conducting icebreaking activities, main-

taining aids to navigation, and securing the safety of vessels, ports, waterways, and related facilities.

As a military service and a branch of the Armed Forces, the Coast Guard also maintains a readiness to operate as a specialized service in the Navy upon the declaration of war or when the President directs. The Coast Guard has defended our Nation in every war since 1790, including the 1990-1991 conflict in the Persian Gulf.

The Coast Guard's highest priority mission is search and rescue. The Coast Guard's search and rescue activities save the lives of approximately ten Americans each day and is unrelated to the primary mission of the new Department of Homeland Security. The Coast Guard provides around the clock readiness to conduct search and rescue missions in all areas of the maritime environment. Annually, the Coast Guard responds to approximately 40,000 calls for assistance. This year the Coast Guard saved 84 percent of all mariners in distress.

The Coast Guard is in process of upgrading and improving its search planning tools to conduct more efficient and effective maritime searches. In addition, the Coast Guard is developing the new National Distress Response System Modernization Project. This vital multi-million dollar project will modernize the Coast Guard's outdated distress communications system allowing the Coast Guard to better respond to mariners in distress and thereby preventing the tragic loss of hundreds of American lives.

As the only military service with law enforcement authority, the Coast Guard apprehends smugglers attempting to import illegal drugs into the United States through the six million square mile transit zone. Drug trafficking must be obstructed to halt the destructive influence of drug consumption on Americans. The Coast Guard seized a record 138,000 pounds of cocaine in 2001. An untold number of American children were kept from the ravages of drug addiction due to the efforts of the Coast Guard. While the Coast Guard seized a record amount of cocaine, it will not meet its 2001 performance target due to the great increase in the northward flow of cocaine toward the United States and the Coast Guard's greatly increased post September 11th homeland security efforts.

Another important mission of the Coast Guard involves the protection of American fisheries resources. Commercial and recreational fisheries contribute about $50 billion annually to the U.S. economy. Responsible management of ocean resources is critical as the world's population continues to grow, demanding increasing food sources. The Coast Guard works to prevent foreign fishing vessels from entering the U.S. Exclusive Economic Zone. The agency also partners closely with other Federal and state agencies to improve the health of fish stocks.

The Coast Guard's prevention, enforcement and response operations in marine environmental protection help to protect our natural resources and reduce the amount of pollution entering U.S. and international waterways. Due to the Coast Guard's continued enforcement of the Oil Pollution Act of 1990, few major oil spills occurred during 2001.

The Coast Guard focuses marine environmental protection activities on oil spill prevention programs. When oil accidents do happen,

the Coast Guard responds with its partners in other Federal agencies, state governments, and the maritime industry to ensure that the impacts of a spill are minimized. These and other prevention efforts have been effective in reducing oil spills in all parts of the country.

The Coast Guard also works to prevent undocumented migrants from illegally entering the United States. The Coast Guard patrols throughout the Caribbean and Florida Straits and responds to intelligence about suspicious voyages along the East and West Coasts and throughout U.S. territories in the Pacific in its efforts to curtail illegal immigration.

Each year millions of passengers are carried aboard cruise ships, ferries, charter boats, sightseeing boats, gaming vessels and other commercial passenger vessels in the U.S. However, only seven fatalities occurred in fiscal year 2001. This low death rate is a marked decrease in the actual number of passenger deaths as well as a decline in the death rate. The Coast Guard aims to ensure the safety of passengers on board vessels by preventing accidents, responding promptly to accidents when they occur, and investigating accidents to prevent them from happening again in the future. The Coast Guard is also responsible for recreational boating safety. The Coast Guard estimates that 742 recreational boating fatalities occurred during 2001. The ratio of fatalities to the registered number of boaters is decreasing despite an increasing number of registered boaters. The Coast Guard coordinates national outreach campaigns targeting life jacket wear, boating safety education, vessel safety checks, carbon monoxide poisoning, and the danger of boating while under the influence of drugs and alcohol.

The Coast Guard's legal responsibilities have expanded over the past twenty years. Many of the laws the Coast Guard administers are codified in subtitle II of title 46, United States Code. The Coast Guard enforces the following laws:

• The Western Hemisphere Drug Elimination Act, which provides a three-year increase of Coast Guard drug interdiction resources to respond to the illegal drug threat facing our country.

• The Anti-Drug Abuse Acts of 1986 and 1988, which expand the Coast Guard's role in waterborne and airborne marine drug interdiction.

• The Maritime Drug Law Enforcement Act, which authorizes the Coast Guard to search and seize any vessel that is manufacturing, distributing, or possessing with the intent to manufacture or distribute a controlled substance in the United States.

• The Deepwater Port Act of 1974, which directs the Coast Guard to oversee offshore oil port operation and construction.

• The Port and Waterways Safety Act of 1974, which directs the Coast Guard to ensure port and merchant vessel safety.

• The Port and Tanker Safety Act of 1978, which authorizes the Coast Guard to inspect foreign tankers, evaluate crew standards, and monitor offshore lightering activities in U.S. waters.

• The Omnibus Diplomatic Security and Antiterrorism Act of 1986, which requires the Coast Guard to maintain and improve port, harbor, and coastal facilities security.

• The Federal Boating Safety Act of 1971, which authorized the Coast Guard to prescribe standards for the manufacture of pleasure boats and associated equipment.

• The Recreational Boating Safety Improvement Act of 1998 which promotes recreational boating safety and access through a state grant program.

• The Federal Water Pollution Control Act of 1972 (popularly known as the Clean Water Act), which requires the Coast Guard to regulate discharges of oil and sewage from vessels.

• The Oil Pollution Act of 1990 (OPA 90), which expands the Coast Guard's authority over oil spills, and establishes a comprehensive regime for oil spill compensation, liability, response, and research and development.

• The Marine Protection, Research and Sanctuaries Act of 1972, which gives the Coast Guard enforcement authority over ocean dumping and marine sanctuaries.

• The Act to Prevent Pollution from Ships, which requires the Coast Guard to administer and enforce international environmental pollution agreements through vessel and port certification and inspections.

• The Marine Plastic Pollution Research and Control Act of 1987, which requires the Coast Guard to enforce prohibitions on the disposal of plastic materials and other garbage at sea.

• The Hazardous Materials Transportation Act, which requires the Coast Guard to enforce safety standards for the waterborne transportation of hazardous materials.

• The Intervention on the High Seas Act, which authorizes the Coast Guard to intervene in situations involving pollution discharges on the high seas that pose a threat to the United States and its territorial waters.

• The Fishery Conservation and Management Act of 1976, which assigns joint responsibility to the Coast Guard and the National Marine Fisheries Services to enforce U.S. fisheries laws within the 200-mile Exclusive Economic Zone of the United States.

• The Outer Continental Shelf Lands Act Amendments of 1978, which authorizes the Coast Guard to enforce environmental and safety regulations governing oil and gas development activities on the outer Continental Shelf.

• The National Invasive Species Act of 1996, which amended the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to strengthen and improve the nation's response to threats posed by aquatic nuisance species.

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Amendment to H.R. 5005

Offered by Mr. Young of Alaska

Page 6, line 21, insert "and" after the semicolon.

Page 6, line 23, strike "; and" and insert a period.

Page 7, strike lines 1 through 3.

Page 7, line 10, insert "and" after the semicolon.

Page 7, line 11, strike the semicolon and insert a period.

Page 7, strike lines 12 through 17.

Page 8, after line 16, insert the following:

(c) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

Page 9, strike lines 17 through 21.

Page 22, strike lines 20 through 24 (and redesignate subsequent paragraphs accordingly).

Page 23, line 1, insert "subject to section 404," after "(4)".

Page 23, line 3, strike "of the Secretary of Transportation, and"

Page 23, line 4, strike the comma at the end.

Page 23, line 6, insert "subject to section 405," after "(5)".

Page 24, after line 6, insert the following (and conform the table of contents of the bill accordingly):

**SEC. 404. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.**

(a) IN GENERAL.—The functions of the Transportation Security Administration of the Department of Transportation transferred under section 402(5) shall be carried out by an Assistant Secretary of the Department appointed by the President under section 103(a)(7). The Assistant Secretary shall be known as the Assistant Secretary for Transportation Security (in this section referred to as the "Assistant Secretary").

(b) REPORTING.—The Assistant Secretary shall report to the Under Secretary for Border and Transportation Security.

(c) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(d) DATE OF TRANSFER OF FUNCTIONS.—Notwithstanding section 802 or any other provision of this Act, the transfer relating to the Transportation Security Administration under section 402(5) shall not occur until after—

(1) the Secretary, Assistant Secretary, and the Under Secretary for Border and Transportation Security have each taken office;

(2) the Secretary of Transportation certifies that explosive detection systems are deployed at all United States airports described in section 44903(c) of title 49, United States Code, and that these systems are screening all checked baggage; and

(3) the Secretary of Transportation certifies that a sufficient number of Federal screeners, Federal Security Managers, Federal security personnel, and Federal law enforcement officers have been deployed at all airports in the United States at which screening is required under section 44901 of title 49, United States Code, other than airports participating in the pilot program under section 44919 of such title.

(e) TSA AND OTHER SECURITY-RELATED PROGRAMS.—

(1) TSA PROGRAMS.—For purposes of the transfer under section 402(5), the Transportation Security Administration shall be considered to consist of those programs for which funds are specifically requested for the Transportation Security Administration in the President's budget submission to Congress for fiscal year 2003.

(2) OTHER SECURITY-RELATED PROGRAMS.—Other security-related programs within the Department of Transportation may not be transferred to the Department of Homeland Security before the last day of a 30-day period of continuous

session of Congress following the date of transmittal by the President to Congress of a notice of the President's intent to make such a transfer. For purposes of the preceding sentence, continuity of a session of Congress is broken only by an adjournment sine die, and there shall be excluded from the computation of such 30-day period any day during which either House of Congress is not in session during an adjournment of more than 3 days to a day certain.

(f) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code.

(g) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

(h) REFERENCES.—References relating to the Under Secretary of Transportation for Security and the Transportation Security Administration of the Department of Transportation in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede the effective date of the transfer under section 402(5) shall be deemed to refer, as appropriate, to the Assistant Secretary and the Department, respectively.

**SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.**

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 402(6), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect, rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)).

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

**SEC. 406. RETENTION OF COAST GUARD FUNCTIONS.**

(a) LIMITATION ON FUNCTIONS OF UNDER SECRETARY.—Notwithstanding any other provision of this title, the functions of the Under Secretary for Border and Transportation Security do not include any function that immediately before this Act takes effect is a function of the Coast Guard.

(b) PRESERVATION OF COAST GUARD FUNCTIONS.—The functions of the Coast Guard (and of the Secretary of the Department in which the Coast Guard is operating with respect to such functions) are not affected by this title.

**SEC. 407. INTERAGENCY SECURITY COMMITTEE.**

(a) PURPOSE.—It is the purposes of this section to enhance the quality and effectiveness of security in and protection of buildings and facilities in the United States occupied by Federal employees for nonmilitary activities (in this section referred to as "Federal facilities") and to provide a permanent body to address continuing Government-wide security for Federal facilities.

(b) ESTABLISHMENT.—There is established within the executive branch the Interagency Security Committee (in this section referred to as the "Committee"). The Committee shall consist of the following members:

(1) The Administrator of General Services.

(2) Representatives from the following agencies, appointed by the agency heads:

(A) Department of State.
(B) Department of the Treasury.
(C) Department of Defense.
(D) Department of Justice.
(E) Department of Homeland Security.
(F) Department of the Interior.
(G) Department of Agriculture.
(H) Department of Commerce.
(I) Department of Labor.
(J) Department of Health and Human Services.
(K) Department of Housing and Urban Development.
(L) Department of Transportation.
(M) Department of Energy.
(N) Department of Education.
(O) Department of Veterans Affairs.
(P) Environmental Protection Agency.
(Q) Central Intelligence Agency.
(R) Office of Management and Budget.

(3) The following individuals or their designees:

(A) The Director, United States Marshals Service.
(B) The head of the Federal Protective Service.
(C) The Assistant to the President for National Security Affairs.
(D) The Director, Security Policy Board.

(4) Such other Federal employees as the President shall appoint.

(c) CHAIR.—The Committee shall be chaired or co-chaired by the Administrator of General Services, or the designee of the Administrator.

(d) WORKING GROUPS.—The Committee is authorized to establish interagency working groups to perform such tasks as may be directed by the Committee.

(e) CONSULTATION.—The Committee may consult with other parties, including the Administrative Office of the United States Courts, to perform its responsibilities under this section and, at the discretion of the Committee, such other parties may participate in the working groups.

(f) DUTIES AND RESPONSIBILITIES.—The Committee shall—

(1) establish policies for security in and protection of Federal facilities;

(2) develop and evaluate security standards for Federal facilities, develop a strategy for ensuring compliance with such standards, and oversee the implementation of appropriate security measures in Federal facilities; and

(3) take such actions as may be necessary to enhance the quality and effectiveness of security and protection of Federal facilities, including—

(A) encouraging agencies with security responsibilities to share security-related intelligence in a timely and cooperative manner;

(B) assessing technology and information systems as a means of providing cost-effective improvements to security in Federal facilities;

(C) developing long-term construction standards for those locations with threat levels or missions that require blast resistant structures or other specialized security requirements;

(D) evaluating standards for the location of, and special security related to, day care centers in Federal facilities; and

(E) assisting the Administrator of General Services in developing and maintaining a centralized security data base of all Federal facilities.

(g) AGENCY SUPPORT AND COOPERATION.—

(1) ADMINISTRATIVE SUPPORT.—To the extent permitted by law and subject to the availability of appropriations, the Administrator of General Services shall provide the Committee such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions under this section.

(2) COOPERATION.—Each executive agency and department shall cooperate and comply with the policies and recommendations of the Committee issued pursuant to this section, except to the extent that the Director of Central Intelligence determines that compliance would jeopardize intelligence sources and methods. To the extent permitted by law and subject to the availability of appropriations, executive agencies and departments shall provide such support as may be necessary to enable the Committee to perform its duties and responsibilities under this section.

(3) COMPLIANCE.—The Administrator of General Services shall be responsible for monitoring Federal agency compliance with the policies and recommendations of the Committee.

**SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED THREATS TO PUBLIC TRANSPORTATION.**

On an annual basis, the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, shall conduct an assessment of terrorist-related threats to all forms of public transportation, including public gathering areas related to public transportation.

Page 24, lines 16 and 17, strike ", major disasters, and other emergencies".

Page 25, line 7, strike "and major disasters".

Page 25, lines 19 and 20, strike "or major disaster".

Page 25, line 22, strike "and major disasters".

Page 26, strike lines 3 through 5 and insert the following:

(6) in consultation with the Director of the Federal Emergency Management Agency, consolidating existing Federal Government emergency response plans for terrorist attacks into the Federal Response Plan referred to in section 506(b); and

Page 26, strike lines 14 through 17 (and redesignate subsequent paragraphs accordingly).

Page 30, after line 9, insert the following:

**SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.**

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard by planning, training, and exercising;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

(3) MEMORANDUM OF UNDERSTANDING.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Director of the Federal Emergency Management Agency shall adopt a memorandum of understanding to address the roles and responsibilities of their respective agencies under this title.

Page 31, at the beginning of line 23, insert "(a) IN GENERAL.—".

Page 32, strike lines 3 through 6 (and redesignate subsequent paragraphs accordingly).

Page 32, strike lines 13 through 15 and insert the following:

(2) subject to subsection (b), directing and supervising grant programs of the Federal Government for State, local, and tribal government emergency response providers; and

Page 32, after line 19, insert the following:

(b) LIMITATION.—Subsection (a)(2) shall not be construed to affect any grant program carried out by the Director of the Federal Emergency Management Agency; except that the Director shall coordinate with the Secretary in making grants relating to emergency response providers.

Page 37, strike line 16 and all that follows through line 14 on page 39 and insert the following:

(c) DEPARTMENT HEADQUARTERS.—

(1) IN GENERAL.—Subject to the requirements of the Public Buildings Act of 1959 (40 U.S.C. 601 et seq.), the Administrator of General Services shall construct a public building to serve as the headquarters for the Department.

(2) LOCATION AND CONSTRUCTION STANDARDS.—The headquarters facility shall be constructed to such standards and specifications and at such a location as the Administrator of General Services decides. In selecting a site for the headquarters facility, the Administrator shall give preference to parcels of land that are federally owned.

(3) SCORING OF EXPENDITURES, OBLIGATIONS, AND APPROPRIATIONS.—Notwithstanding any provision of the Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.), the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.), or chapter 13 or 15 of title 31, United States Code, or any other provision of law, any expenditures, obligations, and appropriations made for the headquarters facility shall be scored on an annual basis.

(4) ALTERNATE FINANCING METHODS.—In the absence of appropriations in fiscal year 2003 for Federal construction of the headquarters facility—

(A) the Administrator of General Services may construct the facility by lease-purchase or installment purchase and may use any lease or installment purchase instrument as a means of financing the acquisition of a site, if necessary, and the construction of the facility, either through commercial financial establishments or through the Federal Financing Bank;

(B) any lease or installment purchase obligation of the Administrator used in financing the construction of the facility shall be scored, for borrowing authority or budget authority purposes, only to the extent outlays are made from the Federal Buildings Fund annually to amortize such obligations; and

(C) if the financing is placed with the Federal Financing Bank, any loans, promissory notes, draws, or other disbursements made by the Bank and secured by the lease rental or installment contract payments by the Administrator of General Services shall for budgetary purposes be treated as a means of financing the Department or the General Services Administration, but only to the extent outlays are made from the Federal Buildings Fund annually to amortize such obligations.

(5) USE OF HEADQUARTERS FACILITY.—The Administrator of General Services shall make the headquarter facility, as well as other Government-owned or leased facilities, available to the Secretary pursuant to the Administrator's authorities under section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490 et seq.) and there is authorized to be appropriated to the Secretary such amounts as may be necessary to pay the annual charges for General Services Administration furnished space and services.

Page 41, lines 17 and 18, strike "the effective date of this Act" and insert "the date of transmittal of a plan to Congress under section 802(b)".

Page 41, line 20, strike "The transfer" and insert the following:

(a) IN GENERAL.—Subject to subsection (b), the transfer

Page 41, after line 25, insert the following:

(b) ORGANIZATION PLAN.—

(1) PLAN TO BE COMPLETED BEFORE TRANSFERS OCCUR.—The transfer of an agency, or any of its functions, to the Department under this Act shall not occur before the last day of a 60-day period of continuous session of Congress following the date of transmittal by the Secretary to Congress of a plan for the organization of the Department.

(2) CONTENTS OF PLAN.—The plan submitted under paragraph (1) shall include—

(A) a designation of which agency in the Department will be carrying out each of the functions assigned to the Department;

(B) a proposal for funding the Department;

(C) a designation of the number of employees that will be employed by the Department;

(D) a description of the manner in which the Department will carry out each function or service transferred to the Department from another agency; and

(E) a designation of the number of employees who will be performing each function or service transferred to the Department from another agency.

(3) CONGRESSIONAL REVIEW PERIOD.—For purposes of paragraph (1), continuity of a session of Congress is broken only by an adjournment sine die, and there shall be excluded from the computation of the 60-day period any day during which either House of Congress is not in session during an adjournment of more than 3 days to a day certain.

Page 44, after line 10, insert the following:

(f) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, Harbor Maintenance Trust Fund, or Oil Spill Liability Trust Fund may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

Page 49, strike line 9 and all that follows through page 50, line 3 (and redesignate subsequent sections of the bill accordingly).

At the end of the bill, add the following (and conform the table of contents of the bill accordingly):

**SEC. 907. TRANSPORTATION SECURITY.**

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

"(A) The Secretary of Homeland Security, or the Secretary's designee.".

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security".

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

"(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(x) (relating to installation of bulk explosive detection systems).".

**SEC. 908. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.**

(a) AMENDMENT TO PROPERTY ACT.—Section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.

(b) LAW ENFORCEMENT AUTHORITY.—The Act of June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat. 281) is amended to read as follows:

**"SECTION 1. SHORT TITLE.**

"This Act may be cited as the 'Protection of Public Property Act'.

**"SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY OF HOMELAND SECURITY FOR PROTECTION OF PUBLIC PROPERTY.**

"(a) IN GENERAL.—The Secretary of Homeland Security (in this Act referred to as the "Secretary") shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

"(b) OFFICERS AND AGENTS.—

"(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

"(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

"(A) enforce Federal laws and regulations for the protection of persons and property;

"(B) carry firearms;

"(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(D) serve warrants and subpoenas issued under the authority of the United States; and

"(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

"(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

"(c) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

"(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

"(d) DETAILS.—

"(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

"(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

"(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

"(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

"(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

"(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

"(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

"(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) preclude or limit the authority of any Federal law enforcement agency; or

"(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.

**"SEC. 3. SPECIAL PAY.**

"Without regard to the pay provisions of chapter 51 of title 5, United States Code, and subchapter III of chapter 53 of such title, the Secretary may, in the Secretary's sole discretion, fix the rates of basic pay for the positions occupied by officers and agents designated under this Act so as to enable the officers and agents to be appropriately compensated in comparison to personnel performing comparable duties in other law enforcement organizations in the local labor market.".

(c) MAXIMUM AGE FOR ENTRY INTO THE POSITION OF FEDERAL PROTECTIVE SERVICE OFFICER.—Section 3307 of title 5, United States Code, is amended—

(1) in subsection (a) by striking "and (f)" and inserting "(f), and (g)"; and

(2) by adding at the end the following:

"(g) The Secretary of Homeland Security may determine and fix the maximum age limit for an original appointment to a position as a Federal Protective Service Officer, as defined by section 8331(29) or 8401(35).".

(d) AMENDMENTS RELATING TO THE CIVIL SERVICE RETIREMENT SYSTEM.—

(1) DEFINITION.—Section 8331 of title 5, United States Code, is amended—

(A) by striking "and" at the end of paragraph (27);

(B) by striking the period at the end of paragraph (28) and inserting "; and"; and

(C) by adding at the end the following:

"(29) 'Federal Protective Service Officer' means—

"(A) an employee occupying a position in the Department of Homeland Security and designated as an officer or agency under section 2(b)(1) of the Protection of Public Property Act, the duties of which position are primarily—

"(i) to detect, investigate, apprehend, arrest, or detain individuals suspected or convicted of offenses against the criminal laws of the United States;

"(ii) to protect and secure the personal safety of officials and other employees of the United States, as well as occupants and visitors on federally controlled property; and

"(iii) to gather, assess, and analyze information relating to threats, and to respond to threats and attacks, against persons and property of the United States; and

"(B) an employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security from a position of Federal Protective Service Officer (as defined by subparagraph (A)) or law enforcement officer;

any determination as to whether or not an employee satisfies subparagraph (B) shall, in the case of an employee occupying a position in the Office of the Federal Protective Service of the General Services Administration on the date of the enactment of this paragraph, be made without regard to any requirement that the employee have completed a minimum period of one or more types of service before the date of transfer.".

(2) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—Section 8334 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by striking "or nuclear materials courier," and inserting "nuclear materials courier, or Federal Protective Service Officer,"; and

(B) in subsection (c), by adding after the item relating to a nuclear materials courier the following:

| | | |
|---|---|---|
| "Federal Protective Service Officer | 7.5 | After the date of the enactment of the Homeland Security Act of 2002.". |

(3) COMPUTATION OF ANNUITY FOR CERTAIN OFFICERS MANDATORILY SEPARATED.—Section 8339 of title 5, United States Code, is amended by adding at the end the following:

"(v) The annuity of a Federal Protective Service Officer retiring under section 8335(e) is—

"(1) 2½ percent of the officer's average pay multiplied by so much of his total service, performed as a Federal Protective Service Officer or law enforcement officer, as does not exceed 20 years; plus

"(2) 2 percent of the officer's average pay multiplied by so much of his total service as exceeds the number of years of service taken into account under paragraph (1).".

(4) IMMEDIATE RETIREMENT.—Section 8336(c)(1) of title 5, United States Code, is amended by striking "or nuclear materials courier" and inserting "nuclear materials courier, or Federal Protective Service Officer".

(5) MANDATORY SEPARATION.—

(A) IN GENERAL.—Section 8335(b) of title 5, United States Code, is amended—

(i) by striking "or nuclear materials courier" and inserting "nuclear materials courier, or Federal Protective Service Officer (other than one described in subsection (e))"; and

(ii) by striking "or courier" and inserting "courier, or Federal Protective Service Officer (other than one described in subsection (e))".

(B) PROVISIONS RELATING TO CERTAIN INCUMBENTS.—Section 8335 of title 5, United States Code, is amended by inserting after subsection (d) the following:

"(e) A Federal Protective Service Officer who is employed by the Office of the Federal Protective Service of the General Services Administration on the date of the enactment of the Homeland Security Act of 2002, and who is otherwise eligible for immediate retirement under section 8336, shall be separated from the service on the last day of the month in which such officer becomes 57 years of age or completes 10 years of service as a Federal Protective Service Officer if then over that age. The Secretary of Homeland Security, under such regulations as the Secretary may prescribe, may exempt a Federal Protective Service Officer having exceptional skills and experience as a Federal Protective Service Officer from the automatic separation provisions of this subsection until the officer becomes 60 years of age. The Secretary shall notify the officer in writing of the date of separation at least 60 days before that date. Action to separate the officer is not effective, without the consent of the officer, until the last day of the month in which the 60-day notice expires.".

(e) AMENDMENTS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—

(1) DEFINITION.—Section 8401 of title 5, United States Code, is amended—

(A) by striking "and" at the end of paragraph (33);

(B) by striking the period at the end of paragraph (34) and inserting "; and"; and

(C) by adding at the end the following:

"(35) 'Federal Protective Service Officer' has the meaning given that term in section 8331(29).".

(2) DEDUCTIONS AND CONTRIBUTIONS.—

(A) EMPLOYEE DEDUCTIONS AND CONTRIBUTIONS.—Section 8422(a)(3) of title 5, United States Code, is amended by adding after the item relating to a nuclear materials courier the following:

| | | |
|---|---|---|
| "Federal Protective Service Officer | 7.5 | After the date of the enactment of the Homeland Security Act of 2002.". |

(B) AGENCY CONTRIBUTIONS.—Paragraphs (1)(B)(i) and (3)(A) of section 8423(a) of title 5, United States Code, are amended by inserting "Federal Protective Service Officers," after "firefighters," each place it appears.

(3) PROVISIONS RELATING TO COMPUTATION OF BASIC ANNUITY.—

(A) ANNUITY FOR CERTAIN OFFICERS MANDATORILY SEPARATED.—Section 8415 of title 5, United States Code, is amended by adding at the end the following:

"(l) The annuity of a Federal Protective Service Officer retiring under section 8425(e) is—

"(1) 2½ percent of the officer's average pay multiplied by so much of his total service, performed as a Federal Protective Service Officer or law enforcement officer, as does not exceed 20 years; plus

"(2) 2 percent of the officer's average pay multiplied by so much of his total service as exceeds the number of years of service taken into account under paragraph (1).".

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) INAPPLICABILITY OF 1.1 PERCENT ACCRUAL RATE.—Section 8415(g)(2) of title 5, United States Code, is amended by inserting "Federal Protective Service Officer," after "nuclear materials courier,".

(ii) ANNUITIES ON REEMPLOYMENT.—Section 8468(b)(1)(A) of title 5, United States Code, is amended by inserting "and (l)" after "through (g)".

(4) IMMEDIATE RETIREMENT.—Section 8412(d) of title 5, United States Code, is amended by striking "or nuclear materials courier" each place it appears and inserting "nuclear materials courier, or Federal Protective Service Officer".

(5) MANDATORY SEPARATION.—

(A) IN GENERAL.—Section 8425(b) of title 5, United States Code, is amended by inserting "Federal Protective Service Officer (other than one described in subsection (e)),'' after "law enforcement officer," each place it appears.

(B) PROVISIONS RELATING TO CERTAIN INCUMBENTS.—Section 8425 of title 5, United States Code, is amended by redesignating subsection (e) as subsection (f), and by inserting after subsection (d) the following:

"(e) A Federal Protective Service Officer who is employed by the Office of the Federal Protective Service of the General Services Administration on the date of the enactment of the Homeland Security Act of 2002, and who is otherwise eligible for immediate retirement under section 8412, shall be separated from the service on the last day of the month in which such officer becomes 57 years of age or completes 10 years of service as a Federal Protective Service Officer if then over that age. The Secretary of Homeland Security, under such regulations as the Secretary may prescribe, may exempt a Federal Protective Service Officer having exceptional skills and experience as a Federal Protective Service Officer from the automatic separation provisions of this subsection until the officer becomes 60 years of age. The Secretary shall notify the officer in writing of the date of separation at least 60 days before that date. Action to separate the officer is not effective, without the consent of the officer, until the last day of the month in which the 60-day notice expires.".

(f) PAYMENTS.—

(1) IN GENERAL.—The Secretary shall pay into the Civil Service Retirement and Disability Fund an amount determined by the Director of the Office of Personnel Management to be necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund resulting from the amendments made by subsection (e).

(2) TIMING.—The Secretary shall pay the amount so determined in 5 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due by the end of fiscal year 2003.

(g) LAW ENFORCEMENT PAY.—

(1) PAY AND BENEFITS UNDER PROVISIONS OF FEPCA.—A Federal Protective Service Officer (within the meaning of section 8331(29) or 8401(35) of title 5, United States Code) is entitled to the same pay and benefits as are provided by sections 403, 404, and 407 of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note) to a law enforcement officer (as defined by section 402 of such Act).

(2) AWARD FOR FOREIGN LANGUAGE CAPABILITIES.—Section 4521 of title 5, United States Code is amended—

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following:

"(7) a Federal Protective Service Officer (within the meaning of section 8331(29) or 8401(35)).".

(3) OVERTIME PAY.—Section 5542(a)(4) of title 5, United States Code, is amended by inserting "or a Federal Protective Service Officer (within the meaning of section 8331(29) or 8401(35))" after "law enforcement officer".

(h) LIMITATION.—Notwithstanding the authority of the Secretary to establish a human resources management system under section 10001 of title 5, United States Code (as added by this Act), or any other authority granted to the Secretary, the Secretary may not reduce the pay or benefits of a Federal Protective Service Officer, within the meaning of section 8331(29) or 8401(35) of such title (as added by this section), below the level provided by such title.

# TITLE X—COAST GUARD FUNCTIONS RELATING TO DEPARTMENT OF HOMELAND SECURITY

**SEC. 1001. UNDER SECRETARY OF THE COAST GUARD.**

(a) IN GENERAL.—Title 14, United States Code, is amended by inserting before section 41 the following:

**"§ 40. Under Secretary of the Coast Guard**

"(a)(1) There is an Under Secretary of the Coast Guard appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary of the Coast Guard is the head of the Coast Guard.

"(2) A person may not be appointed as Under Secretary of the Coast Guard within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

"(b) Subject to the authority, direction, and control of the Secretary of the department in which the Coast Guard is operating, the Under Secretary of the Coast Guard is responsible for, and has the authority necessary to conduct, all affairs of the Coast Guard.

"(c) After first informing the Secretary of the department in which the Coast Guard is operating, the Under Secretary of the Coast Guard may make such recommendations to Congress relating to the Coast Guard as the Under Secretary considers appropriate.

"(d) The Under Secretary of the Coast Guard may assign such of Under Secretary's functions, powers, and duties as the Under Secretary considers appropriate to the Commandant. Officers of the Coast Guard shall, as directed by the Under Secretary of the Coast Guard, report on any matter to the Under Secretary of the Coast Guard or the Commandant.

"(e) In addition to the other duties of the Under Secretary of the Coast Guard, the Under Secretary shall be responsible for acting as the liaison to the Department of Homeland Security with respect to all Coast Guard functions.

"(f) The Under Secretary of the Coast Guard may—

"(1) assign, detail, and prescribe the duties of officers and members of the Coast Guard and civilian personnel of the Coast Guard; and

"(2) prescribe regulations to carry out his or her functions, powers, and duties under law.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of title 14, United States Code, is amended by inserting before the item relating to section 41 the following:

"40. Under Secretary of the Coast Guard.".

(c) TRANSFER OF FUNCTIONS.—

(1) TRANSFER.—There are transferred to the Under Secretary of the Coast Guard all functions that are vested by law, regulation, or Executive order in the Commandant of the Coast Guard.

(2) REFERENCE.—Any reference in any law, regulation, or Executive order to the Commandant of the Coast Guard with respect to a function transferred under paragraph (1) is deemed to refer to the Under Secretary of the Coast Guard.

**SEC. 1002. MAINTENANCE OF ALLOCATIONS OF FUNDING FOR COAST GUARD OPERATION AND MAINTENANCE.**

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following:

**"§ 676. Maintenance of allocations for operation and maintenance**

"(a) IN GENERAL.—Of the amount appropriated for operation and maintenance of the Coast Guard for each fiscal year, not less than the percentage specified in subsection (b) with respect to a purpose shall be obligated or expended for expenses related to that purpose.

"(b) PURPOSES AND PERCENTAGES.—The purposes and percentages referred to in subsection (a) are, respectively, the following:

"(1) For search and rescue, 12 percent.

"(2) For drug interdiction, 13 percent.

"(3) For fisheries law enforcement, 11 percent.

"(4) For interdiction of migrants, 4 percent.

"(5) For environmental law enforcement, 8 percent.

"(6) For marine safety, 5 percent.".

(b) TECHNICAL CORRECTION; CLERICAL AMENDMENT.—Chapter 17 of title 14, United States Code, is amended—

(1) by redesignating the second section 673 (relating to "Small boat station rescue capability") and section 674 in order as sections 674 and 675; and

(2) in the table of sections at the beginning of the chapter by striking the items relating to "Small boat rescue capability" and"Small boat station closures" and inserting the following:

"674. Small boat rescue capability.
"675. Small boat station closures.
"676. Maintenance of allocations for operation and maintenance.".

## COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
*Washington, DC, July 12, 2002.*

Hon. RICHARD K. ARMEY
*Chairman, House Select Committee on Homeland Security, The Capitol, Washington, D.C.*

DEAR MR. CHAIRMAN: As specified in section 6 of H.Res. 449, this letter transmits the views and recommendations of the Committee on Ways and Means on those aspects within the jurisdiction of the Committee of the bill, H.R. 5005, to establish a Department of Homeland Security and transfer the United States Customs Service to the new department. The recommended legislative text is attached and was favorably reported from Committee on July 10, 2002.

The Committee on Ways and Means looks forward to working with the Select Committee on Homeland Security as we promote security while maintaining the free flow of trade across American borders.

Best regards,

BILL THOMAS
*Chairman.*

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PROPOSED AMENDMENTS TO H.R. 5005

Proposed Amendments to H.R. 5005

**(Recommended to the Select Committee on Homeland Security by the Committee on Ways and Means)**

Page 21, after line 4, insert the following (and conform the table of contents accordingly):

# Subtitle A—General Provisions

Page 22, line 1, insert after "(4)" the following: "except as provided in subtitle B,".

Page 22, strike lines 10 through 12 and insert the following:

(1) the United States Customs Service, except as provided in subtitle B;".

Page 24, after line 6, add the following (and conform the table of contents accordingly):

# Subtitle B—United States Customs Service

**SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.**

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions set forth in section 420(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

"Commissioner of Customs, Department of the Treasury"

and inserting

"Commissioner of Customs, Department of Homeland Security.".

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

**SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.**

(a) RETENTION BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding sections 401(4), 402(1), and 803(e)(2), authority that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding section 733, the Secretary may not consolidate, alter, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or the compensation or benefits under title 5, United States Code, of personnel attributable to such functions, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

**SEC. 413. ALLOCATION OF RESOURCES BY THE SECRETARY.**

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 180 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term "customs revenue services" means those customs revenue functions described in paragraphs (1) through (6) and (8) of section 420.

**SEC. 414. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.**

(a) ESTABLISHMENT AND IMPLEMENTATION.—

(1) IN GENERAL.—Not later than September 30, 2003, the Commissioner of Customs shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of the Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system for expenses incurred in the operation of the Customs Service.

(2) ADDITIONAL REQUIREMENT.—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses.

(3) USE OF MERCHANDISE PROCESSING FEES.—The cost accounting system described in paragraph (1) shall provide for an identification of all amounts expended pursuant to section 13031(f)(2) of the Consolidated Omnibus Reconciliation Act of 1985.

(b) REPORTS.—Beginning on the date of the enactment of this Act and ending on the date on which the cost accounting system described in subsection (a) is fully implemented, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on a quarterly basis a report on the progress of implementing the cost accounting system pursuant to subsection (a).

**SEC. 415. PRESERVATION OF CUSTOMS FUNDS.**

Notwithstanding section 733(b), no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

**SEC. 416. REPORTS TO CONGRESS.**

The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

**SEC. 417. CUSTOMS USER FEES.**

Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

"(B) amounts deposited into the Customs Commercial Automation Account under paragraph (5).";

(2) in paragraph (4), by striking "(other than the excess fees determined by the Secretary under paragraph (5))"; and

(3) by striking paragraph (5) and inserting the following:

"(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Customs

Commercial Automation Account from fees collected under subsection (a)(9)(A), $350,000,000.

"(B) There is authorized to be appropriated from the Customs Commercial Automation Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

"(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Customs Commercial Automation Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.".

**SEC. 418. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

The President shall include in each budget transmitted to the Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

**SEC. 419. PAYMENT OF DUTIES AND FEES.**

Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)) is amended—

(1) in the first sentence—

(A) by striking "Unless the merchandise" and inserting "Unless the entry of merchandise is covered by an import activity summary statement, or the merchandise"; and

(B) by inserting after "by regulation" the following: "(but not to exceed 10 working days after entry or release, whichever occurs first)"; and

(2) by striking the second and third sentences and inserting the following: "If an import activity summary statement is filed, the importer or record shall deposit estimated duties and fees for entries of merchandise covered by the import activity summary statement no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever occurs first.".

**SEC. 420. DEFINITION.**

In this subtitle, the term "customs revenue function" means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

**SEC. 421. GAO REPORT TO CONGRESS.**

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to the Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

**SEC. 422. CORPORATE EXPATRIATES.**

(a) LIMITATION.—The United States Customs Service shall not enter into any new contract with a subsidiary of a publicly traded corporation if the corporation is incorporated in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) DEFINITION.—For purposes of subsection (a), the term "tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the waiver is required in the interest of national security.

## EXPLANATION OF PROPOSED AMENDMENTS

### I. INTRODUCTION

#### *A. Background on the United States Customs Service*

Since 1789, the United States Customs Service has been a federal agency under the United States Treasury Department. Congress created the Customs Service as its fifth legislative act in order to implement the first Act of Congress, the Tariff Act of 1789. Virtually all federal government revenue was originally collected by the Customs Service through duties. Today, the Customs Service collects over $20 billion of revenue, ensures that all imports and exports comply with U.S. laws and regulations, guards against smuggling, and is responsible for the following:

1. Assessing and collecting customs duties, excise taxes, fees and penalties due on imported merchandise;
2. Interdicting and seizing contraband, including narcotics and illegal drugs;
3. Processing persons, baggage, cargo and mail, and administering certain navigation laws;
4. Detecting and apprehending persons engaged in fraudulent practices designed to circumvent customs and related laws;
5. Protecting American business and labor and intellectual property rights by enforcing U.S. laws intended to prevent illegal trade practices, including provisions related to quotas and the marking of imported merchandise;
6. Collecting anti-dumping and other duties under our trade remedies laws and by providing customs recordation for copyrights, patents and trademarks;
7. Protecting the general welfare and security of the United States by enforcing import and export restrictions and prohibitions, including the export of critical technology used to develop weapons of mass destruction, and money laundering; and
8. Collecting accurate import and export data for compilation of international trade statistics.

Today, in addition to its own laws, the Customs Service enforces well over 400 other provisions of law for at least 40 agencies. A number of these statutes relate to quality of life issues involving the environment, such as motor vehicle safety and emission controls, water pollution standards, pesticide controls, freon smuggling, and the protection of endangered wildlife. Other laws safe-

guard American agriculture, business and public health, and consumer safety.

*B. The President's Homeland Security Proposal and H.R. 5005*

On June 18, 2002, President Bush proposed to transfer all of the authority and assets of the Customs Service, as well as many other federal agencies, to a new Department of Homeland Security. This proposal was incorporated into H.R. 5005, which was introduced on June 24, 2002. Specifically, the Customs Service would be placed under an Under Secretariat for Border and Transportation Security along with the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, the Coast Guard, and the Transportation Security Administration. Unlike the Coast Guard, H.R. 5005 does not require that the Customs Service be maintained as a separate entity. Under Section 402 of H.R. 5005, the Secretary of Homeland Security would be vested in the functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto. The President's proposal would give the Secretary significant authority to reorganize the Customs Service, reallocate reserves within Customs, and make changes to Customs employees' compensation.

*C. Rationale for the Committee's Recommendations to Amend H.R. 5005*

Unlike other agencies that are being transferred to the new Department of Homeland Security, the Customs Service has four unique characteristics:

1. The Customs Service is a revenue-collecting agency with significant trade facilitation functions. The Customs Service collects over $20 billion a year in duties, second only to the Internal Revenue Service in collections. Economically critical trade laws are implemented by the Customs Service. Because of its border presence, the Customs Service has taken on other border-related missions such as preventing drug smuggling and stopping weapons of mass destruction.

2. A significant portion of the Customs Service's budget is funded through over $1 1/2 billion worth of user fees paid by importers, and by law those fees must be used only for specific inspectional services or as budgetary offsets to general commercial operations.

3. Most of the Customs Service's legal authority is held by the Treasury Department or other agencies of government and delegated to the Customs Service. For example, 19 U.S.C. 3 states that the Secretary of the Treasury shall supervise the collection of duties. Historically, this responsibility has been delegated to the Customs Service.

4. Substantial portions of the Customs Service's trade work is very technical and esoteric. The work requires professionals with legal and regulatory skills that are unlike border security skills.

For these reasons, the Members of the Committee recommend that the Select Committee on Homeland Security recognize the unique mission of the Customs Service and adopt the attached bill language to amend H.R. 5005. In making these recommendations, the Committee adopts the fundamental basis for of the President's

proposal and agrees to transfer Customs assets and personnel in their entirety to the new Department of Homeland Security. The Committee rejected the option of carving up the Customs Service into commercial and non-commercial elements. Instead, the Committee sought to identify and prevent further reorganization or reductions in a closely defined core group that perform revenue-collection functions.

The Committee was guided by one over-riding goal: to ensure that the Department of Homeland Security would be successful and not hamstrung by any limits on its authority or ability to carry out the protection of Americans. It is also important to ensure that revenue continues to be collected and that goods keep moving across the border with little delay in order to maintain delicately balanced commercial schedules and operations. The Committee is confident that the proposed changes to H.R. 5005 do not interfere with the new Department's missions but will enhance its effectiveness.

Four amendments were offered to the Chairman's mark. The first amendment, offered by Mr. Cardin, would have designated the existing Customs Service as a "distinct entity" within the Homeland Security Department. This amendment failed by voice vote. The second amendment, offered by Mr. Becerra, would have expanded the dedicated use provision for the merchandise processing fee (MPF) in the Chairman's mark to require use of MPF receipts (in excess) of the $350 million dedicated for ACE development) for commercial operations. This amendment failed by a roll call vote of 12 ayes to 24 noes. The third amendment, offered by Mr. McDermott, would have preserved existing and future Customs' employees pay, performance standards, etc. as provided under Title 19 and Title 5. This amendment failed by a voice vote. Mr. Doggett offered an amendment to prohibit the Customs Service from entering into contracts with companies that have reincorporated overseas in order to avoid U.S. taxation. This amendment was agreed to without objection.

## II. EXPLANATION OF RECOMMENDATIONS TO AMEND H.R. 5005

*Sec. 402 of base text*: The recommendation would authorize the transfer of functions, personnel, assets, and liabilities of the existing Customs Service in their entirety to the Division for Border and Transportation Security of the Department of Homeland Security, subject to other provisions of the amendment. Unlike H.R. 5005, the Committee does not recommend transferring the functions of the Department of the Treasury related to the Customs Service for the reasons given below in Sections 411 and 412.

*Sec. 411*: A core Customs Service is established within the Department of Homeland Security and vested, at a minimum, with certain revenue-related offices and functions as specifically identified. This core Customs entity will continue to have a Senate-confirmed Commissioner, and the incumbent Commissioner may continue to serve until a new Commissioner is named.

The primary function of the Customs Service has always been revenue collection and trade facilitation, and it is imperative to maintain these activities. However, revenue and trade will be relatively minor activities within the very large, new Department of Homeland Security. Given the importance of trade and government

revenue, an independent and separate Congressional mandate for trade and revenue collection is appropriate. Accordingly, Customs Service personnel and offices that handle these unique revenue and trade functions should continue to operate within their organization after the transfer to the new Department.

This section refers to Section 420(7) of the amendment for the list of components within the current Customs Service that the Committee determines to be completely or primarily devoted to the performance of revenue collection: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialists, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial Systems Specialists. The personnel who perform this work have specialized skills in the very technical field of trade law, which are unlike the skills related to border security. For this reason, the group identified in Section 420(7) would comprise the Customs Service core established under Section 411 within the Department of Homeland Security and would have a distinct existence apart, though integrated with, the many border security elements of the new Department.

Regarding the provision requiring a Senate confirmed Customs Commissioner, the Committee believes that the person who leads the Customs Service must be an extraordinary individual to handle the multiple functions of that office. The Commissioner should continue to answer to, and be endorsed by Congress to ensure that all of Customs' missions are recognized.

*Sec. 412(a)*: The recommendation would reserve revenue collecting statutory authority to Treasury, where it is currently vested, and transfer all other authority exercised by the existing Customs Service to the Department of Homeland Security. Treasury may delegate its reserved authority to Homeland Security, as it often does to Customs today. Treasury shall consult with Homeland Security on all matters and regulations affecting customs functions. The recommendation authorizes the Department of the Treasury to hire additional staff to exercise this authority.

It is not unusual for the Customs Service to implement and enforce laws that by statute are intended to be implemented by entirely different departments; indeed, Customs Service currently enforces 400 laws on behalf of 40 different agencies. The proposed changes would continue to empower the Secretary of the Treasury to promulgate regulations on a myriad of highly technical trade matters, while leaving it to the new Department of Homeland Security to implement them. In this way, Treasury's trade expertise and macroeconomic outlook is retained to address technical trade matters.

*Sec. 412(b)*: With regard to the Customs Service core established under Section 411, reorganization or decrease in the funding or staff or reductions to Title 5 pay and benefits levels is prohibited in order to preserve these critical trade functions.

The President and Governor Ridge have described their wish for flexibility in the Department structure created by Congress, and there are many ways that the Administration will be able to obtain the "synergy" it seeks for the new Homeland Security Department with the Committee's recommendations. As described earlier, how-

ever, the revenue-oriented group established under Section 411 has unique functions distinct from security functions. It is therefore appropriate to prohibit reductions to this core group and to preserve these critical trade functions.

*Sec. 413*: The recommendation provides that the Secretary shall maintain adequate staffing to assure that existing levels of customs revenue services are maintained, and the Secretary shall notify Congress of actions that reduce such services.

Although all offices of the Customs Service conduct revenue-collecting services, those components of Customs that are outside of the core revenue-collecting group described in Section 420(7) and required to be kept intact per Section 412(b) perform mixed functions. The Committee is mindful of the flexibility needs and security goals of the President and therefore requires only that customs revenue services, not necessarily staffing, be maintained at the existing levels as the Customs Service is transferred to the new Department of Homeland Security. Any significant reduction in services must be reported to Congress in advance, which is consistent with current law at 19 U.S.C. 2075(g).

*Sec. 414*: The Customs Service is required to implement a cost accounting system in order to determine and track the use of $1.5 billion of Customs user fees.

The Committee is concerned that Customs Service is currently unable to answer fundamental questions about how it spends money. For example, Customs officials state that it spends a certain amount of money on commercial operations. The figure is not based upon the addition of various commercial costs from all operations within the Customs Service, such as the number of people who actually processed entries of merchandise at specific ports during a set period. Instead, the figure is based upon Customs officials' belief that a set percentage of its work is always related to commercial activities. That static percentage is based upon a no longer available, ad hoc survey conducted by Customs several years ago. A modern cost accounting system would allow the Customs Service to accurately identify the amount of money spent at specific locations and for specific revenue functions.

Given that $1.5 billion of Customs' $2.6 billion budget comes from the collection of fees that are ostensibly for specified revenue services, the Committee adopted this provision to ensure that revenue collecting functions can be closely tracked within the overall Department of Homeland Security, with strict account for such fees. Therefore, this reform is appropriate for a bill to transfer the Customs Service to the new Department of Homeland Security.

Such a system would also provide compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), which is a joint and cooperative undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management working in cooperation with each other and other agencies to improve financial management practices in government. That Program has statutory authorization in the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 65).

*Sec. 415*: The recommendation provides that Customs fees (with the exception of the merchandise processing fee) must continue to

be used for currently authorized functions. Fee receipts may not be transferred to any other agency or office in the Department.

Congress created import fees to help fund critical customs activities. Fees are paid by commercial interests in return for specific commercial services. There have long been concerns about whether Customs can adequately account for the cost of providing commercial services in return for the fees collected. See the discussion in Section 414 above. It would be inappropriate and potentially inconsistent with United States trade obligation for importers to pay fees that subsidize non-commercial functions of the new Department of Homeland Security. For these reasons, the Committee believes that fees should continue to be spent only on activities already defined in 19 U.S.C. 58c.

*Sec. 416*: The recommendation would make further changes for the purpose of ensuring that certain commercial functions are carried out. The text would require that all reports now provided to Congress from the Customs Service shall continue to be provided to the House Ways and Means and Senate Finance Committees.

Transferring the assets and functions of the Customs Service to the new Department of Homeland Security will not lessen the need of these committees for information about trade operations. Through the Customs Service, the Department will be implementing virtually all trade obligations of the United States. These trade obligations lie within the jurisdiction of these committees. Therefore, existing reports should continue to be provided to the Congressional committees of jurisdiction on trade to allow the committees to continue appropriate oversight and authorizations.

*Sec. 417*: The recommendation provides that a portion of the Customs Merchandise Processing Fee must go to build the new Customs computer.

The Customs Service's current import system, the Automated Commercial System (ACS), was designed in 1984 and will not be able to meet the increasingly complex, long-term requirements impacted by the growth in trade, responsibilities, and legislation. Consequently, replacing ACS with the Automated Commercial Environment (ACE) is a critical component in the modernization and development of the Customs Service. The new computer system has also taken center stage in the fight against terrorism since security data collection will be an important objective of the new Department. It is therefore entirely appropriate to mandate that the ACE system be built from the proceeds of the merchandise processing fee.

This provision has strong support from the import business community that pays the merchandise processing fee. Moreover, Governor Ridge has stated that he anticipates "the rapid development of the ACE system will continue as will the interagency community's development of an International Trade Data System that creates a harmonized system for import-related data. These systems will likely become a cornerstone of the Department of Homeland Security's enterprise architecture."

*Sec. 418*: The recommendation requires that the Administration provide a separate budget request on the customs revenue functions within the new Department.

This recommendation is consistent with the overall approach of the Committee in assuring that the core revenue-collecting components of the Customs Service are maintained. Coupled with the cost accounting system that will record expenditures for customs revenue services, this requirement for a separate budget request will ensure that the Committee can continue to oversee that revenue is properly collected and trade is continuing appropriately.

*Sec. 419*: The recommendation would change the merchandise entry process to authorize monthly billing with a prohibition against deferral of duty past a statutory deadline.

This provision is a general reform of the import process. The purpose is to modernize the customs system from an antiquated entry-by-entry billing method to a modern monthly billing method that is more consistent with general business practice. Congress provided regulatory flexibility to the Executive Branch in the Customs Modernization Act to implement a modern billing system; however, there has been insufficient progress to date. In addition, the Administration has twice this year used the underlying statute (19 U.S.C. 1505(a)) in what the Committee believes is an inappropriate ad hoc manner to defer duties for extraordinary lengths of time. The provision creates a statutory deadline that may not be extended.

This provision is appropriate for the Homeland Security bill because it supports the overall goal of a modern, automated import system that will be used for commercial and homeland security purposes. Moreover, there is a further benefit in that the process of collecting import data and determining admissibility (linked closely to a homeland security mission) becomes more clearly removed from the collection of revenue (the traditional customs revenue mission).

*Sec. 420*: The recommendation defines customs revenue functions to include the assessing and collecting of all types of duties, fees, and taxes; the processing and denial of entry of persons and goods; enforcing quota, marking, and intellectual property laws; collecting trade data; enforcing trade agreements; functions of certain revenue collecting specialists; and functions of certain revenue collecting support offices.

These definitions are used throughout the recommended amendment in order to 1) define the scope of the newly created Customs Service core within the Department of Homeland Security and its directions for the Department's future operations related to trade and revenue collection; 2) describe to the scope of the authorities retained by the Department of the Treasury for delegation to the Secretary of Homeland Security; and 3) describe the services that must be maintained by the Department of Homeland Security even outside the newly-created Customs Service core.

*Sec. 421*: The recommendation provides that GAO will report on all trade functions performed by the executive branch.

The creation of a new Department that will have significant trade responsibilities has led the Committee to recommend a comprehensive report to identify all agencies in the executive branch that have trade functions. This report will assist the Committee in continuing to conduct oversight of international trade functions.

*Sec. 422*: The recommendation provides that Customs is prohibited from entering into new contracts with publicly traded corporations if the corporation is incorporated in a tax haven country as defined in the section, subject to the President's power to waive based upon national security reasons.

DISSENTING VIEWS OF MESSRS. STARK, MCDERMOTT, AND BECERRA

ON THE CHAIRMAN'S PROPOSED AMENDMENT TO H.R. 5005, JULY 11, 2002

While the Administration's current focus is on the creation of the new Department of Homeland Security (DHS), the Ways & Means Committee is responsible for the Customs Service functions under the new Department. This includes the need to ensure that Customs employees' labor protections are maintained. And as Members of Congress, we are responsible for ensuring that the creation of this new department does not trample on existing laws and our democratic process. The absence of civil service and Freedom of Information Act protections in the Chairman's mark is ample reason to reject the amendment. But the hasty fashion in which this new agency is being developed is completely unacceptable under a democratic rule of law.

We commend the Chairman for attempting to preserve the revenue- raising functions of the Customs Service as a distinct entity within Customs. However, the Chairman's amendment only includes a small subsection of existing Customs personnel and includes a limited mandate. Although the Administration continues to reiterate its promise that Customs employees' civil service, collective bargaining, and whistle-blower protections will be maintained under the reorganized agency, these protections were not specifically included in the Chairman's amendment. While the Chairman advised the Committee that these protections do not fall under the Ways & Means jurisdiction, our support cannot rest on a mere promise from the Administration. Twenty-two existing federal agencies are targets for inclusion under the new DHS umbrella. We would discourage our colleagues from taking a cavalier approach with the lives of tens of thousands of civil servants for the sake of meeting a September 11 deadline.

Nothing in the Chairman's mark ensures that the Freedom of Information Act, the Federal Advisory Committee Act and the Government in Sunshine Act are maintained in the new Customs department under the DHS. As envisioned by the Administration, this leaves the option of closed-door meetings and secrecy up to the discretion of sixteen assistant secretaries for the new agencies—ten of whom would not need Senate confirmation to hold their posts.There is no reason that the new department needs to be hastily rushed through the Ways & Means Committee, nor any other Congressional committee. This Committee held a hearing two weeks ago in which the Department of Treasury representative provided very little detailed information on the structure and components of the new Customs agency under DHS. Two weeks later, the same representative could not provide any additional information on the new Customs agency. The checks and balances established by our country's founding fathers should not be ignored in pursuit of meeting a self-imposed September 11 deadline.

We wish to make perfectly clear that our dissension must not be interpreted as opposition to securing our domestic territories under the new Department of Homeland Security, but rather as an exercise in maintaining the checks and balances so crucial to the democratic process. This is the largest overhaul of the executive branch in fifty years and will have ramifications long beyond our tenure as Members of Congress. Any new department should be fashioned correctly the first time with all the sunlight the democratic process can afford. Regretfully, perfecting amendments offered during the Committee markup were rejected along party lines. In conclusion, the Chairman's amendment to H.R. 5005 does not provide the necessary elements for a long-standing democratic Department.

PETE STARK
JIM MCDERMOTT
XAVIER BERCERRA

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