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KEEPING THE NATION SAFE THROUGH THE PRESIDENTIAL TRANSITION

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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KEEPING THE NATION SAFE THROUGH THE PRESIDENTIAL TRANSITION

THURSDAY, SEPTEMBER 18, 2008

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA,
OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:05 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka and Voinovich.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. I call this hearing of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia to order.

Today's hearing, "Keeping the Nation Safe Through the Presidential Transition," will examine planning for homeland security risks associated with the upcoming Presidential transition, the first since the attacks of September 11.

Because history suggests that there is an increased risk of attack in the time shortly before and after governmental transitions, it is critical that the Department of Homeland Security (DHS) function smoothly through the transition. I want to commend DHS officials for the seriousness with which they are planning for the upcoming transition. The Department has invested considerable time and energy in transition planning.

But DHS starts at a disadvantage in transition planning. Just created in 2003, it is now the third largest cabinet department. The Department has been on the Government Accountability Office's high-risk list since it was created. It has faced many tests in its short history, and it has not always handled them well. Even without the transition, I believe that DHS presents the most serious management challenge in the Federal Government today.

Substantial gaps in DHS leadership will make it difficult for DHS to ensure leadership through the transition. According to the National Academy of Public Administration's June 2008 report, 18 percent of executive positions, nearly one out of every five top positions, are vacant. Half of the executive positions at the National Protection and Programs Directorate are vacant. Forty percent of executive positions in the Office of General Counsel are vacant.

And perhaps most troubling, one-fourth of the executive positions at the Federal Emergency Management Agency are vacant.

High vacancy rates will compound the burden placed on top officials when appointees leave. I know that DHS is working to address this situation, but time is running out.

Many of the career employees called on to juggle multiple roles during the transition have been in their current positions only a short time. DHS has had the highest career executive turnover rate of any cabinet department over the last several years. More than half of the current career executives have been in their positions for less than 2 years. Low morale and high turnover have plagued DHS since its creation. This is a serious management problem and now a serious transition concern and it must be given urgent attention.

I am pleased that the Department increasingly has placed career employees in positions of high authority. Most components have a career employee in the deputy position who will be able to fill the shoes of the departing political appointee during the transition. The Department has identified the career employees who will take the positions of other critical appointees until their replacements start, as well.

The Department's core management functions should be undertaken without respect to politics or ideology. That is why I joined with my good friend, Senator Voinovich, on a bill, S. 2816, to allow the DHS Human Capital Officer to be a career civil servant, as well as on the Effective Homeland Security Management Act, which is S. 547, which would convert the Under Secretary for Management into a deputy position with a term appointment. These bills would improve continuity during Presidential transitions and would promote better management.

Ms. Duke, as I said during your confirmation hearing, I am pleased that you are willing to continue serving at DHS through the Presidential transition. I hope that the next President considers keeping you in your position until your successor is confirmed. Your extensive management experience would be valuable during the challenging transition time, and your many years in the civil service would give you the credibility to help bridge the gap between the outcoming Administration and the new one.

Turning now to the new leadership that will come on board after the inauguration, the new Administration's national and Homeland Security appointees must be nominated and confirmed more quickly than has happened in the past. This was a recommendation of the 9/11 Commission, which observed that many of President Bush's critical appointees were not confirmed until the summer of 2001 or later. Indeed, no Administration has had more than 60 percent of its cabinet and sub-cabinet appointees confirmed by August of its first year. Speeding this process will require the commitment of the incoming Administration, the current Administration, and the Senate.

The new President will need to identify, vet, and choose his nominees very quickly, which will require a clear understanding of current homeland security problems and the incoming President's priorities in addressing them. There are only 11 weeks between the election and inauguration day. Both candidates' teams should be

working hard now to choose their potential transition team and key nominees.

The Intelligence Reform and Terrorism Prevention Act of 2004, implementing a 9/11 Commission recommendation, allows the Presidential candidates to submit requests for security clearances for their prospective transition team before the election and allows the President-elect to submit requests for other nominees right after the election. I hope the candidates will take advantage of that change.

Senator Voinovich and I have worked for years to reform and modernize the security clearance process. Some progress has been made in speeding the process and reciprocity of clearances, but it still remains too slow and too paper-intensive throughout the government.

Finally, the Senate must speed the confirmation process. The post-election period will be a time of transition for the Senate as well as the Executive Branch, with new Members elected and changes in Committee membership. It will take planning, focus, and dedication to ensure that the confirmation process is thorough, fair, and fast.

I want to thank Senator Voinovich again for his work on this issue. We are both firmly committed, whichever party will occupy the White House next year, to ensuring that the transition goes smoothly. As I stated last week at this Subcommittee's hearing on general government transition planning, even as the Senate legislative session winds up, this Subcommittee will continue working to see that Congress, the current Administration, and the next Administration do all that we can do to keep the Nation safe through the transition.

I know that DHS takes this issue very seriously, as well. I look forward to hearing more about DHS's challenges and progress in preparing for the transition. I want to thank our witnesses for being here today to discuss this critical issue.

I now turn to my friend, Senator Voinovich, for any opening statement that he would like to make at this time. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Mr. Chairman. One of the joys of being on this Subcommittee is the wonderful relationship that I have with our Chairman, Chairman Akaka. It is unusual that an agenda continues over a 7- or 8-year period. Ms. McGinnis, you know how long we have worked on this together, and I think that you should be assured that we are going to continue this effort, as Senator Akaka says, to stay on top of these issues and do the oversight that is necessary as we move along.

I really believe this is one of the most important hearings that we are going to have in this Congress. Our Subcommittee met last week to consider the overall challenges the Federal Government faces as it prepares for the Presidential transition, and today we are looking at the Department of Homeland Security it challenges.

I will say, Ms. Duke, that when Secretary Chertoff was in Cleveland, I did compliment him on the fact that, according to everybody that I have talked to, the Department's transition plan is a very

good plan. The real issue is do you have the wherewithal in order to implement that plan?

I think everyone in the country needs to be cognizant of the fact that there may be a heightened risk of a terrorist attack for the next several months. I make this statement based on history. The U.S.S. *Cole* was bombed 1 month before our 2000 election and the 9/11 attacks occurred 8 months after our 2000 election.

We are not the only country that is at risk during transition. In 2003, explosives were detonated on a train in Russia 2 days before their national elections. Similarly, bombs were set off on trains in Spain 3 days before its 2004 elections. And last year in the United Kingdom, there were bombing attempts within days of the appointment of the new Prime Minister.

The 9/11 Commission has noted that this is a very crucial time in terms of some of the dangers that we are subjected to.

As I said, I believe that we are preparing for the transition and I complimented Mr. Johnson last week, and said that I was appreciative of the fact that he and Secretary Chertoff were both trying to make sure that we don't drop the baton during this period like our Olympic runners did, which we were all unhappy about, but they did compensate later on for that.

We are here today to hear from DHS and the National Academy of Public Administration about how DHS, with the Council for Excellence in Government, is preparing for the transition. I worked with NAPA when I was mayor, so I know the good work that they do and look forward to hearing from them today.

Today, we also have an opportunity to discuss what more can be done by DHS, Congress, and the next Administration to solidify the transition actions DHS has already taken. I am anxious to discuss several areas where I think we can build on the good work that has already been done.

First, many transition reports suggest the need to provide security clearances for new officials in a timely manner, and I agree. In fact, the Chairman and I have been working to bring a performance-based approach to how the government manages access to sensitive national security information since 2004, and we are waiting for a report before this Administration leaves on how they are going to really streamline that process.

Second, I am interested in exploring how DHS human capital challenges could negatively impact the transition, and Senator Akaka has made reference to those already. The NAPA report notes that a large number of vacancies is a major gap in the DHS career leadership structure, and again, I am not going to go into the details, but 139 of the Department's executive positions were vacant on March 20, 2008. That is about 20 percent of its leadership positions, and I am concerned about that. A number of transition studies note that career executives must provide stability during transitions, so we must make sure that DHS has the necessary authority to hire the employees it needs.

Mr. Chairman, you and I have worked to provide agencies the tools that they need to hire the right people for the right job at the right time in the right place, and I hope, Ms. Duke, that these tools have been helpful to DHS, and I would like to say to you, thank

you very much for stepping up as a career employee to take on management responsibility. Thank you very much for doing it.

FEMA executives must also have the qualifications necessary to manage emergencies and disasters, and I do not think that non-career executives should fill 34 percent of FEMA's executive positions. That is something that Senator Akaka and I are going to have to work on.

This afternoon, I also look forward to discussing how this Administration and the next, as well as Congress, can best reach out to the public regarding the transition, as NAPA and others recommend. I think we need to discuss possible risks to the Nation during the transition period, but also provide assurances that the government is preparing to address those risks and will leave no stone unturned in its efforts. We are going to make sure that everybody understands that. In other words, we are going to send a message that transitions bring risks, but we are alert and ready to address those risks.

I also hope we can discuss how the Federal Government's transition preparations can and should be coordinated with State and local governments and the Presidential campaigns.

I want to thank our witnesses for joining us today on this matter of critical importance to our country. I appreciate your time and look forward to hearing from each of you, and I want to especially thank Ms. McGinnis for all of the great work that you have done right from the beginning when we got started on the human capital challenge. I hope that you take great pride in the legislation that Senator Akaka and I have worked on over the years to try and make sure that we can recruit the best, retain them, and reward them. I must say, Senator Akaka, without the participation of the private sector, much of the great progress that I think we have made over the last 10-year period—would not have been possible. Thank you, thank you for all the work you and your organization have done to help us.

Senator AKAKA. Thank you, Senator Voinovich.

Again, I want to welcome our witnesses today to this Subcommittee: Elaine Duke, who is Under Secretary for Management at the Department of Homeland Security; Frank Chellino, who chaired the panel of the National Academy of Public Administration that produced the report entitled, "Addressing the 2009 Presidential Transition at the Department of Homeland Security" at the request of DHS and Congress;[1] Patricia McGinnis, who is the President and Chief Executive Officer of the Council for Excellence in Government; and John Rollins, a specialist in terrorism and national security at the Congressional Research Service.

As you know, it is the custom of this Subcommittee to swear in all witnesses. I would ask all of you to please stand and raise your right hand.

Do you swear that the testimony you are about to give the Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. DUKE. I do.

Mr. CHELLINO. I do.

[1] The report submitted by Mr. Chellino appears in the Appendix on page 122.

Ms. MCGINNIS. I do.

Mr. ROLLINS. I do.

Senator AKAKA. Thank you. Let it be noted in the record that the witnesses answered in the affirmative.

I want the witnesses to know that while your oral statements are limited to 5 minutes, your entire statements will be included in the record.

Ms. Duke, will you please proceed with your statement.

TESTIMONY OF ELAINE DUKE,[1] UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. DUKE. Thank you, Mr. Chairman and Ranking Member Voinovich. It is truly a pleasure to be here before you this afternoon and I want to thank you for giving me the opportunity to highlight the actions that the Department of Homeland Security is taking to ensure we are completely prepared before the election, through the inauguration, and beyond.

As was stated by the Members of the Subcommittee, historically, we know that terrorists perceive government transitions to be periods of increased vulnerability. Our employees and military members will continue their vital efforts to protect our country today, tomorrow, and throughout the transition without hesitation. However, we are taking this time to focus on and improve our day-to-day business operations as well as to maximize our readiness and incident response capabilities.

The Department's transition efforts have garnered a great deal of attention and we have been busy ensuring a seamless transition will occur. We are reviewing and making changes to our internal processes. We are preparing briefing and confirmation materials for the incoming Administration. We are conducting training and exercises to ensure the current leadership is in place, is prepared for any threat. We are focused on change management and communicating our plans to employees, our partners in industry, and government partners on the International, Federal, State, and local level.

We are also working with stakeholders and partners outside the Department in respect to security clearances, exercises, and interagency coordination. We are working with the members of this panel here to ensure that we keep the right focus both in planning and execution of our transition activities.

Our transition efforts actually began in the spring of 2007. By this time last year, we had begun identifying critical positions and senior career civil servants who will assume responsibility during the time of transition.

In September 2007, Secretary Chertoff asked the Homeland Security Advisory Council to establish an Administrative Transition Task Force for recommendations to the Department on best practices. The Task Force made many good recommendations. Although some of the recommendations are not within the Department's authority to implement, we took the Task Force recommendations to heart and have incorporated them in our transition efforts. We have a cadre of transition officers who are working closely with my

[1] The prepared statement of Ms. Duke appears in the Appendix on page 29.

core transition team to evaluate internal processes, develop briefing materials, and implement an exercise plan.

In November 2007, we joined Congress in requesting that the National Academy of Public Administration prepare an independent report of our transition planning efforts. The NAPA report made several important recommendations, most of which we have either implemented or will implement prior to transition. The report confirmed what we had suspected. Of our 22 component agencies and program offices, 14 have career civil servants in the No. 1 or No. 2 positions, while seven component agencies or programs have only career civil servants in senior leadership positions.

We are providing improved processes to equip new appointees with the tools they will need as well as the information relationships required to be effective to do their jobs. To head this effort, we have appointed Coast Guard Rear Admiral John Acton, who is here with me today, to serve as our full-time Transition Director.

In December 2007, the Department focused on the efforts at an interagency level by engaging the Council on Excellence in Government (CEG). The emphasis is on the Department's homeland security training and intergovernmental relations and interactions with other Federal, State, and local governments. In concert with the Federal Emergency Management Agency, the Council is supporting our training and exercise program and our relationships and communication plans with especially our State and local government and first responders.

Let me emphasize this. Because more than 99 percent of the Department's 216,000 employees are career civil services or Coast Guard members and not political appointees, I do believe the change in Administration will have little effect on our day-to-day front-line operations. Our employees will continue to seamlessly do their jobs as they do now, protecting the country every day.

Having said that, though, we do understand the increased risk during this transition and have our efforts dedicated to preparing for it.

I thank you for your leadership and continued support of the Department and its management programs. I look forward to working with you in shaping our future and the success of DHS with energy and enthusiasm. Again, I am honored to be here today and thank you.

Senator AKAKA. Thank you very much, Ms. Duke. Mr. Chellino.

TESTIMONY OF FRANK CHELLINO,[1] CHAIRMAN, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. CHELLINO. Senator, thank you. First, I would like to ask that our report be entered into the record.[2]

Senator AKAKA. Without objection, it will be included in the record.

Mr. CHELLINO. And second, regarding my written comments, yesterday, we met with Admiral Acton and Dr. Tiffany Lightbourn from DHS. We had a very positive meeting with them about training and transition. As a result of that, we revised page four of my

[1] The prepared statement of Mr. Chellino appears in the Appendix on page 33.
[2] The report submitted by Mr. Chellino appears in the Appendix on page 122.

testimony. I think we submitted that to you earlier this morning, so there is a little revision in what we previously gave you.

Senator AKAKA. Thank you very much.

Mr. CHELLINO. Mr. Chairman and Senator Voinovich, thank you for inviting the National Academy of Public Administration to testify at the Department of Homeland Security's preparation for the 2009 Presidential transition. I served as the panel chair for the Academy's 2008 report that assessed DHS's executive profile and its plan for the 2009 Presidential transition.

The Presidential transition of 2009 is the first major transition since September 11, 2001, and the first for DHS, which was created in 2003. DHS not only built a new organization from the ground up, but has undertaken two major department-wide reorganizations and absorbed new and expanded responsibilities that were not part of its original charter. This continually changing environment, coupled with major ongoing operational responsibilities, has caused a continuous whitewater management environment at DHS. With the 2008 Presidential election on the horizon, DHS leadership is about to turn over responsibility for managing this complex and challenging organization to a new team.

As we pointed out in our report, recent history demonstrates that political transitions present an opportunity for terrorists to take advantage of real or perceived weaknesses in a Nation's ability to detect, deter, prevent, or respond to attacks. The final report of the 9/11 Commission raised concerns about the impact of future transitions on the government's ability to deal with terrorism.

Due partly to the delayed resolution of the 2000 elections, the incoming Bush Administration did not have its deputy cabinet officials in place until Spring 2001, or its sub-cabinet officials in place until that summer—historically, getting the Presidential team in position has been a slow process. The Commission strongly pushed for changes to the process so that the Nation is not left vulnerable to these types of delays in a post-September 11, 2001 world. During the transition, DHS must retain the ability to respond quickly to both manmade and natural disasters.

In light of these issues, Congress and DHS asked the Academy to assess DHS's executive profile, study its transition training, and review its plans for the 2009 Presidential transition. Our June report was the result of that request.

Regarding DHS's executive profile, the Academy assessed the appropriateness of the overall number of executives for DHS given its size and broad mission objectives, assessed the Department's allocation between career and non-career executives, compared the Department with similarly structured agencies' career and non-career executives, and identified gaps in the Department's career senior leadership, including risks associated with changing leadership during the Presidential transition.

Although no entity has provided a formula or guidelines for the specific optimum number of executives or political appointees in an agency, the Academy concluded that the total number of DHS executives and the percentage of political appointees are well within the norms of other cabinet-level agencies. However, the Academy did recommend that DHS shift more executives to field locations in immigration and border management agencies and change non-ca-

reer headquarters deputy officials, FEMA regional administrators, and other officials to career executives.

In addition, the report identified gaps in DHS executive staffing, including high turnover, many vacant positions, and a lack of ethnic and gender diversity.

Regarding transition training, the Academy assessed the adequacy of executive training programs as they relate to the transition and compared DHS training programs with those of similarly structured cabinet-level agencies. The Academy concluded that DHS's transition training and development efforts are consistent with the executive development programs in most Federal agencies and has a balanced set of transition-specific training programs underway. If implemented, these should help executives prepare to meet their homeland security responsibilities during transition. DHS is well along in its transition training, especially given that it is a young agency with a critical national mission and going through its first Presidential transition.

Last, the Academy reviewed DHS's transition planning and made 22 recommendations spread across a defined time line from prior to the national conventions in August to following inauguration day in January 2009. These specific recommendations are discussed in detail in the report.

DHS has begun to address these 22 recommendations and has advised the Academy that they have substantially or partially completed 10 of the first 12 NAPA recommendations which were to be completed by September 4. Regarding Academy recommendations 13 and 14, which were to be completed by November 4, DHS has advised the Academy that the White House has the responsibility for reaching out to Presidential transition teams to solicit names of potential political appointees. To our knowledge, this has not yet been implemented. However, DHS has geared up its internal security processes to meet the demands of the incoming executive selectees.

DHS's actions are positive, but there remain important areas that must be addressed if the Department is to be completely prepared. To the greatest extent possible, incoming DHS leadership, including the Secretary and key staff, must be in place on inauguration day or shortly thereafter. This requires the support and cooperation of other Federal agencies with background check and clearance responsibilities as well as the Congress, given its confirmation role and responsibilities.

Finally, the Academy noted that DHS has not fully achieved its intended mandate of providing an integrated and universal approach to homeland security. Much has been asked of DHS since 2003. However, the Department's key seven components still largely operate as stand-alone entities. Important steps are being taken by DHS headquarters to improve coordination among the components. If the void in leadership during the transition results in components continuing to operate independently in areas that call for a more collaborative approach, DHS's operational efficiency and effectiveness will suffer and its stated objectives will remain out of reach.

In addition, and compounding this lack of coordination is the 86 Congressional committees that oversee DHS. These multiple com-

mittees make it difficult to both align resources to strategy and pass authorizing legislation, but it also subjects the Department to policy disarray. These issues will provide a major challenge for the leadership team appointed by the next President.

Mr. Chairman, that concludes my statement. Thank you for inviting the Academy and we will be happy to answer questions at the appropriate time.

Senator AKAKA. Thank you very much, Mr. Chellino. Ms. McGinnis.

TESTIMONY OF PATRICIA McGINNIS,[1] PRESIDENT AND CHIEF EXECUTIVE OFFICER, COUNCIL FOR EXCELLENCE IN GOVERNMENT

Ms. MCGINNIS. Thank you very much, Senator Akaka and Senator Voinovich. I am glad to see the continuity of leadership in this Subcommittee even as you switch chairs back and forth, so thank you very much.

I appreciate the opportunity to participate in this very timely discussion of keeping our Nation safe through the transition. The Council for Excellence in Government works to improve the performance of government and we have played a significant role in Presidential transitions. Both the Clinton and Bush Administrations called on us to help orient new appointees and offer leadership to the top appointed Presidential team and White House staff.

In addition, we have worked intensely in the area of homeland security for the last several years, looking at it on an enterprise basis, not just working with the Department but working with State and local government, people on the front lines, the private sector, and even engaging the public, which is an important part of this enterprise, as well.

We were asked last fall and we began an engagement with the Department of Homeland Security to play a role in their transition planning. Our job is to help ensure that the critical roles, responsibilities, and protocols for emergency response will be understood, executed, and coordinated seamlessly by leaders at the Department of Homeland Security in collaboration with others across the Federal Government with homeland security responsibilities, State and local government officials, and the appropriate private sector leaders.

And this transition period is quite extended. It has already begun, as we are seeing appointees leave, and will continue through the election, through the inauguration, and for some weeks and months after that, we hope not too long before the appointees are in place to take over.

We are focusing both on the acting career officials, or those who will be stepping up in acting positions based on the succession plan, and later on incoming appointees that have operational and staff support functions to the Secretary.

To guide the work, we have established a small bipartisan panel, which is co-chaired by Admiral Jim Loy, who was the Deputy Secretary of the Department, Commandant of the Coast Guard, and

[1] The prepared statement of Ms. McGinnis with an attachment appears in the Appendix on page 38.

New York City Police Commissioner Ray Kelly. We have given you a list of the members of the panel. They really do represent the homeland security enterprise throughout the country and have been very helpful.

We have two main tasks. One, we are creating an inventory and visual mapping of the key roles, relationships, and responsibilities and protocols based on the National Response framework, the continuity of operations plans, and the other protocols. This is not easy because it is very complex, but it is a great way to see how it works, see who relates to whom and what the responsibilities are. So we want to offer that to the Department not only for transition, but for later on.

The second task, as Ms. Duke said, is to design and deliver workshops for the career officials and then the appointed officials as they come in. There are three goals here.

One is to make sure that they understand their roles and responsibilities and the protocols.

Two, we want them to practice these roles. We think that exercises are critically important.

And three, through that effort, we want to see relationships and camaraderie built among the team and including Federal, State, and local, and some private sector participants. As our friends on the front line often say, you don't want to be exchanging business cards in the middle of an emergency.

We held the first scenario-based training workshop on Monday, September 15, for 50 senior career officials. It went very well and we know that as we go forward, we will be offering some of the same kinds of workshops, fundamentals and getting into scenarios. We are connecting these to the National Exercise Program exercises and we understand that the career people who are there now have more experience than the appointees coming in, for the most part, so we will have to adjust and focus on who our audience is.

I would like to conclude by answering the questions you posed about the progress of the Department and the risk. We agree with you that the Department has made great progress. We commend the leadership of Elaine Duke, Paul Schneider, and others who are quite committed to assuring this smooth transition. We are particularly impressed with Admiral John Acton, who has been named as the coordinator of the transition and will be there as appointees leave and new appointees come in.

We think there are two significant risks that we bring to your attention, and I think you are aware of them. One is in terms of training and exercising, the Department is doing a great job, the National Exercise Program, connecting with other departments, but we do see that the training and exercises across the Federal Government is not well coordinated. There are a lot of training and exercise programs that are not connected. As far as we know, there is no clearinghouse or repository for such training and exercise programs, and I think that this is work to be done, not only for the transition, but on an ongoing basis, to make sure that each department is taking advantage of what the other offers and working together.

The second risk you mentioned, and that is the potentially lengthy gap between the inauguration of the next President and

the confirmation of key appointed leaders. We think that the cabinet should be sworn in on inauguration day and it would be great to see other top officials, as well, but certainly days, not weeks and months after that, if possible. I know you understand the importance of that.

What I would say is that you hit the nail on the head, both of you, in terms of the security clearance investigations, and given the state of the reengineering of that process, we would strongly recommend increasing the capacity, the investigative capacity, so that you can be moving people through more quickly by having a larger capacity.

And then second, in terms of the Senate leadership and the confirmation, we would urge that commitments and changes in the process take place before the election, if possible, establishing time frames for considering and voting on nominees, maybe a different policy toward holds or other changes. If that can happen before the election and we have a winner and a loser, I think it will be most constructive.

Thank you very much.

Senator AKAKA. Thank you very much, Ms. McGinnis. Mr. Rollins.

TESTIMONY OF JOHN ROLLINS,[1] SPECIALIST IN TERRORISM AND NATIONAL SECURITY, CONGRESSIONAL RESEARCH SERVICE

Mr. ROLLINS. Chairman Akaka, Ranking Member Voinovich, thank you for asking me to appear today to discuss the risks and challenges associated with the Presidential transition. As stated, my name is John Rollins. I am a specialist in terrorism and national security with the Congressional Research Service. I authored a report in April of this year entitled, "2008–2009 Presidential Transition National Security Considerations and Options," and I ask that that be placed in the record.[2]

Senator AKAKA. Without objection.

Mr. ROLLINS. The nice thing about going last is many of the points I have to offer have been covered, so I will keep my comments brief.

Before offering suggestions or ideas where Congress may assist current and future Presidential transition activities, I would like to offer a bit of context to the risks that we face. As previously stated, the Presidential transition currently underway will be the first one since September 11, 2001. In my report, and I believe this is similar in the NAPA report, I look at the transition period actually being from the time of the campaigning by Presidential candidates through the first year of the new Administration. That allows for time for confirmation of new appointees and for national and homeland security policy directives and procedures to be in place, with the assumption that some of those will change as they are currently sitting.

As we have all discussed, history is replete with examples of attacks by terrorist groups to take advantage of the transfer of

[1] The prepared statement of Mr. Rollins appears in the Appendix on page 49.
[2] The report submitted by Mr. Rollins appears in the Appendix on page 70.

power. We have talked about the examples. I would refer to last July 2007, a national intelligence estimate to take a look at what they offered regarding possible Presidential transition risks. The non-classified version of the estimate offered the following points regarding al-Qaeda's capability over the next 3 years. So we are 1 year into that 3-year period that the estimate spoke of.

The estimate stated, al-Qaeda has regenerated key elements of its homeland security attack capability and the leadership continues to plan high-impact plots. Al-Qaeda will intensify its efforts to put operatives here in the United States. And last, maybe most importantly, al-Qaeda's homeland security plotting desires are likely to focus on prominent political, economic, and infrastructure targets. So here, I think we have the estimate of a year ago stating that this is a window of vulnerability, I think confirming what we have seen with history and past attacks.

As with many crimes, an act of terrorism often results from the confluence of the aggressor's motivations, means, and opportunity. Many national and homeland security observers suggest that al-Qaeda and other international and domestic terrorist groups maintain the desire to attack U.S. interests. The means or the capabilities of the enemies of our Nation are subject to a great deal of debate within the government and outside the government. However, when one looks at the possibility of an attack occurring during the Presidential transition period, combined with the suspected need for al-Qaeda to prove its continuing viability as an organization, the enemy may see the upcoming transfer of power too enticing to resist when considering whether to attack U.S. interests in the homeland or abroad.

A piece that I added as of yesterday—this wasn't in the original submission that I provided your staff last week—some national security observers suggest that the attacks that took place in Yemen yesterday may have been undertaken with the desire to seize the U.S. embassy, thus creating a protracted situation that could influence the upcoming election. So there may have been a cause to that. Whether this act was designed for that purpose or for some other objective, many national security observers suggest that al-Qaeda-supported statements or actions may increase through the transition period.

I will now briefly touch on areas that Congress can provide assistance to the transition activity. While implementation activities of the Presidential transition process are primarily the responsibility of the Executive Branch, as we have discussed, there are a number of things that Congress may choose to do to support the current and incoming Administration.

One, as I believe Ms. Duke discussed, is providing the name of agency leaders to the Congress of who is going to have decision-making authority during the transition; providing briefings to the Congress regarding possible risks to the Presidential transition process; and, of course, providing information about the current status of transition activities.

One item of interest that I think we are all aware is pursuant to a provision in the implementation recommendations of the 9/11 Commission Act of 2007, the Department of Homeland Security is required to develop a transition and succession plan to be pre-

sented to the incoming Secretary. The deadline for this plan to be submitted to Congress is December 1.

Next, I will briefly touch on Congressional support for the incoming Administration. The Congress may wish to prioritize hearings, so we talked about the need for the incoming Administration to identify nominees. Congress may wish to prioritize the nominees based on national security and homeland security responsibilities. And, of course, Congress would want to work with the new Administration to understand its national security priorities, as that may have short-term policy and budgetary implications.

Other activities that I will briefly touch on, if Congress could consider holding a special session of Congress after the election to ascertain what the outgoing and incoming Administrations have accomplished, and, of course, Congress may wish to quickly assign new and existing Members of Congress to committees that focus on national security.

In conclusion, whether the enemies of the United States choose to undertake action counter to national security interests or the new President experiences a peaceful period during the transition, the new Administration's recognition and response to the Nation's security challenges will depend heavily on the preparation activities that take place between now and the inauguration.

Thank you for convening this important hearing and I would be happy to answer any questions you may have,.

Senator AKAKA. Thank you very much, Mr. Rollins.

Ms. Duke, the NAPA report highlights troubling problems with high executive turnover and vacancies at DHS. I am going to ask a series of questions about those issues. The report revealed that DHS has had the highest turnover of career executives of any cabinet agency over the past several years. This has contributed to high executive vacancy rates. In particular, the executive vacancy rates at the National Protection and Programs Directorate in the Office of General Counsel are extremely high. What do you attribute this problem to, and what are you doing to address it?

Ms. DUKE. OK. Thank you, Mr. Chairman. Since the NAPA report—or even before, but there are results since the NAPA report, I am, with the Deputy Secretary, managing biweekly the SES vacancies and announcements and filling of the key positions. We have been able to reduce our vacancy rate from about 20 percent at the time of the NAPA report to about 13 percent now. We have about another 35 selections pending, so with that—it should be completed by the end of this month—we will have our vacancy rate under 10 percent for the first time. We are going to start tracking the career and the political separately now because we think as politicals exit, we want to make sure we are keeping the career because that is a combined number of all our senior executives.

What we have done is, one, manage it and bring attention to it. The second thing we have done is NPPD, one of their unique challenges is they have grown so big so quickly. They had several hundred positions to fill this year. So we have separated their staffing off. They were overwhelming the system, and so all of the DHS hiring was minuscule. It was less than half of the—it was not even equal to NPPDs. So we are managing NPPD's hiring separately, and currently, NPPD's vacancy rate at the senior executive is down

to about 34 percent, not what it needs to be certainly, but we are managing that. So I think that is unique to NPPD and the fact that with the reorganization of DHS, they just grew and have so many new positions. So we are going to continue to watch this.

We do have all the key number twos in place other than my deputy. The Deputy Under Secretary for Management is under recruitment. But all the other key deputies that we talked about, having a career deputy for all the under secretaries, that is in place.

Senator AKAKA. Thank you.

Mr. Chellino, NAPA took an in-depth look at DHS's human capital challenges for your report. Did that work provide insight into how DHS could address high turnover and vacancies among career executives?

Mr. CHELLINO. Yes and no, Senator. The NAPA report identified the number of vacancies. Oftentimes, they have a 76 percent executive transition turnover in their positions. The NAPA report looked at why these people left. A lot of them were at the end of their career when they switched into DHS. DHS had a major reorganization in 2005, brought together 22 agencies; highly centralized in 2003. In 2005, they became completely decentralized and became seven core component elements. So I think there probably were some frustrations with some career people that went into DHS, and as a result of that, they resulted having the highest turnover in executive positions in the government, including both political and career.

Now, if you look at political, the average political employee in the Federal Government today is in place for 24 months. While our report said that DHS did very well with political appointees in terms of their numbers and percentage, the panel felt that if DHS, as it grows as an agency, can continue to reduce those political appointments, it is going to be a lot better for the experience level, the credibility level. You don't want people coming into a Nuclear Power Detection Office in DHS and learning a job for 2 years and then leaving.

These are positions, not unlike the CIA or the FBI or DEA or Coast Guard or Secret Service, where those agencies have very few political appointees and the theme is to get people in these offices where they are going to stay for a full career. So while DHS does very well with political positions, we would recommend as they grow as an agency, they continue to reduce those slots and make them career experienced people.

Senator AKAKA. Ms. Duke, according to the NAPA report, FEMA had an executive vacancy rate of 25 percent, the highest of any of DHS's operating components. Additionally, more than one-third of FEMA executives were political appointees. Most of these were Senior Executive Service positions that could be filled with career employees. I am concerned that there will be a tremendous leadership vacuum at FEMA during the transition that could hinder the response to any emergency. What is DHS doing to ensure that there are not any gaps in emergency response during the transition?

Ms. DUKE. Well, what we are doing in terms of leadership, FEMA has brought its vacancy rate down to 15 percent, so it is making progress, along with the other parts of DHS. What we have

done for FEMA because as you know, Mr. Chairman, both the Director and Deputy are political at this time, is we have done a waiver to the succession order and Nancy Ward, who is the FEMA Region 9 Director, is going to be the Acting Director of FEMA when the two top politicals resign. So that is going to prevent kind of a bumping of FEMA people over time.

So what will happen is when the Director and Deputy resign, since they are both politicals, Ms. Ward will become the Acting Director of FEMA so that we can keep the continuity of leadership. To make her ready for that, she is coming to Washington, DC on October 6 and will be in the training mode with Chief Paulison and Deputy Johnson to make sure she is ready.

Additionally, we are working on the FEMA regional administrators. All 10 were political originally, and through attrition, three so far are now career filling those rregional administrator positions.

Senator AKAKA. Thank you. Senator Voinovich.

Senator VOINOVICH. One of the questions I asked Mr. Johnson last week was, is there a transition manual that you have in place that is pretty comprehensive that you could give representatives of the Presidential campaigns?

Ms. DUKE. Yes. We have an outline of a Presidential briefing book which we are putting together and that will have a full overview of DHS. And I think that would be the most to what you are talking about in terms of having something for the next Administration.

We also have a manual for our outgoing politicals in terms of their responsibility and another manual for the incoming political appointees in terms of how to be a good political appointee in the Federal Government, some of the management pieces, the ethics and the responsibilities and those types of things. But our briefing book would be the closest, I think, to what you are talking about, Senator.

Senator VOINOVICH. To your knowledge, have both the campaigns put people in place that are interfacing with you currently?

Ms. DUKE. We have not been contacted by either campaign at this time.

Senator VOINOVICH. When would you suggest that they do that?

Ms. DUKE. We are poised and ready. And additionally, I might point out that Ms. Lovelace, Gail Lovelace, who you met with last week, and Mr. Johnson, have put together a Federal panel. We are in contact with her because she is working with the campaigns right now and she knows that we are available and ready to appropriately work with the campaigns. But we do think we have an important mission and we do not want to lose the mission continuity because of the Presidential transition.

Senator VOINOVICH. Mr. Chellino.

Mr. CHELLINO. Sir, along those lines with this issue—we spoke to DHS about this yesterday and about wondering why the transition teams haven't been engaged to date. Our 13th and 14th recommendations were that after the conventions and prior to the election, that the transition teams be contacted and that the initial paperwork, which as you know is very lengthy and very time consuming, be completed and started and at least submitted either through the White House or through the FBI, and that the initial

clearances, the dates of birth, the Social Security numbers be given so that preliminary—both campaigns are already talking about this in our report so that we don't lose time waiting for the elections to come around. There seems to be an issue as to who is supposed to be doing the contacting and when it is going to be done.

Senator VOINOVICH. How about Senator Akaka and Senator Voinovich sending a letter to the campaigns saying that we have had these hearings. To our knowledge, no one has been appointed——

Mr. CHELLINO. I would welcome that.

Senator VOINOVICH. The sooner you do it, the better off we are going to be, particularly in this area of the Department of Homeland Security, because of its critical nature.

Mr. CHELLINO. Particularly in this area, and I would wholeheartedly support that recommendation immediately.

Senator VOINOVICH. Mr. Rollins.

Mr. ROLLINS. Sir, I would just offer that according to press reports, both campaigns have chosen, nominally chosen transition leaders, so that is one venue that the Department could reach out to these people. And also, both campaigns have senior individuals that have been designated Homeland Security representatives that have been out on the speaking circuit and meeting with others. So that would be another way that the Department could possibly get an opening into the——

Senator VOINOVICH. Ms. McGinnis.

Ms. MCGINNIS. Yes. I would say that it would be a great idea for you to reach to them because there is this sort of funny dance that goes on at this time of year where no one wants to seem to be presumptuous, measuring the drapes and getting ready with their names and nominees. So I think that the transition planning in the campaigns is behind what has taken place in the past, and given the vulnerabilities now, I think that is a little troubling because the authority to go ahead and send these names up literally now should be taken advantage of and they need to be completely aware of what they can do. They need to be briefed and encouraged.

When you asked about a transition manual, it would be wonderful if we could figure out how to create something based on best practices in the past and challenges in the future.

Senator VOINOVICH. Senator Akaka knows this. I did that. That was one of the most important pieces of work I did when I was going out as Mayor of Cleveland and as governor. I really felt an obligation to do everything I could to make sure that there was a smooth transition, that we laid it out for the next Administration so they knew some of the things they would have to do and some of the problems that they would be confronted with almost immediately.

Mr. Chellino.

Mr. CHELLINO. Senator, yes. Continuing with that discussion, I was particularly dismayed in the *Government Executive* magazine that came out, and I happened to listen to your interview with Clay Johnson last week. But he went on record saying the White House Presidential Personnel Office is developing a road map that the new Administration can follow to have 100 appointees confirmed by April 1 and 400 by August 1, and I find that highly unacceptable.

We have 5,000 political appointees that will be coming in. Twenty-two-hundred of them are going to be executive level, and you are talking almost a year to get these people confirmed. We are literally wasting time right now as we speak.

Ms. MCGINNIS. And that is where the capacity, increasing the investigative capacity, could make a big difference. But this has to be a concerted effort.

Senator AKAKA. As you recall on that issue, Mr. Chellino, Mr. Johnson said that up to the present time, past Administrations have been able to confirm just 25 by April 1. And so 100 would be three times as many as in the past. But we need even more than that.

Senator VOINOVICH. Have they identified the critical positions? You said 100 critical by April, 400 by August. Ms. Duke, have you let them know—do you have the list of what are the critical positions so that you can share them with——

Ms. DUKE. We have our list of critical positions. Additionally, I would like to note that I did learn from Ms. Lovelace that the campaigns have requested security clearances for about 100 people and they worked directly with the FBI. I do not know, though, if any of those are to work on homeland security issues. But there is apparently some, in the last week or so, work on getting names for security clearances.

Senator VOINOVICH. Ms. McGinnis had a suggestion. I understand that the Office of Personnel Management now is whipping people through, doing a much better job, with the security clearance investigations. What do you think of the idea of maybe increasing the number of folks that you have got so that when these come in, you can look them over in terms of your security concerns?

Ms. DUKE. I think we are doing that and we are poised. We have about 200 political appointees in DHS and we will have the capacity for both the clearances and the suitability for those potential employees.

Senator VOINOVICH. I have used my time up, Senator Akaka. Why don't you go ahead.

Senator AKAKA. We will have a second round.

Senator VOINOVICH. OK.

Senator AKAKA. Mr. Chellino, you testified that DHS has partially or fully completed 10 of the first 12 recommendations in the NAPA report. As you mentioned earlier, you sent updated testimony today. The earlier version of your testimony that we received 2 days ago stated that DHS had partially or fully completed seven of the first 12 recommendations. What new information did you receive about DHS's progress on the three recommendations that you have updated?

Mr. CHELLINO. Yes, Senator. That was as a result of our meeting yesterday with Admiral Acton. There were four of us from NAPA that were present at that meeting, and we left, walked away from that meeting very impressed at the focus, what they had accomplished, who they had contacted in terms of transition training, in terms of contacting the National Guard, in terms of contacting NORTHCOM, FAA, Department of State. They had a litany of who they are working with and reaching out to existing ongoing govern-

ment agencies that already have significant training that they can joint venture with and thoroughly impressed us.

The only two areas that were left vacant were the distribution of the SES's, and they are doing a comprehensive review of the existing SES's—I think it is going to be completed in December—to see whether or not they want to reallocate them more to immigration and the border agencies. Keep in mind, Border Patrol, I think, increased 5,000 people in the last couple of years. So those—proportionately, the border agencies, the three border agencies, have not kept pace with the degrees of SESes that the other agencies have.

So as a result of that meeting yesterday, those three more recommendations were updated and we are very pleased. As you kick into the next cycle, which will end November 4, you get into these issues of pre-clearing and getting the security clearances ready for the transition teams, whomever they want to name, and that is where we suspect there is going to be a problem.

Senator AKAKA. Ms. Duke, as I stated earlier, I am pleased that DHS increasingly is placing career civil servants in positions of authority. However, as the end of the Administration draws closer, critics have voiced concern that DHS is filling positions that previously were filled by political appointees with career employees as a way of extending this Administration's influence into the next Administration. What are you doing to ensure that career hiring decisions are made exclusively based on the qualifications of the candidates throughout the Department?

Ms. DUKE. All our senior executive positions, of which a deputy-type position would likely be a senior executive, are publicly advertised, posted on the Federal website, USAJobs, and competitively solicited. Once we get in the applications, we go through the standard human resources process, and then every SES selection at headquarters and the majority of significant ones in the components are reviewed by an Executive Resources Board chaired by the Deputy Secretary with about six members, and we review the senior executive selections to ensure it was truly merit promotion-based.

Also, right now, if any new SES selection would go to the Office of Management and Budget for review of SES peers on the Qualification Review Board. If the candidate was a previous political appointee, it goes through another review to ensure that merit—by Office of Personnel Management (OPM)—to make sure that DHS properly followed merit promotion principles. So there are several steps of review in filling these.

Most of our deputy positions are by long-time career civil servants that have been in the Federal system and really are truly there for the stability of that specific functional area in DHS.

Senator AKAKA. Thank you.

Ms. McGinnis, in past Presidential transitions, lack of mutual trust between members of the incoming and outgoing Administrations has hindered sharing of needed information. The Council for Excellence in Government has worked on new appointee training. Do you have thoughts on building trust and encouraging full and open communication among current and incoming Administration officials?

Ms. MCGINNIS. That is a very tough question as the campaigns heat up and become more and more partisan. But I think that on issues of national security and homeland security, which should transcend politics, there is an opportunity to establish some practices and sharing of information, and this transition could lay the groundwork for that in terms of being sure that briefings are taking place, that the security clearances are being handled for both campaigns, and I think that the tenor in the Congress makes a lot of difference.

The Congressional leadership can set the right tone, and in fact, as I suggested before, if some steps could be taken in the Senate on a bipartisan basis to assure that the confirmations actually come to a vote within a reasonable and short period of time, and I think 30 days is reasonable. It was mentioned in the Intelligence Reform and Terrorism Prevention Act. And it would be wonderful to have some sort of resolution or commitment from the leadership as an example to show that trust.

Senator AKAKA. Mr. Rollins.

Mr. ROLLINS. Sir, I just offer the obvious. I believe oftentimes familiarity breeds trust, even among individuals that don't see policy issues similar. So the sooner that we can get the incoming national security and homeland security leaders engaged with the Department and the Office of the Director of National Intelligence and others, I think there will be a personal relationship that forms which would help the trust and help move some of these issues forward.

Senator AKAKA. Thank you.

Ms. Duke, is DHS taking any steps to ensure that DHS officials will provide a full and open exchange of information with the incoming Administration?

Ms. DUKE. Yes. We have an outline of both our transition plan and our briefing book that is comprehensive, and if this Subcommittee doesn't have it yet, I would be pleased to share it with you. I think that the fact that my office has the lead for this, you have my personal and professional commitment, and I think that having a Coast Guard officer lead it shows—is a neutral statement on our part.

As a political appointee, I do serve the President, but I think each one of us in DHS is dedicated to the homeland security. We work there because we think that is an important mission. I think that will transcend any issues, and much of what we are doing in transition really is policy neutral, as I think Ms. McGinnis said earlier, just building a strong basis so we are ready to transition. But I give you my personal word on that.

Senator AKAKA. Thank you very much. Senator Voinovich.

Senator VOINOVICH. Thank you.

Under Secretary Duke, as you know, we have been following the Department's efforts to establish a common set of performance metrics, and I know you have got your hands full, but I am hoping that Mr. Schneider is going to deliver the agreed-upon metrics by October, which is around the corner——

Ms. DUKE. Right.

Senator VOINOVICH [continuing]. Because we have worked very hard on it, and as you know, or maybe you don't know, we have

had this battle going back and forth as to how the Department is to be judged in terms of whether they are continuing on their transformation. I don't want to see our effort disappear, and by having those metrics and agreement, next year, 6 months out, we can sit down with the folks and just say, here is what the metrics are. How are you doing? So we can continue on this transformation because I really believe that if we don't do that, we are never going to get this Department shaped up. This is a gigantic management challenge and one that many of us look back on and say, maybe we did it the wrong way, or at least I thought we did it the wrong way, but that is neither here nor there. Anyhow, it is done and so we have got to move forward with it.

The other thing I would be interested in is your ideas on some suggestions, for example, some legislation dealing with moving these appointees through committees. There are some reasons we just don't get it done, sometimes in regard to a legitimate complaint, but we are going to be sending out a kind of a directive to all of the committees saying these are the kinds of things you should be looking for the nominees for these key positions, a kind of a job description. But there has got to be other ways that we can, as you suggest, Ms. McGinnis, to move nominations along so that we aren't the problem. And so often, we are the problem.

Mr. ROLLINS. Senator, I think that is a very good question. I think you answered the issue in the question, is looking at the job description, if you will, the job responsibility of the nominees. Look to see who has significant policy and resource making decision in the national security and homeland security environment and then possibly prioritizing those individuals for confirmation prior to others.

Senator VOINOVICH. Yes. And, probably another good idea might be to send that kind of criteria off—I think we did, in the Bush Administration, I think we sent it off to the campaigns, or after the election, saying that these are the kind of qualifications that they should be looking at. So you have got the administrative branch that has it and the Legislative Branch.

And this concept of getting people on board and thinking about them in the key positions early is a great idea because then you start to—I mean, I have to tell you, I ran for governor in 1990 and I had somebody who was out working on the campaign but their main responsibility was to look at people that would be on screening committees for key positions in the Administration, asking were there folks out there that looked like they might be good candidates. In other words, we were already thinking about if we won the election, how we could go to town as soon as possible on getting some of this stuff done.

So anything that we can do, our job, I mean, you can't control what other people do, but certainly we can do our share, our part.

Ms. MCGINNIS. The Council over the years has produced something called our Prune Book. I don't know if you are familiar with it, but you are familiar with the Plum Book, which is the list of political appointees. We take advantage of our members who have experience in government and put together a list of the top critical management positions and then do profiles and qualifications. So we are working hard on that now, trying to do it in a priority fash-

ion, and we worked with GAO last time to produce those management qualifications that you are talking about.

A couple of other suggestions, the committees all have different questions and questionnaires for appointees, and, of course, they may have different substantive questions. But to the extent that could be standardized or could be done in a way that complements the questions that have already been answered in the Executive Branch clearing process, that would streamline the process.

And then again, you are leaders and you work with your leaders, but it would be—I mean, could there be—I guess I am asking you—a way to establish a time frame as suggested by the 9/11 Commission, by the Intelligence Reform and Terrorism Prevention Act, of getting these people considered and to a vote within 30 days?

Senator VOINOVICH. Well, I think certainly Senator Akaka and I could work on that, to try and influence our respective parties and our leadership to do that. I will say this, that we tried to limit or to reduce the number of political appointees——

Ms. MCGINNIS. Yes.

Senator VOINOVICH [continuing]. And ran into a storm because so many of the committees were jealous of having the jurisdiction. They wanted it to be a political appointee so they could get themselves into the act. And I know I am going to take—it is not going to help this Administration—another stab at leadership to see if we can't get them to fulfill the recommendations of the 9/11 Commission.

Ms. MCGINNIS. Right.

Senator VOINOVICH. The other point is the point that Mr. Chellino made, and that is we just have to look at some of these things from a practical point of view about who should be a political appointee and who shouldn't be.

Ms. DUKE. And if I could add, Senator, in that regard, we do agree with your proposed—this Subcommittee's proposed 2816. That won't solve the whole problem, but it will help in one position, we believe.

Senator VOINOVICH. I think we have that hotlined. You are talking about the CHCO position?

Ms. DUKE. Yes, sir.

Senator VOINOVICH. Yes. That is done, I think.

Ms. DUKE. Great.

Mr. CHELLINO. Senator, along those lines of thinking outside the box, and we have a little back-channel information on this, and being so concerned about the confirmation and how long it is going to take to get—of the 775 executives in DHS, 83 of them are political—we have heard that some of them, if they were asked to stay through the inauguration, that they would be willing to do it. I don't know if that helps the problem or not in terms of leaving those experienced people, or quite frankly, how DHS feels about it, but that might be a temporary hold until we can get these new people on board.

Senator VOINOVICH. Yes. I made a note of that. Everybody submits their resignation——

Mr. CHELLINO. Right.

Senator VOINOVICH [continuing]. And that is the end of it and they walk out of this place. Some of them want to get out of here.

Mr. CHELLINO. I understand that. But I have heard that some, if they were asked at DHS, would be willing to stay.

Senator VOINOVICH. But some of them are in key positions, and I think as good citizens and patriotic Americans, if asked to stay for a time being until somebody was there in place, it might be a good idea.

The other thing is that having someone that has had the experience—of course, I suspect some of them come back voluntarily to spend time with a new person to try and help them out, but that would be wonderful, if we could do that. Another good idea.

Senator Akaka, I have another meeting that I have to go to. I would like to suggest that once this new group is in, that maybe you and I sit down with them, the administrative branch, and maybe we could get some of the people, Ms. McGinnis——

Ms. MCGINNIS. Yes.

Senator VOINOVICH [continuing]. That were part of the original group that got together and talk about what we have accomplished in terms of flexibilities and human capital and then identify maybe some other areas where we could be helpful to this next Administration so they can get the folks on board that they need to get the job done.

Ms. MCGINNIS. We would be delighted to help with that.

Senator VOINOVICH. Yes. Again, I want to thank the witnesses for being here. I am sorry I have to exit.

Senator AKAKA. Thank you very much, Senator Voinovich. Your experience as an administrator certainly adds to trying to meet these challenges that we are talking about.

Mr. Rollins, you have researched the national security implications of the Presidential transition across the government. How do challenges at DHS compare to those at other agencies with national and homeland security responsibilities, particularly those created since the last Presidential transition? And how do you compare the relative risks and the amount of progress made so far?

Mr. ROLLINS. This is a very good question. I don't know if I can offer you a definitive answer. My discussions, my research into this shows, ironically enough, that the Department of Homeland Security is further ahead in its transition planning activities than most other departments and agencies with national security or homeland security responsibilities.

The way I look at that is the Department is still young enough that it hasn't developed enough bad practices or is not complacent in the transition. So this is something new for the Department and many of the leaders. I would offer that probably in other departments and agencies that have been around a while, this is an every 4-year activity, so complacency has set in and we will approach this as we did prior to September 11, 2001. But I think that the Department is doing well.

My concern is I think the Department is doing extremely well internally, but as you offered, Senator, my concern is how is it doing with respect to other Federal departments and agencies? Are they interacting and working with the Department to assist transition efforts? How is the Department working with State and local governments? Is that connection being made? So I think there is a very good job being done internally. I am not quite certain that is

the case across the Federal Government and certainly not down to the State and local level.

Senator AKAKA. Let me then move into the area you just mentioned, and I want to pose this question to Mr. Chellino, Ms. McGinnis, and Mr. Rollins. Your written testimony, Ms. McGinnis, states that Federal officials seldom train and exercise with State and local officials or private sector leaders. The NAPA report and the Congressional Research Service that report Mr. Rollins authored also emphasized the importance of training and coordination with State and local officials and the private sector.

I would like to hear more about why you highlighted this issue and what more should be done to improve State, local, and private sector coordination through the transition. Ms. McGinnis.

Ms. MCGINNIS. The reason that we consider it to be a risk area is because of the nature of the mission, protecting the homeland. It cannot be accomplished by one department and it is quite complex because it involves every level of government and the private sector and the public. So, first of all, it presents a huge challenge, and also in our observation and experience, the best preparation for an emergency is practice or experience.

We have worked closely with people who are on the front lines, particularly at the local level, and we know from that experience that while they exercise frequently with State and other local governments, the Federal Government is usually not involved. In fact, I think the training and exercising programs, as they are funded, are really quite separate for State and local government and then most of the programs in the Federal Government are designed for Federal employees.

Now, of course, you know that the TOPOFF exercises and the National Exercise Program are broader and they are scenario-based and they are bringing together people from across the Federal Government and to some extent State and local people. In my view, this needs to be expanded and more emphasis should be given to joint exercises and coordinating the exercise programs and capacity across government and especially those that are federally funded down to the State and local level.

Senator AKAKA. Mr. Chellino.

Mr. CHELLINO. Senator, I think in particular with DHS being a relatively new agency, the seven core component agencies have been there for hundreds of years, and quite frankly, I believe FEMA probably does have a good relationship. In the aftermath of Hurricane Gustav, FEMA obviously worked very well down in New Orleans this time and they couldn't have done that without a good working relationship with the State and locals. The Immigration Department now has the cross-designation to designate local police officers with Federal authority to arrest illegal immigrants. The Secret Service, whenever they are deployed, they are totally engaged with State and local law enforcement officers to protect the President or those that they have to protect.

So I think those things will continue, and clearly the State and locals are always screaming, we want more Federal involvement, we want more Federal dollars, we want more Federal help. That will get better over the years. But I think to the degree that DHS

has come along and done what they have already done, they are making sufficient progress.

Senator AKAKA. Mr. Rollins.

Mr. ROLLINS. Sir, I will just offer one group that we focused on early in the hearing is the citizenry of the Nation here. We have just talked about State and local and the private sector. But I see this period of risk, potential vulnerability, as a period of opportunity, as well, to engage the citizens of this Nation, to inform them that we are going into a heightened threat period, to ask for their assistance. We have got a lot of activity on the prevention side of homeland security that is trying to become more formalized and more routine, the Fusion Centers and outreach to State and local police and the homeland security advisors. But this is an opportunity to ramp that up, if you will, a bit and to involve the citizens, to try to envelop them into the entire homeland security environment through the vulnerability that this transition period presents and then that may help us in the future for safeguarding the Nation.

Senator AKAKA. Ms. Duke, what is DHS doing to improve coordination with State and local partners and the private sector through the transition? Will future exercises include these important stakeholders?

Ms. DUKE. Yes, two things. One is we used to think of our transition planning as it had three pillars or facets. We, about 3 months ago, added a fourth, and that is communications, not only with State and local, but with citizens, with other Federal agencies. It is important enough to rank its own chapter in the transition book.

On the exercise side, what we have done is we started originally with the FEMA exercise program as the basis and had some training earlier of DHS employees. So that was the first step, and that happened this spring. With the CEG training and exercises we are doing, we have added some of the Federal agencies. In the first session of it, we had about three other Federal agencies participating.

What Admiral Acton is working on right now in terms of the full plan is we have the FEMA exercise program. Northern Command has an exercise program and then the National Guard has an exercise program that they regularly exercise with State and local governments because of their unique mission. So Admiral Acton is working with NORTHCOM and the National Guard to overlay the exercise programs and have them have exercises that have really all three components, the new Northern Command look at homeland security, the traditional FEMA, which is, of course, disaster focused, and then the National Guard to add the State and local government component.

Senator AKAKA. Ms. Duke, many State and local governments will be undergoing their own transitions after elections this fall. How will DHS ensure that needed connections are made between State and local leaders and Federal career executives and incoming appointees with changes happening at so many different levels?

Ms. DUKE. Well, the part we can do is make sure that our new points of contact are known and communicated to the State and local governments. So we are working on ensuring that our transition plans, our change in personnel is known. We are going to the different conferences that State and local governments or different

emergency response agencies have that are talking about transitions. So we are really trying to be out there and visible.

But I think probably one of the most important things we can do is make sure they know who is going to be at DHS in key positions during the transition because the actual response won't change. The exercise and the National Response Framework will be the same, whether the incident is in a transition or not. It is just knowing the right people to do the coordination with, and that is a principal focus.

Senator AKAKA. This is my final question to Ms. Duke. The Federal Government now recognizes security clearances across departments, but individuals with clearances still need suitability reviews before starting new positions. Please explain why that is necessary and what, if anything, can be done to ensure that the suitability review process does not slow the process of getting new appointees on board.

Ms. DUKE. Mr. Chairman, that is an area of extreme interest to me. The difference between a clearance, which is a position needs to know, have access to classified information, and then making sure that individual is able to—doesn't have enough risk that they can't have access to the classification. And within that, there are specific clearance levels, as you know.

Suitability is, is a person suitable for employment in the Department? It looks at many different facets. It looks at debt. It looks at drug use. It looks at does the person represent themselves well in public. Could they be an appropriate Federal person. So it looks beyond just national security risk.

What we are doing to help the fact that these are two time-intensive processes is for new employees of DHS that need both a suitability and a clearance, we will run those in concurrence. So we will do the suitability as the clearance is being processed. We won't do them sequentially.

Also, I just issued a policy that will allow reciprocity within DHS. So if you are suitable in one of the components of DHS, you will be deemed suitable at headquarters. That is something new. It is an initial step, and there is more to go.

Finally, under the new Executive Order—I know you are expecting a report this December—DHS was just added to the group that is looking at reciprocity of suitability Federal-wide. We have been a member for about 2 months and I am actively engaged in that. You may know that OMB, DOD, and ODNI were the principal players previously and we were added as a key stakeholder and we are really looking at how we can, both for employees and for contractors, make it so that we are managing the risks but making it a better process.

Senator AKAKA. Well, thank you very much.

I would like to thank each of our witnesses again for your testimony. Preparing the Department of Homeland Security for the Presidential transition is critically important. We must ensure there are no gaps in our homeland security capabilities as current Administration appointees leave and new leaders are selected and confirmed. I am pleased the Department is taking the issue very seriously.

However, the same management problems that hindered DHS's day-to-day operations will make the Presidential transition much more challenging. In particular, high existing career executive vacancies will make it more difficult to fill the shoes of the appointees who leave at the end of this Administration. DHS must continue to make progress on its poor morale, high turnover, and high vacancy rates. DHS deserves credit for its efforts to develop career employees for leadership positions and to place more career civil servants in positions of authority. This will have long-term benefits for the management of the Department and will smooth future Presidential transitions. But DHS needs to do even more to promote career employees.

The current Administration, the new President, and the Senate will need to work together to make sure key appointees are nominated early, granted security clearances quickly, and promptly considered and confirmed or rejected by the Senate. This Subcommittee will continue to focus on the crucial task of keeping the Nation safe through the Presidential transition, and Senator Voinovich and I will continue to discuss this hearing as well as what we need to do during this period.

The hearing record will remain open for one week for additional statements or questions from other Members.

This hearing is now adjourned.

[Whereupon, at 3:38 p.m., the Subcommittee was adjourned.]

APPENDIX

TESTIMONY OF ELAINE C. DUKE
U.S. DEPARTMENT OF HOMELAND SECURITY

September 18, 2008

Thank you Mr. Chairman, Ranking Member Voinovich and members of the Committee. It's my pleasure to appear before you today for the first time as the Under Secretary for Management in the Department of Homeland Security (DHS). I especially want to thank you for giving me the opportunity to highlight the actions the Department of Homeland Security is taking to ensure we are completely prepared before the election through the inauguration and beyond.

In January 2009, the Federal government will undergo a transition from one Administration to the next. Historically, we know terrorists perceive government transitions to be periods of increased vulnerability. The attacks in Madrid in 2004, in London in 2005, and in Glasgow in 2007 all took place during transitions. The first World Trade Center attack in 1993, as well as the September 11th attacks occurred within the first year of new Administrations. At DHS, we are doing everything necessary to ensure we are prepared for the upcoming Presidential transition and that there will be no gaps in our leadership team, planning efforts, or mission success.

Our employees and military members will continue their vital efforts to protect our country today, tomorrow and right throughout the transition without hesitation. However, we are taking this time to focus on, and improve, our day-to-day business operations as well as to maximize our readiness and incident response capabilities.

The Department's transition efforts have garnered a great deal of attention, both inside and outside the Department. Inside the Department, we have been busy ensuring a seamless transition will occur. We are reviewing and making changes to our internal processes. We are preparing briefing and confirmation materials for the incoming Administration. We are conducting training and exercises to ensure the leadership in place is prepared for any threat. We are focused on change management and communicating our plans to our employees.

Today's hearing on our progress is a fine example of our efforts to inform and work with stakeholders and partners outside the Department. Moreover, we are working with our government partners with respect to security clearances, exercises, and inter-agency coordination. We are working with independent experts such as the National Academy of Public Administration, the Council for Excellence in Government, and the Homeland Security Advisory Council to ensure that our transition efforts are properly focused.

Our transition efforts actually began in the Spring of 2007. By this time last year, we were identifying critical positions that support component priorities and using our own Critical Position Succession Planning template to ensure a pipeline of successors to critical positions, which are viewed as corporate assets and monitored on a regular basis. As part of this process, components identified senior career civil servants who will assume responsibility for political positions during the time of transition. Components have identified key competencies needed for success in these positions, assessed successor pools, prepared development plans, assessed our ability to recruit externally, and identified critical positions that are vacant or have high succession risk.

In September 2007, Secretary Chertoff asked the Homeland Security Advisory Council (HSAC) to establish an Administration Transition Task Force to provide recommendations and best practices to the Department. The members shared their knowledge and experience in leading change and managing transitions within their own public and private organizations. The Task Force also engaged public and private sector subject matter experts involved in organizational transformations and transitions.

The Task Force made several recommendations and grouped their recommendations into seven categories: Threat Awareness, Leadership, Congressional Oversight/Action, Policy, Operations, Succession and Training. Although they did not rank their recommendations within each category, they did indicate that all their recommendations "constitute national imperatives and must be expeditiously implemented."

Some of the Task Force's recommendations that are under the "Congressional Oversight and Action" section, and certain others in the report, are not within the Department's ability to implement, such as recommendations to consider and expeditiously approve the new Administration's Secretary of Homeland Security, or to implement the 9/11 Commission recommendation to reduce from 86 the number of Congressional oversight committees and subcommittees claiming some jurisdiction over the Department. The Department is encouraged by these recommendations and looks forward to Congress taking them into consideration for implementation. We took the Task Force's recommendations to heart and have incorporated many of them into our current planning process. For instance, we are taking full advantage of the period between now and November 2008 as an important time to establish and standardize processes and procedures.

We also organized a cadre of individuals focused on transition. Our cadre consists of Senior and Deputy Transition Officers who are working closely with my core transition team to evaluate internal processes, develop briefing materials to ensure operational effectiveness during the

anticipated surge of incoming and exiting employees, and develop and implement a training exercise plan.

In November 2007, we joined Congress in requesting that the National Academy of Public Administration (NAPA) prepare an independent report on our transition planning efforts. We asked NAPA to provide a frank assessment of where we stand and areas where we need to improve. We welcomed the report's findings, which noted that the Academy Panel was "pleased ... that the department has taken some steps to help it to be well positioned for the transition." The NAPA report also made several important recommendations, most of which we have either implemented or will implement prior to the transition.

For example, we have now established a transition plan for our components, ensuring that the top leadership in each component includes career executives who will preserve continuity of operations before, during and after the administration transition. Of our 22 component agencies and program offices, 14 have career Civil Servants in the number one or number two positions while seven component agencies or program offices have only career civil servants in senior leadership positions.

We are also providing improved processes to equip new appointees with the tools they need as well as the information and relationships required to be effective in their jobs. To lead this effort, we have appointed Coast Guard Rear Admiral John Acton to serve as our full-time transition director.

But, as the report notes, it is critical that "to the greatest extent possible, incoming DHS leadership – including the Secretary and key staff – must be in place on Inauguration Day or shortly thereafter." This would require swift action by the new Administration as well as Congress.

In December 2007, the Department focused efforts at the interagency level by engaging with the Council on Excellence in Government (CEG). Emphasis for CEG will be on the Department's homeland security training and intergovernmental interactions with other federal, state and local governments. We asked CEG to establish a small bi-partisan panel of experienced practitioners and experts to help channel this work.

In concert with the Federal Emergency Management Agency (FEMA) and other parts of DHS, the Council support our training and exercise plans. With these exercises, inter-agency participants will not only practice their roles but also build working relationships and rapport with other key decision makers in a variety of emergency scenarios. This effort will strengthen participants' knowledge of national homeland security protocols and interfaces with other departments as well as state, local, and tribal governments to ensure that we are collectively prepared.

In May of this year, we held a DHS Senior Career Leaders Transition Readiness Conference at the Federal Law Enforcement Training Center in Glynco, Ga., to prepare the Department for the changeover. Approximately 100 senior career employees attended a three-day conference which included remarks from Deputy Secretary Paul Schneider, presentations from various offices, team-building activities, and a table-top exercise. We made major progress during this conference in furthering cross-organizational and cross-functional relationships that will carry us

well beyond the transition. To offer the public an inside view of the DHS transition preparations, we even brought a CNN reporter to cover the conference.

Transition handbooks will be developed for major programs and significant operational areas. Each handbook will address top priorities, key challenges and issues relevant to the identified program or operational area. The handbooks will provide a "nuts and bolts" approach to address all of the items that must be transitioned from one leadership team to another during the 2009 administration change. The handbooks will also cover records management to ensure necessary documents are retained and accessible.

Because more than 99 percent of the Department's 216,000 employees are career employees or military members, and not political appointees, I believe the change in administration will have little, if any, impact on our critical frontline operations. Our employees will continue to seamlessly do their jobs as they do now, protecting our country every day.

Thank you for your leadership and continued support of the Department of Homeland Security and its management programs. I look forward to working together with you in shaping the future and success of DHS with energy and enthusiasm. I am honored to be here today, and welcome the opportunity answer any questions you may have.

Statement of Frank J. Chellino,
Panel Chairman for the Department of Homeland Security
Presidential Transition Study,
National Academy of Public Administration

On the Presidential Transition at the Department of Homeland Security

Before the
Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia,
Committee on Homeland Security and Governmental Affairs Committee,
United States Senate

September 18, 2008

Mr. Chairman and Members of the Subcommittee, thank you for inviting the National Academy of Public Administration to testify on the Department of Homeland Security's (DHS) preparation for the 2009 Presidential Transition. I served as Panel Chair for the Academy's June 2008 report that assessed DHS' executive profile and its plans for the 2009 Presidential Transition.

The Presidential Transition of 2009 is the first major transition since "9-11" and the first for DHS which was created in 2003. DHS not only built a new organization from the ground up, but has undertaken two major departmentwide reorganizations, and absorbed new or expanded responsibilities that were not part of its original charter. This continuously changing environment, coupled with major ongoing operational responsibilities, has caused a continuous "white water" management environment at DHS. With the 2008 Presidential election on the horizon, DHS leadership is about to turn over responsibility for managing this complex and challenging organization to a new team.

As we point out in our report, recent history demonstrates that political transitions present an opportunity for terrorists to take advantage of real or perceived weaknesses in a nation's ability to detect, deter, prevent or respond to attacks. The final report of the 9-11 Commission raised concerns about the impact of future transitions on the government's ability to deal with terrorism. Due partly to the delayed resolution of the 2000 election, the incoming Bush administration did not have its deputy Cabinet officials in place until Spring 2001 or its sub-Cabinet officials in place until that summer. Historically, getting the Presidential team in position has been a slow process. The Commission strongly pushed for changes to the process so that the Nation is not left vulnerable to these types of delays in a post-9/11 world. During the transition, DHS must retain the ability to respond quickly to both man-made and natural disasters.

In light of these issues, Congress and DHS asked the Academy to assess DHS' executive profile, study its transition training, and review its plans for the 2009 Presidential transition. Our June report was the result of the request.

Regarding DHS' executive profile, the Academy: 1) assessed the appropriateness of the overall number of executives for DHS, given its size and broad mission objectives; 2) assessed the department's allocation between career and non-career executives; 3) compared the department with similarly structured agencies' career and non-career executives, and 4) identified gaps in the department's career senior leadership structure, including risks associated with changing leadership during a Presidential transition.

Although no entity has provided a formula or guidelines for the specific optimum number of executives or political appointees in an agency, the Academy concluded that the total number of DHS executives and the percentage of political appointees are well within the norms of other Cabinet-level agencies. However, the Academy does recommend that DHS shift more executives to field locations in immigration and border management agencies and change non-career headquarters deputy officials, FEMA regional administrators and other officials to career executives. It addition, the report identified gaps in DHS' executive staffing including, high turnover, many vacant positions, and a lack of ethnic and gender diversity.

Regarding transition training, the Academy: 1) assessed the adequacy of executive training programs as they relate to the transition; and 2) compared DHS' transition training programs with those of similarly structured Cabinet-level agencies. The Academy concluded that DHS' transition training and development efforts are consistent with executive development programs in most federal agencies and has a balanced set of transition-specific training programs underway. If implemented these should help executives prepare to meet their homeland security responsibilities during transition. DHS is well along in its transition training especially given that it is a young agency with a critical national mission and going through its first Presidential transition.

Lastly, the Academy reviewed DHS' transition planning and made 22 recommendations spread across a defined timeline from prior to the National Conventions in August to

following Inauguration Day in January 2009. These specific recommendations are discussed in detail in the report.

DHS has begun to address these 22 recommendations and has advised the Academy that they have substantially or partially completed ten (10) of the first 12 NAPA recommendations which were to be completed by September 4th.

Regarding Academy recommendations 13 and 14, which were to be completed by November 4th, DHS has advised the Academy that the White House has the responsibility for reaching out to the Presidential Transition Teams to solicit names of potential political appointees. To our knowledge, this has not yet been implemented. However, DHS has geared up its internal security processes to meet the demands of incoming executive selectees.

DHS' actions are positive but there remain important areas that must be addressed if the department is to be completely prepared. To the greatest extent possible, incoming DHS leadership - including the Secretary and key staff—must be in place on Inauguration Day or shortly thereafter. This requires the support and cooperation of other federal agencies with background check and clearance responsibilities, as well as the Congress given it confirmation role and responsibilities.

Finally, the Academy noted that DHS has NOT fully achieved its intended mandate of providing an integrated and universal approach to homeland security. Much has been

asked of DHS since 2003. However, the department's key seven components still largely operate as "stand alone" entities. Important steps are being taken by DHS Headquarters to improve coordination among the components. If the void in leadership during the Transition results in components continuing to operate "independently" in areas that call for a more collaborative approach, DHS' operational efficiency and effectiveness will suffer and its stated objectives will remain out of reach. In addition, and compounding this lack of coordination, is the 86 Congressional Committees that oversee DHS. These multiple Committees make it difficult to both align resources to strategy and pass authorizing legislation but it also subjects the department to policy disarray. These issues will provide a major challenge for the leadership team appointed by the next President.

Mr. Chairman, that concludes my statement. Thank you for inviting the Academy to this Hearing.

I would be happy to respond to any questions.

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Testimony of
Patricia McGinnis, President and CEO
Council for Excellence in Government
Before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia
U.S. Senate

September 18, 2008

Thank you Mr. Chairman, Senator Voinovich and members of the subcommittee, for inviting me to participate in this important discussion about keeping the nation safe through the presidential transition. As we have seen in Spain and the U.K., national elections and transitions present opportunities for terrorists to exploit potential gaps in leadership continuity. A devastating natural disaster could also test the continuity of our nation's emergency response enterprise during this period.

As you know, the Council for Excellence in Government is a non-profit, non-partisan organization that works to improve performance of government and accountability to its owners and customers, the American people.

The Council has played a significant role in presidential transitions. Both the Clinton and Bush Administrations called upon the Council to help organize leadership and orientation programs for senior presidential appointees and White House staff. We have also worked extensively with career government leaders to develop their management skills and to help them navigate the changing of the political guard during presidential transitions. Attached to my statement is a description of the Council's presidential transition resources.

In addition, the Council's extensive work to help improve the performance of the nation's homeland security enterprise – including the Department of Homeland Security, other federal agencies, states, localities and the private sector, gives us not only a broad perspective but also an active network of homeland security leaders across the country, from the front lines to federal decision makers. Attached to my statement is a description of our homeland security initiatives.

The Council's Role in the Homeland Security Transition

In the fall of 2007, the Council was asked by the Department of Homeland Security, in consultation with the House and Senate Appropriations Committees, to help ensure that the critical roles, responsibilities and

protocols for emergency response are well understood, coordinated and executed, if necessary, during the changing of the political guard, which has already begun and will continue through the election, the inauguration of a new president and the appointment of top leaders in DHS and other agencies with homeland security responsibilities.

The Council's role is to prepare career interim officials at DHS and incoming appointees with operational or decision support responsibilities to carry out their roles and to follow the protocols required by a variety of emergency scenarios, in collaboration with:

- Leaders with homeland security related responsibilities in other federal agencies (Defense, Justice, Health and Human Services, Transportation, State, the Intelligence Community and other agencies, as appropriate),
- State and local government officials,
- Appropriate private sector leaders.

To guide this work, the Council established a bi-partisan panel of homeland and national security practitioners and experts. The panel is co-chaired by **Admiral James Loy** and **New York City Police Commissioner, Ray Kelly** and includes experienced practitioners from all levels of government and the private sector:

- ***The Honorable Prudence Bushnell,*** *Former Ambassador and Assistant Secretary of State for African Affairs; CEO, Sage Associates*
- ***Michael Byrne****, Former Senior Director, The White House Office of Homeland Security; Senior Vice President for Emergency Management and Homeland Security, ICF International*
- ***Darrell Darnell****, Director, District of Columbia Homeland Security and Emergency Management Agency*
- ***The Honorable Glenda E. Hood****, Former Secretary of State, State of Florida; President & CEO, Hood Partners, LLC*
- ***Major General Timothy K. Lowenberg****, Adjutant General of Washington State, United States Air Force*
- ***Henry Renteria****, Director, California Governor's Office of Emergency Services*
- ***Michael Wallace****, President, Constellation Generation Group*

Our first step in this effort was to review the National Response Framework, National Preparedness Guidelines, the National Incident Management System, and other documentation of interagency and intergovernmental roles, responsibilities, and protocols in order to create a visual map of the various roles and responsibilities of key actors in both a notice and no-notice event.

We have interviewed key officials from DHS and related federal agencies, selected state and local officials, private sector leaders and other key stakeholders to validate the mapping of roles and responsibilities and obtain their input on the critical elements of

coordination and communication before, during and after a major emergency. The mapping shows who is responsible for what, when and under what circumstances, with operational instructions in the event of a major emergency. The map and associated information - to be provided electronically - will incorporate roles and responsibilities in a logical and understandable flow so that acting or new DHS leaders will have the information they need to respond to a threat or an incident, even if on Inauguration Day. Other federal as well as state, local and private sector roles and responsibilities are identified in the mapping.

The Council is also organizing training workshops, initially for acting career leaders in critical positions and later for new presidential appointees. Our bipartisan panel urged that initial priority be to prepare career leaders who will play a critical role before and after the new appointees arrive. The workshops to be conducted over a period of months, will include first, the Fundamentals of Crisis Management, which focuses on the basic roles and responsibilities of each position and office in the National Response Framework, and second, scenario based training workshops to be conducted in conjunction with National Exercise Program led by FEMA. Scenarios with no-notice, short-notice and advance notice will be covered for acting career officials and incoming appointees.

The goals of these workshops are:

- For career leaders and incoming presidential appointees to understand the operational roles and responsibilities set out in the NRF as well as the key support functions necessary for an effective response to an emergency,
- Have them practice their roles and interact with other decision makers in both notice and no-notice emergency scenarios, and
- Build relationships and camaraderie among key decision makers and responders.

We held the first scenario based training workshop on Monday, September 15, as a prelude the National Exercise Program's Senior Officials Exercise involving a Man-Portable Air Defense System. Both the workshop and the exercise took place at the Transportation Security Administration's Freedom Center. Over fifty senior career officials from across the department with critical roles and responsibilities in the event of such a major incident participated in the workshop. They heard from representatives from federal, state, local government and the private sector about incident management at all levels, with a particular focus on a MANPADS scenario. Participants were encouraged to step up as leaders in their agencies during the transition time period as vacancies in critical appointed positions increase.

Observations about Progress of DHS Transition and Associated Risk Areas

Mr. Chairman and Senator Voinovich, in your invitation letter, you asked for observations about DHS's progress in preparing for the transition and the risks associated with the transition.

This is the first presidential transition for the Department, and there is no question that preparing for a smooth transition is a very high priority for both the appointed and career leaders in the department. The Undersecretary for Management, Elaine Duke, is testifying today on the transition work they have underway and progress to date, which is substantial. We are particularly pleased with their focus on enabling career leaders in their succession plan to manage the transition, both of outgoing and incoming appointees. The Senior Career Transition Coordinator, Admiral John Acton, is experienced, organized and very focused on assembling what he calls "Tiger Teams" of career staff and experts for the tasks outlined in the four transition planning fronts, with clear accountability for specific products, milestones and results. DHS seems much further along in its transition planning than most other federal agencies. Both appointed and career leaders clearly recognize the vulnerability of this period and value the continuity necessary to achieve their mission

There are significant risks in this period of heightened alert. I would like to focus on two areas of risk that require leadership beyond the scope of DHS.

First, from my vantage point, the training and exercises to prepare acting career officials and incoming appointees to assume their collaborative homeland security responsibilities across federal agencies do not seem to be as well coordinated as they should be. For the overall transition, each department and agency has named a senior career transition coordinator and the Deputy Director for Management at OMB is bringing them together to facilitate collaboration. Also, the national security professionals training initiative is well underway and is convening leaders from security related agencies to focus on transition. And, the National Exercise Program, led by FEMA conducts scenario based exercises involving those with operational responsibilities from across the federal government (depending on the scenario). Nevertheless, there are many exercises and training programs that are not coordinated and as far as I know there is not a clearinghouse or repository of such activities and resources, to encourage coordination or "not reinventing the wheel" many times over. Also, very seldom do federal officials train or exercise with state and local leaders and first responders or private sector leaders.

In our view, training and exercising together is the best way to ensure seamless, effective enterprise wide response to a major emergency. As our friends on the front lines at the local level often say, "you don't want to be exchanging business cards during an emergency". This is work to be done, related both to the transition period and our ongoing security

The second risk is the potentially lengthy gap between the inauguration of the next president and the confirmation of key appointed leaders in key national and homeland security positions. The Secretaries of Homeland Security, Defense, State and a few others if not the whole cabinet, should be confirmed on Inauguration Day. Then, they should not be "home alone", with few if any confirmed deputies, undersecretaries and other critical appointees on board. The Executive Branch is working to expedite the security clearance process and according to the initial plan submitted to the President on April 30, 2008 by the Joint Security and suitability Reform Team, the time for security clearance determinations is down, on average, from 162 days in 2005 to 112 days currently. The goal is to reduce the time to 60 days, after reforms have been implemented and the investigative capacity is expanded.

In my view, it is imperative to expand that capacity in order to have key appointees in place days or weeks, not months after the new president is sworn in.

It is also imperative for the Senate leaders to expedite the confirmation process to consider and vote on key nominees as soon as possible to assure continuity in our national and homeland security leadership. The establishment of timeframes for confirmation hearings and votes, limits on "holds", and other process agreements should be worked out before the election—before we have a winner and a loser.

Broader reform of the presidential appointments process is long overdue but we urge you and your colleagues to do as much as possible before the changing of the political guard to expedite these critical votes on key nominees during this vulnerable transition period.

Thanks you very much. I look forward to discussing these issues further.

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Attachment #1

THE COUNCIL FOR EXCELLENCE IN GOVERNMENT'S 2008-09 PRESIDENTIAL TRANSITION INITIATIVE

I. The Council's Role in Presidential Transitions

The eyes of the world will be firmly focused on America on the first Tuesday in November when millions of citizens head to neighborhood polling places to select the 44th President of the United States. Six blocks from the White House, the eyes and energy of everyone at the non-partisan **Council for Excellence in Government** already are fixed on the critical dimensions of the transition, which officially spans eleven weeks, from election day until the new Chief Executive takes the oath of office at noon on January 20, 2009. The planning and management of this historic changing of the guard in the federal government is of vital importance not only to the new President and his team, but also to the American public and the world.

Transitions by their nature are times of great hope and anticipation, when citizens look to newly elected leaders to deliver on the promises of their campaigns and to bring people together. This transition is the first in more than half a century without an incumbent president or vice president on the ballot. It will unfold with economic, energy, environmental, health care and national security challenges certain to test the mettle of the new President and the 111th Congress. This will be only the third transition taking place with the country at war (Nixon succeeded Johnson in 1969 at the height of the Vietnam conflict; Eisenhower became President during the Korean War), and the first post 9/11 transition.

The Council for Excellence in Government offers a variety of resources to the new Administration to help navigate a smooth transition and get its programs, personnel and policies off to a strong start. ¡Founded a quarter-century ago by business leaders who had held high government posts and believed passionately in public service, the Council serves as an independent, trusted and valued source of information and assistance for the White House and those the President appoints to run the executive branch. The Council is not an advocacy group, think tank or association with a point of view to pitch to the new Administration; it is a pragmatic, results-oriented, non-partisan organization that works to facilitate excellence in government performance and accountability to the public for progress and results.

The Council has played an active role in past transitions and already is engaged in preparations for the 2008-09 transition—to provide valuable information and assistance for the candidates' transition planners; the official

transition team of the President-elect; the Senators and Senate Committees that will consider the new President's nominees; the nominees themselves; the career public servants who will keep the government running through the 77-day transition and beyond; the news media that even in quieter times covers transitions with a special intensity; and every citizen with a stake in excellence in government.

- **Orientation for the President's Team.** Both the Clinton and Bush Administrations called on the Council to organize leadership and orientation programs for hundreds of senior appointees and White House staff. These workshops and briefings were first offered in the second Clinton term from 1997 until 2000 and, with new authority under the Transition Act of 2000, for the Bush Administration from 2001 until 2004. They were designed with the guidance of White House steering groups to help new managers prepare to run major government enterprises, drawing on best practices and lessons learned and with a special focus on collaboration, accountability for measurable results, ethical principles of public service, and the strategic use of resources, including people, technology and partnerships, in the context of the process requirements, oversight and media coverage that are often intense and unique to government and politics.

- **Profiling the top Prune Jobs.** Since 1988 the Council has published the invaluable *Prune Book* series profiling the toughest management jobs in government. Beyond mere title and job descriptions, these books give the White House and nominees a hands-on view of the challenges ahead, drawn principally from those who once occupied these top appointed positions. The title is a play on the *Plum Book* that Congress publishes every four years listing the thousands of jobs and board seats subject to political appointment. "Prunes," in Council lexicon, are "Plums," seasoned by experience and with a much thicker skin. The *2009 Prune Job Profiles* will appear in an expanded online transition resource with links to a wealth of information from the Office of Personnel Management, the Office of Government Ethics, Senate committees and other sources. In this new, electronic format, the *Prune Job Profiles* will be fully searchable and kept up to date beyond 2009. The Council this fall also will update its *Survivor's Guide for Presidential Nominees,* a lively compendium of practical advice for nominees to posts that require Senate confirmation. The Council published the *original Survivor's Guide* in 2000 in conjunction with The Brookings Institution.

II. 2008-09 Transition Resources Web 2.0

The Council is taking its transition assistance online by creating a dynamic new web resource which, along with a variety of meetings, workshops and other gatherings, will provide transition leaders, prospective nominees, and others the following resources:

- ***Appointing the President's Team: Prune Job Profiles***

Appointing the right people to a select group of top leadership and management posts in the federal government is critical to the success of a new President and Administration. Beyond the Cabinet appointments and White House Staff, sub-cabinet appointments to lead critical government agencies and functions – such as emergency management, social security, Medicare and Medicaid require seasoned experience and savvy management skills.

For nearly two decades, the **Council for Excellence in Government** has produced the *Prune Books*, comprehensive guides written specifically to equip the incoming presidential administration with insights into one of its most difficult tasks: staffing the key appointed positions that carry out the new President's agenda throughout the Executive Branch of government.

Since the first ***Prune Book*** was released in 1988, nearly a dozen additional editions have been published in book form, and have explored a range of issues: from the toughest management and policy making jobs to the toughest science and technology jobs.

As we approach a new administration in 2009, the Council is taking the *Prune* series from book form to a major web presence (Prunes 2.0) and expanding its value and reach as an ongoing resource for top government managers. This initiative is taking the concept of Prune Jobs to another level. Not only are we profiling the jobs, but we are explicitly pointing Page 8 of 12 to the management qualifications and attributes that the President and Senate should consider for these appointments. What are the qualifications and skills required for excellent performance in these jobs? What are the qualities and perspectives a successful candidate should have? We are selecting and highlighting **top Prune Jobs**, and we will also list and provide information about other appointed positions, using the *Plum Book* and other sources.

A Steering Committee has been formed to select the key appointed positions and to guide the development of the job profiles and qualifications. Members of the Steering Committee include selected Council Principals and others who have served in Prune Jobs, in Presidential Personnel or have experience in executive search. Their perspectives and insights are informing our analysis of recruiting best practices along with the skills and qualifications it takes to excel in these positions.

We are also conducting extensive outreach to past leaders of Presidential transitions, White House Chiefs of Staff, Senators and Committee staff, key career employees, and selected experts and stakeholders.

This year, as in the past, the *Prune* profiles will concentrate on a selection of Executive Schedule jobs, filled by presidential appointment and confirmed by the Senate. The Steering Committee has culled these jobs from the more than 1,100 in the PAS category. Key criteria for making these choices included:

- Budget and staff size and scope of management duties
- Congressional and public visibility
- Consequences of failure to perform effectively
- Missions that address priorities of the public and the candidates

The Council is also reaching out to past leaders of Presidential transitions, White House Chiefs of Staff, Senators and Committee staff, key career employees, and other experts and will share their wisdom and advice online.

- ***Dynamic Online Communities***

We will organize dynamic online communities to share insights and information about how to succeed, best practices, and lessons learned. Utilizing the same tools that have drawn millions to Facebook and other social networking sites, the Council will manage the sharing of information, blogs, case studies, and other resources online and at workshops and briefings for new appointees and career managers as well as overseers, stakeholders, and the news media -- all designed with the singular purpose of improving government performance. Among the interactive communities envisioned are ones for:

- Chief Operating Officers
- Chief Information Officers
- Chief Financial Officers
- Chief Acquisition Officers
- Chief Human Capital Officers

We will also pursue cross-agency communities that manage programs in key areas of public priority such as:

- Health Care
- Homeland Security
- Jobs and the Economy

These online communities can and will be tailored, expanded and clustered around what new appointees and their teams decide are the categories and topics that interest them most.

- ***Selecting the Cabinet and White House Staff.*** Past Transition and Administration leaders will offer advice on strategy, timing, roles and responsibilities, what worked well, and lessons learned, with attention to history, context and effectiveness in the public interest.

- ***Inventory of Appointed Positions.*** In addition to the profiles in the *Prune Book,* the Council will provide a full inventory of appointed positions, drawing on the

Plum Book, compiled by the House Committee on Government Reform, and other resources.

- ***New Survivor's Guide for Presidential Nominees.*** The Council also will publish online a new edition of its 178-page *A Survivor's Guide for Presidential Nominees,* which former OPM Director Constance Horner described on its release in November 2000 as "a classic on how Washington works." This electronic *Survivor's Guide* will explain how to navigate the often perplexing nomination and confirmation process, offer a ***Confirmation Roadmap*** with steps, mileposts, barriers and a path to the finish line, and furnish clear instructions and links to all the ***Government Forms Online*** that nominees must fill out, including the financial disclosure and other Executive Branch forms and as many of the Senate Committee questionnaires as available.

- ***Special Events.*** The Council will hold forums and workshops where appointees and other government managers can brainstorm and exchange best practices with each other, learn from the experiences of former officials and engage informally with stakeholders, the media and other transition watchers.

- ***Blogs.*** The Council's Transition Web site will include interactive blogs for senior managers and appointees to exchange experiences, information, and ideas on bringing out the best in managing government programs. Some features may be password protected.

- ***Transition News.*** Links to key media sites that track transition news.

- ***Other Key Links.*** We will also provide links to a full array of Transition-related Web sites, inside and outside the government, including:

  - ✓ White House
  - ✓ Office of Government Ethics
  - ✓ Congressional sites
  - ✓ Partner Web sites

- ***Timing and Beta Web site.*** While the public launch is scheduled for November, the Council will make a beta Web site available for testing and use by the candidates' transition planners in September. The beta site will contain extensive information about appointments, navigating the nomination and confirmation process, and gearing up to meet the challenges that will confront the new Administration.

For more information, contact Patricia McGinnis, President and CEO of the Council, at pmcginnis@excelgov.org , 202-728-0418, or Jeanne Van Vlandren, jvanvlandren@excelgov.org , 202-530-3241; or visit our website, www.excelgov.org.

Attachment #2: The Council for Excellence in Government Summary of Homeland Security Initiatives

Our work over the past five years has created invaluable enterprise-wide resources to bring to this assignment. Through town hall meetings across the country and polling, expert working groups and symposia with federal, state and local government leaders, corporate partners and civic groups, we developed a bottom-up assessment and recommendations for action, contained in our 2004 report, ***"We the People: Homeland Security from the Citizens' Perspective"*** (http://www.excelgov.org/wethepeople).

The Council also worked with the American Red Cross, George Washington University and DHS to identify barriers and strategies for emergency preparedness, contained in ***"Public Preparedness: A National Imperative"*** (http://www.excelgov.org/publicpreparedness). Other key initiatives include:

- **Survey-based Readiness Quotient (RQ)** to measure preparedness of the public. With support from the Alfred P. Sloan Foundation, the Council worked with the American Red Cross, public and private sector leaders and survey experts to design a survey-based tool to measure and track progress and gaps in the preparedness of individuals in any community – workplaces, schools, cities or the nation as a whole. Go to the Council website or www.whatsyourRQ.org to answer 10 questions, get your score and links to resources to improve your preparedness.

- **Big City Emergency Managers' Learning and Exchange Forum.** The Council convenes a "Learning and Exchange Forum" of the directors of emergency management in eleven large, high-risk cities – from Boston, New York City, Los Angeles, Chicago, Washington, DC, Philadelphia, Houston, San Francisco, San Diego County and Miami-Dade County.

- **U.S. Department of Homeland Security Fellows Program.** In January 2007, the Council, in partnership with the Department of Homeland Security, launched the DHS Fellows Program to develop a core of future senior career leaders from across the department, who will lead their areas of responsibility with a strategic, collaborative approach that builds ownership of a complex and challenging mission and increases accountability for results.

Testimony Before the Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management, the Federal Workforce, and the
District of Columbia

By

John Rollins
Specialist in Terrorism and National Security
Foreign Affairs, Defense and Trade Division
The Congressional Research Service

September 18, 2008

Introduction

I would like to thank the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia for asking me to appear today to discuss the risks and challenges associated with the ongoing presidential transition. Chairman Akaka, Ranking Member Voinovich, and Members of the Committee, my name is John Rollins. I am a specialist in terrorism and national security with the Congressional Research Service (CRS). Per your staff's request, I will keep my opening remarks brief and focused on areas where Congress may assist ongoing presidential transition activities. If so desired, during the question and answer period, I can address other aspects of the presidential transition period as it relates to national and homeland security concerns. I request that my CRS report, *2008-2009 Presidential Transition: National Security Considerations and Options*,[1] be placed into the record.

Before addressing specific areas where Congress may assist current and future presidential transition activities, I would first like to briefly offer a bit of context regarding the risks that the nation may face.

First Post 9/11 Presidential Transition

As we are all aware, the presidential transition currently underway will be the first since the attacks of September 11, 2001. As proposed in the aforementioned CRS report, the transition period can be viewed more broadly than the traditional time frame of the eleven weeks between the election and the inauguration. To account for the entirety of the period of transition, and possibly defining the time frame of the nation's vulnerability, one might view the presidential transfer of power in five phases:

Phase 1: Campaigning by presidential candidates
Phase 2: Selection of party nominees
Phase 3: Election day
Phase 4: Post election day to prior to the inauguration
Phase 5: Presidential inauguration to formation of the new Administration's national security team and issuance of policy directives

Potential Risks to the Presidential Transition Period

History is replete with examples of terrorist groups attempting to take advantage of periods of transition in power. Recent examples include the first bombing of the World Trade Center – a mere five-weeks after President Clinton's first inauguration; the attacks of September 11, 2001 – eight months after President Bush's first inauguration; the Madrid train bombing in March 2004 – three days before Spanish citizens went to the polls to vote for a Prime Minister; and the attempted London-Glasgow bomb plot last summer -- undertaken two days after a new Prime Minister of the United Kingdom assumed office.

In considering possible threats to the current presidential transition process, it might be helpful to note the analysis contained in the July 2007 National Intelligence Estimate (NIE). The NIE was produced by the Office of the Director of National Intelligence and reflects the analytic

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[1]CRS Report RL34456, *2008-2009 Presidential Transition: National Security Considerations and Options*, by John Rollins.

consensus of the Intelligence Community. The non-classified version of the NIE offered the following points regarding al-Qaida's capability and intent over the "next three years":[2]

- "the group has regenerated key elements of its homeland security attack capability" and the "leadership continues to plan high-impact plots";
- "al-Qaida will intensify its efforts to put operatives here (in the U.S.)"; and
- "al-Qaida's homeland plotting is likely to focus on prominent *political*, economic, and infrastructure targets."

As with many crimes, an act of terrorism often results from a confluence of the aggressor's motivations, means, and opportunity. Many national and homeland security observers suggest that al-Qaida and other international and domestic terrorist groups maintain the desire, or motivation, to attack U.S. security interests. The means, or capabilities, of the enemies of our nation are the subject of a great deal of debate. However, for the more sophisticated terrorist attacks, whether the desire is to conduct an act with the desire to go undetected or pursue some type of suicide-based attack, the attacker often seeks to choose the best opportunity for success without being detected prior to the incident. When one looks at the possibility of an attack occurring during the presidential transition period, combined with the suspected need for al-Qaida to prove its continuing viability as an organization that can launch an attack in the homeland, the enemy may see the upcoming transfer of power as too enticing to resist, and may choose to attempt a disruptive strike during this unique time in American politics rather than waiting for more advantageous conditions to attempt an attack.

Congressional Assistance to Presidential Transitions

I will next turn my attention to areas that the U.S. Congress may assist the ongoing presidential transition activities.

While the implementation activities of the presidential transition process are primarily the responsibility of the executive branch, there are a number of things Congress may choose to do to facilitate, support, and oversee a change of Administrations. In addition to holding hearings with current Administration leaders and prospective new Administration leaders, some of the activities offered in the CRS report that Congress may wish to consider during the presidential transition period include requesting information from the current Administration, supporting the formation of the incoming Administration, and refining some Legislative Branch processes.

Congress may request the current Administration to provide:

- the names of agency leaders responsible for making national security related decisions during the presidential transition period;
- briefings on the possible risks to the presidential transition process;
- information about the current status of transition planning activities,
- briefings about the Administration's efforts to engage and collaborate with prospective new Administration senior security officials; and
- information about the funds appropriated for the purposes of the current presidential transition and how these monies are being used to support national and homeland security activities.

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[2] *The Terrorist Threat to the U.S. Homeland*, Office of the Director of National Intelligence, July, 2007. [http://www.dni.gov/press_releases/20070717_release.pdf].

In addition, pursuant to a provision in the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress required the Department of Homeland Security to have a current senior departmental official "develop a transition and succession plan (which is) to be presented to the incoming Secretary and Under Secretary for Management to guide the transition of management functions in a new Administration."[3] The deadline for submitting the plan to Congress is December 1st.

Congressional support to the incoming Administration may include:

- prioritizing hearings for new Administration nominated political appointees who will have significant national security responsibilities;
- working with the new Administration to understand its national security priorities and, where applicable, have the changes in policies and programs reflected in the 2009 budget; and
- passing the FY2009 appropriations bills without undue delay.

Other activities Congress may wish to consider during the presidential transition period include:

- providing a sense of the Congress resolution that notes the importance of effective and collaborative activities between the departing Administration and the incoming Administration;
- holding a special session of Congress soon after the election to ascertain what the outgoing and incoming Administrations have accomplished and will do with respect to transition-related activities; and
- quickly assigning new and existing Members of Congress to committees focusing on national security issues to allow these individuals to have the opportunity to understand better the issues for which they have oversight.

Conclusion

While the first presidential transition in the post 9/11 era is of concern to many national and homeland security observers, risks during the transition period may be minimized with proactive executive branch and congressional actions. It is likely the new President will face many national security-related challenges upon taking office. Regardless of whether the enemies of the United States choose to undertake action counter to the nation's security interests or the new President experiences a relatively peaceful period during the transition, the new Administration's recognition and response to these challenges will depend heavily on the preparation activities that have occurred prior to the inauguration. While it may be impossible to stop an incident of national security significance during the presidential election period, there are steps that can be taken during all phases of the transition to lessen the risks to the nation.

Thank you for convening this important hearing. This concludes my remarks and I look forward to answering any questions you may have.

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[3]Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, Sec. 2405.

Post-Hearing Questions for the Record
Submitted to Elaine Duke, Under Secretary for Management,
Department of Homeland Security (DHS)
From Senator Daniel K. Akaka

Question 1

"Keeping the Nation Safe through the Presidential Transition"
September 18, 2008

1. Please provide an update of the data contained in Exhibit 8 "Distribution of DHS Executives by Position and Component" in the National Academy of Public Administration report entitled, *Addressing the 2009 Presidential Transition at the Department of Homeland Security.*

Response: The update to Exhibit 8 is provided below.

Exhibit 8: Distribution of DHS Executives by Position and Component

Component	PAS	PA Non-Career	SES/ TSES Non-Career	SES/ TSES Career	SES/ TSES Term	SL/ ST	Vacant	Total Executive Positions
Headquarters								
Domestic Nuclear Detection Office		1		6				7
Intelligence and Analysis	1			15		3	5	24
Management	2	1	2	31	1	4	8	49
National Protection and Programs Directorate	1	1	3	13	1	1	9	29
Office of General Counsel			5	8		3	4	20
Office of Health Affairs				3		6	2	11
Office of Inspector General	1			12				13
Operations Coordination				6	5		2	13
Office of the Secretary	3	1	14	6	2		7	33
Policy	1		5	7	4	5	1	23
Science and	1			11	2	21	2	37

Component	PAS	PA Non-Career	SES/ TSES Non-Career	SES/ TSES Career	SES/ TSES Term	SL/ ST	Vacant	Total Executive Positions
Technology								
Total Headquarters	10	4	29	118	15	43	40	259
Non-Headquarters								
Customs and Border Protection	1		4	98	2		3	108
Citizen and Immigration Services			5	44			3	52
Federal Emergency Management Agency	5	1	14	46	3		9	78
Federal Law Enforcement Training Center				8			1	9
Immigration and Customs Enforcement	1		2	53	2		11	69
Transportation Security Administration	1		2	128	11		24	166
US Coast Guard*	1			14				15
US Secret Service				46		2	3	51
Total Non-Headquarters	9	1	27	434	18	2	57	548
Total DHS	19	5	56	552	33	45	97	807

Note: * Coast Guard includes only the Commandant of the Coast Guard and civilian executives. It does not include any other senior uniformed executives.
Source: DHS Executive Resources Office as of October 17, 2008

Post-Hearing Questions for the Record
Submitted to Elaine Duke, Under Secretary for Management,
Department of Homeland Security (DHS)
From Senator Daniel K. Akaka
Question 2

"Keeping the Nation Safe through the Presidential Transition"
September 18, 2008

2. Regarding the September 18, 2008, policy on Suitability Reciprocity Acceptance at DHS Headquarters:
   a. When does the new policy take effect?

Response: On August 19, 2008, the Chief Security Officer, Department of Homeland Security (DHS), directed that suitability reciprocity acceptance be carried out at DHS headquarters. The decision to establish the new policy was based upon a risk assessment of a variety of factors.

   b. Please explain why the policy was limited to DHS component employees transferring to DHS headquarters.

Response: The policy was limited in this manner because it was determined that component employees may be detailed to headquarters and have access to the facilities and IT systems during such details. Because of the low risk, the Office of Security concluded that it would be inefficient to conduct duplicative suitability determinations for this group of employees.

   c. Please state whether DHS will expand suitability reciprocity to employees transferring (1) between DHS components and (2) from DHS headquarters to a component. If so, approximately when will a policy or policies implementing expanded reciprocity be issued?

Response: The Office of Security is engaged in continual conversations with all components on the topic of suitability reciprocity. When discussing suitability reciprocity, it is important to keep in mind the fact that position sensitivity and component mission varies from job to job and component to component; consequently, the level of investigations, clearances and suitability determinations will vary. DHS does not have a specific date for a policy, but will keep the committee apprised.

In addition to our efforts within DHS, we are engaged at the federal level. On June 30, 2008, by Executive Order 13467, the Suitability and Security Clearance Performance Accountability Council (Council) was initiated. It is the principal interagency forum for ensuring the alignment of security clearance and suitability processes where appropriate across the Executive Branch.

The Council will be accountable to the President to achieve the goals of security clearance and suitability reform, and is responsible for driving implementation of the reform effort, ensuring accountability for desired suitability and security clearance determination performance by agencies and departments, ensuring the Suitability Executive Agent and Security Executive Agent align their respective processes where appropriate, and sustaining reform momentum. DHS was identified as a key participant in the Council. The Under Secretary for Management represents DHS on this council and expects that it will result in great strides in reciprocity for both security clearances and suitability.

d. Please state what specific factors DHS considers for suitability determinations that are different from the factors considered in order to adjudicate security clearances.

Response: Suitability considers the individual's character, reputation, and trustworthiness in relation to the specific job position. The process also ensures that the employee holds the correct security clearance if a clearance is required by DHS for the position.

Suitability determinations are made in accordance with the following criteria (5 CFR 731) and are aligned with security eligibility factors as described:

(1) Misconduct or negligence in employment; (Guideline E: Personal conduct)
(2) Criminal or dishonest conduct; (Guideline J: Criminal conduct)
(3) Material, intentional false statement or deception or fraud in examination or appointment; (Guideline J: Criminal conduct)
(4) Refusal to furnish testimony as required by Sec. 5.4 of 5 CFR 731;
(5) Alcohol abuse of a nature and duration which suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others; (Guideline G: Alcohol consumption)
(6) Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation; (Guideline H: Drug involvement)
(7) Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force; (Guideline K: Security violations & Guideline L: Outside activities)
(8) Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

<u>Intelligence Community Directive (ICD) 704.2 Guidelines for Security Clearance Eligibility Determinations:</u>

Guideline A: Allegiance to the United States
Guideline B: Foreign influence
Guideline C: Foreign preference
Guideline D: Sexual behavior
Guideline E: Personal conduct
Guideline F: Financial considerations
Guideline G: Alcohol consumption
Guideline H: Drug involvement

Guideline I: Emotional, mental, and personality disorders
Guideline J: Criminal conduct
Guideline K: Security violations
Guideline L: Outside activities
Guideline M: Misuse of information technology systems

DHS also considers the following additional considerations to the extent they deem them pertinent to the individual case:

a) The nature of the position for which the person is applying or in which the person is employed;
b) The nature and seriousness of the conduct;
c) The circumstances surrounding the conduct;
d) The recentness of the conduct;
e) The age of the person involved at the time of the conduct;
f) Contributing societal conditions; and
g) The absence or presence of rehabilitation or efforts toward rehabilitation.

Post-Hearing Questions for the Record
Submitted to Elaine Duke
From Senator George V. Voinovich

"Keeping the Nation Safe Through the Presidential Transition"
September 18, 2008

1. **More than one report regarding the transition, including the Homeland Security Advisory Council Report, suggests that Congress should pass the Fiscal Year 2009 appropriations bills to aid in the transition. On September 17 in a House Homeland Security Committee hearing, Department of Homeland Security (DHS) officials discussed other reasons DHS needs an actual appropriations bill; Deputy Chief Procurement Officer Gunderson said a continuing resolution would stop some programs in their tracks. Would you speak to whether you think passage of the Fiscal Year 2009 appropriations bills is important to the transition and other DHS initiatives and explain why?**

   Response: The Fiscal Year (FY) 2009 Department of Homeland Security Appropriations Act was enacted as part of P.L. 110-329 on September 30, 2008.

   However, regular enactment of a full fiscal year funding bill each year is vital to the Department's continued operations and planning needs. Without its appropriations, the Department of Homeland Security (DHS) may not be able to initiate new programs that may be intended to counter emerging threats, and it may not be able to sign new or planned contracts. Interruptions in funding, as well as periods of reduced funding, are very disruptive to planning and operations, both at DHS headquarters and in the field. Research activities, training programs, construction projects and other important functions could be interrupted and might be re-started at an additional cost.

   Significant delays in the Department's appropriations for FY 2009 could have jeopardized plans for consolidating DHS assets and personnel in a new headquarters facility at St. Elizabeths in Washington, DC. Fence construction at the southwest border could have been delayed, with costs increasing with each day of delay, and the U.S. Coast Guard could not proceed with initial construction of its fourth National Security Cutter. Important new research on promising homeland security technologies under the auspices of the Science and Technology Directorate would have been suspended.

2. **Preparedness for the transition must involve state and local governments as well as other federal agencies. How is the Department reaching out to state, local and tribal leaders regarding transition preparations?**

3. **On a related note, more than ten states and territories will hold their own executive elections this year. How is the Department working with those states and territories**

to ensure that their transition preparations are coordinated with the federal government's efforts?

Response to 2 &3: State, local, tribal and territorial governments are responsible for ensuring their own governments are fully prepared to handle state-level transitions as well as engage with any federal agency undergoing transition. The General Services Administration (GSA) is responsible for the overall Presidential Administration Transition. However, the Department of Homeland Security (DHS) has been working with State, local, tribal and territorial governments to inform them of measures being taken to ensure the upcoming transition has a minimal effect on the Department's operations or their own operations.

The Office of Intergovernmental Programs' (IGP) mission is to promote an integrated national approach to homeland security by ensuring, coordinating, and advancing federal interaction with state, local, tribal, and territorial governments. Specifically, IGP has been working with the Homeland Security Advisors (HSAs) from all 56 States and territories, and the tribal community to build awareness that a career transition team is in place across the Department and to update them on DHS transition planning. We have held various informal sessions with key stakeholders including associations that work with state, local, tribal and territorial elected officials, and the Deputy Secretary briefed the HSAs at a meeting in Washington, D.C. in May on the Department's transition efforts to date. Currently, IGP is working with the Core Transition Team to schedule roundtable or teleconference sessions with key state, local, tribal and territorial associations, Washington, D.C. state representatives, and the HSAs.

The Department is also aware of the States that may go through their own transition this year. State, local, tribal and territorial governments are responsible for transitioning their new governments, and at the appropriate time DHS and other federal agencies will reach out and provide guidance when necessary. In addition, as personnel changes take place at the state, local, tribal and territorial level, IGP staff will coordinate with the new staff on homeland security issues and ensure that they are brought up to speed on Department functions, priorities and concerns. This includes an IGP Department briefing, a call from the Secretary and/or the Assistant Secretary for Intergovernmental Programs, and an intelligence and threat briefing.

Similarly, other DHS components that work with state, local, tribal and territorial governments will be addressing individual concerns on transition and homeland security issues. For instance, the Office of Health Affairs (OHA) serves as the Department of Homeland Security's principal agent for all medical and health matters, and they work with all levels of government and the private sector. The Office of Intelligence and Analysis (I&A) is a member of the National Intelligence Community and ensures that information related to homeland security threats is collected, analyzed, and disseminated to the full spectrum of homeland security customers in the Department, and at state, local, territorial, and tribal levels. Each of the Department's operational components also have daily interaction with state, local, tribal, and territorial governments, and will be working to ensure minimal disruption during the Administration change.

4. **I understand that DHS has flagged 34 of its 139 vacant executive positions as critical. How did DHS determine which positions are critical and how many critical positions are vacant today?**

   Response: To determine which positions are critical, the Department of Homeland Security (DHS) provided guidance to components, who in turn identified their critical positions. The guidance included these criteria:

   - Position involves leadership of a program area that is of significant importance to the Department's ability to accomplish its mission.
   - Position is responsible for major operational areas and a short-term vacancy would adversely affect the ability of the Department to accomplish its mission.

   Based on information submitted by the components as of October 2008, 15 critical positions are currently vacant.

5. **Do you believe new authorities from Congress would help the Department fill those vacancies?**

   Response: Most, but not all of the critical positions are executive level positions. At this time, DHS does not need a new authority to fill these positions. In July of 2007, concern was raised that 24 percent of the top positions in the Department were vacant. However, reports at that time failed to consider that the Office of Personnel Management (OPM) in March 2007 granted DHS the authority to fill 73 new Senior Executive Service (SES) positions. This increase in the Department's SES allocation temporarily increased the percentage of executive positions which were vacant, but only because the Department had not yet had a chance to recruit for the new positions. Today, that 24 percent vacancy rate has been cut in half to 12 percent. This reduction is even more impressive since over the past year, DHS received authority from OPM to add another 50 SES positions. Further, the Department continues to hire new executives every month. Currently, 23 new executives have been selected and are waiting for clearance to start work. Once they are added, the vacancy rate should drop to below 10 percent. Additionally, DHS is participating in an OPM government-wide pilot to test new strategies for filling SES positions.

6. **How is the Department addressing the National Academy of Public Administration's (NAPA) suggestion that training be designed to build positive relationships with the new Administration's transition team and appointees?**

   Response: The Department of Homeland Security is actively working to prepare its career employees for the new Administration's transition team and appointees. While not the primary goal of our Training and Exercises effort during transition, we are building opportunities for the new and old employees of the organization to understand each other's roles and responsibilities in the event of an incident, network, and build team

bonds. By providing identical training for career and incoming political employees we will build and reinforce a common base of knowledge for the Department. In addition, through interactive workshops, small group and table top exercises, we will build the positive relationships necessary to unite the new and continuing career employees.

7. **Similarly, how is the Department addressing NAPA's recommendation that DHS reduce political appointments so there are large numbers of long term, senior employees with expertise and institutional knowledge in agencies like FEMA, the Domestic Nuclear Detection Office, and the National Protection and Programs Directorate?**

   Response: With regard to political appointees, the NAPA report indicated that the transition will require a strong reliance on career executives to play a key role in providing the stability needed as the senior political leadership turns over. The career civil servants should play the "bridging" role through this period. The report stated that DHS was taking steps to make this happen and DHS is one of six departments with the lowest percentage of non-career executives.
   The Department continues to assess our senior staffing structure across the entire Department. One of the Department's major objectives for the transition is to have the right career people in place when the political leadership changes. The Deputy Secretary manages the status of political appointees and their career successors for the top positions in the Department. In October 2007, DHS completed a component level succession order and a delegation of authority for each component head position. For each, there is at least one backup, and sometimes two or three. As part of the transition planning, jobs held by political appointees will be filled by career executives.
   With respect to the specific organizations identified (FEMA, DNDO and NPPD), we can report the following. As stated in the NAPA report, a number of Regional Administrator positions at FEMA have already been converted from non-career to career. At the Domestic Nuclear Detection Office, the Deputy Director is a long-time career civil servant who will serve as the acting Director should the position of director, which is appointed by the President, become vacant. DNDO is allocated seven SES positions; only one, the director is a non-career position. At the National Protection and Programs Directorate, the Chief Operating Officer will be a senior career executive who will become acting director. Although currently vacant, we are currently recruiting for a Chief Operating Officer within NPPD, and anticipate filling this position soon. NPPD is allocated 29 executive positions; only five are filled with political appointees.

8. **How will the Department address the Council for Excellence in Government's (CEG) concern about coordinating training across federal agencies?**

   Response:
   Pursuant to the Homeland Security Presidential Directive (HSPD) 8 and Homeland Security Act of 2002, the National Exercise Division (NED) within FEMA was designated as the executive agent of the National Exercise Program (NEP). The NEP is a

national, interagency-wide program to prioritize, focus, and coordinate national security and homeland security preparedness-related exercise activities.

The Department engaged the Council for Excellence in Government (CEG) to help ensure our senior career employees, incoming appointees and leaders of other agencies critical to homeland security are prepared to respond should a national incident occur. In concert with FEMA's NEP, the USM and other parts of DHS, we will deliver training and exercises during the time of the presidential election campaign, inauguration, and subsequent appointments of Senate-confirmed positions.

Through these exercises, DHS is working to ensure operational preparedness between and among the external agencies with whom DHS interfaces on homeland security matters. Participants will not only practice their roles, but also build relationships and camaraderie with other key decision makers in a variety of national emergency scenarios. We are also working closely with the Homeland Security Council at the White House to ensure other departments with homeland security roles are integrated with our transition efforts. This effort will strengthen DHS employees' knowledge of national security protocols and interfaces with other departments as well as state, local, and tribal governments to ensure we are prepared should a crisis arise.

In addition our career lead for DHS Presidential Transition, RADM John Acton has engaged in active outreach with his federal counterparts to coordinate transition activities. Meetings have been held with Department of Defense, Department of Transportation, National Security Agency, Government Services Administration, Office of Management and Budget, and the Government Accountability Office. The Department is an active participant in the Agency Transition Officer Committee, which assembles Transition leadership across the federal government. We have offered at this body to integrate representatives from other federal agencies in our Training and Exercise activities and have asked to participate in any relevant transition training they plan to hold with their leadership.

9. **Will you provide me a copy of CEG's visual map of roles and responsibilities of key actors in the event of an emergency?**

   Response: We anticipate a final product from CEG at the end of October and we are willing to provide a copy.

10. **First responders will more than likely be the first to encounter any terrorist activity that might occur during the transition. What training or alerts does DHS anticipate providing to police and fire fighters so they are prepared for the transition?**

    Response: DHS has not provided any transition-specific training to first responders. Nevertheless, all of the training and response capabilities that we fund in our grant programs are designed to enable first responders to react to any threat, whether targeted

at transition periods and activities or not. Grants specifically targeted at preparing first responders include the 25 percent set-asides in the State Homeland Security grants and the Urban Area Security Initiative grants for law enforcement terrorism prevention activities. These set-a-sides in FY 2008 were $215 million and $195 million respectively. Furthermore, grants to firefighters were more than $750 million in FY 2008 as well.

With regard to alerts, although we have no actionable intelligence at this time that would lead us to expect terrorist activity during the transition, we know that changes in governmental administrations have historically been used by those who want to influence election outcomes or disrupt the continuity of government as opportunities to inflict harm. Should any intelligence emerge that requires action, alerts will be sent through the extensive information-sharing networks the Department has built with State and local governments.

11. **During last week's hearing, Clay Johnson discussed the administration's goal to have 100 critical positions filled by April and 400 positions by August. I believe the record is 25. Clay Johnson testified that both presidential campaigns have indicated a willingness to meet this goal. Has DHS identified its critical positions for purposes of meeting this goal?**

Response: DHS has taken this goal into its planning efforts and will share with the President-Elect the current organizational charts which show the span of control of the Department's top executive positions. To ensure positions are filled as quickly as possible once nominees are identified, DHS has taken steps to streamline its clearance processes and to add process capacity.

12. **How has DHS incorporated this goal into its planning efforts?**

Response: DHS positions appointed by the President are listed below. Each of these positions are critical.

CBP	Office of the Commissioner - CBP	Basham	W Ralph	Commissioner	PAS
DNDO	Immediate Office - DNDO	Oxford	Vayl	Director, Domestic Nuclear Detection Office	PA-Noncareer
FEMA	Office of the Administrator - FEMA	Paulison	R. David	Administrator, FEMA	PAS
FEMA	Office of the Administrator - FEMA	Johnson	Harvey	Deputy Administrator/Chief Operating Officer, FEMA	PAS

FEMA	Grants Program Directorate - FEMA	Ashley	W. Ross	Assistant Administrator, Grant Programs	PAS
FEMA	National Preparedness Directorate - FEMA	Schrader	Dennis	Deputy Administrator for National Preparedness	PAS
FEMA	National Preparedness Directorate - FEMA	Bierman	Brock	Dir, Small State & Rural Advocate/Dir, Community Preparedness	PA-Noncareer
FEMA	Fire Administration, NPD - FEMA	Cade	Gregory	Assistant Administrator, U.S. Fire Administration (USFA)	PAS
I&A	Office of the Under Secretary - IA	Allen	Charles	Under Secretary for Intelligence and Analysis	PAS
ICE	Office of the Assistant Secretary - ICE	Myers	Julie	Assistant Secretary	PAS
USCIS	Office of the Director - CIS	VACANT		Director, USCIS	PAS
MGMT	Office of the Under Secretary	Duke	Elaine	Under Secretary for Management	PAS
MGMT	Office of the Chief Financial Officer - MGT	Norquist	David	Chief Financial Officer	PAS
MGMT	Office of the Chief Information Officer - MGT	Mangogna	Richard	Chief Information Officer	PA-Noncareer
OIG	Office of the Inspector General	Skinner	Richard	Inspector General	PAS
OS	Immediate Office of the Secretary	Chertoff	Michael	Secretary	PAS
OS	Immediate Office of the Deputy Secretary	Schneider	Paul	Deputy Secretary	PAS
OS	Officer for Civil Rights and Civil Liberties	Sutherland	Daniel	Civil Rights and Civil Liberties Officer	PA-Noncareer
OS	Office of Counternarcotics Enforcement	Dhillon	Uttam	Director	PAS
OGC	Office of General Counsel	Vacant		General Counsel	PAS
POLICY	Immediate Office of the Assistant	Baker	Stewart	Assistant Secretary for Policy	PAS

	Secretary for Policy				
NPPD	Office of the Under Secretary for NPPD	Jamison	Robert	Under Secretary for National Protection and Programs	PAS
NPPD	Assistant Secretary for Infrastructure Protection - NPPD	Stephan	Robert	Assistant Secretary for Infrastructure Protection	PA-Noncareer
OHA	Office of Assistant Secretary for Health Affairs	Vacant		Assistant Secretary for Health Affairs/Chief Medical Officer	PAS
ST	Under Secretary for Science & Technology - ST	Cohen	Jay	Under Secretary	PAS
TSA	Office of the Assistant Secretary, TSA	Hawley	E. Kip	Assistant Secretary, TSA	PAS

13. **Last week Mr. Johnson also testified that each agency would have its fiscal year 2009 program, GAO High Risk, and management practice goals, as well as plans to achieve those goals, by January 20. Will DHS meet this deadline?**

Response: On September 5, 2008, well in advance of the January 20 deadline, the Department of Homeland Security sent the General Accountability Office (GAO) and the Office of Management and Budget (OMB) a copy of its Integrated Strategy for High Risk Management. This plan addresses how the Department is overcoming challenges identified by GAO as "high risk."

Comprehensively, this integrated management strategy communicates the transformational capabilities, operational oversight, and performance management mechanisms that are required by DHS to successfully manage areas of risk. In developing this integrated strategy, High Risk Initiative Owners collaborated to elaborate upon current high risk management efforts. They have also sought to communicate future actions, milestones, and metrics that clarify how each high risk area is currently being addressed. Early drafts of the document were provided to OMB and GAO for collaborative comment and feedback was positive and constructive.

A key message in this document clarifies integration of the Department's many efforts in order to overcome high risk elements. This plan explains how through the use of an integrated framework to address management challenges and define how we have successfully transformed 22 legacy agencies into a unified Department, the American public will see fewer high risk challenges in the management and mission of DHS.

Response to Post-Hearing Questions for the Record
Submitted to Frank Chellino
From Senator George V. Voinovich

"Keeping the Nation Safe Through the Presidential Transition"
September 17, 2008

1. **The National Academy of Public Administration's (NAPA) report notes that several officials have indicated that a career executive should fill the position of Chief Human Capital Officer (CHCO) at the Department of Homeland Security (DHS). What reasons were given for having a career CHCO at DHS?**

   Improving leadership continuity with qualified and experienced personnel was the primary reason for recommending the conversion of a number of DHS non-career leadership positions to either fixed-term or career appointments. In the specific case of the CHCO, the Chief Human Capital Act of 2002 identifies a set of specific human resources functions for which the CHCO is accountable. They are: *(1) selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles; (2) implementing the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and (3) carrying out all functions to align the agency's human resources policies and programs with the organizations' mission, strategic goals, and performance outcomes.*[1] The Panel believed that the execution of these specific human resources functions could best be enhanced by a career executive focused on delivering a robust human resources strategic and operational framework relatively free of a short-term political focus.

2. **The NAPA report also notes that the Federal Emergency Management Agency (FEMA) needs to address the number of non-career executives in its ranks. Will you discuss why NAPA focused on FEMA, especially since the National Protection and Programs Directorate (NPPD) has an even higher percentage of non-career executives?**

   The National Academy Panel focused on FEMA for three reasons. First, though the percentage of non-career appointees is higher in NPPD (43% compared to 34%), the actual number of non-career appointees is much higher in FEMA. FEMA has 20 non-career executive positions compared to NPPD's 6 (see p. 37 of the report). Second, FEMA's 20 non-career appointees include 6 of the 10 Regional Administrator positions, which are key emergency management operational positions, rather than policy positions. Finally, the Panel considered the critical nature of the FEMA mission as a result of the Post-Katrina Emergency Reform Act 2006. That Act established new leadership positions within the Department and brought additional functions into FEMA. The Panel believes that strong emergency management experience is critical to carrying out the responsibilities of the Regional Administrator, which include developing mitigation strategies, preparing and responding to disasters and building strong relationships with Federal, State and local partners and service providers.

[1] "Public Law 107-296: Chief Human Capital Officers Act of 2002" (116 Stat. 2135; Date: 11/25/02).

3. **Additionally, I agree with the assessment that FEMA's Regional Administrators and other DHS executives should be career executives. Did your Panel discuss whether Congress should mandate that Regional Administrators or other specific political appointees at DHS be career officials?**

   The Panel had a vigorous discussion regarding whether Congress should mandate the Regional Administrators or other specific political appointees be converted to career appointment. Currently, the Regional Administrators are appointed by the FEMA Administrator after consulting with state, local and tribal governments, while specific political appointments for Deputy Administrators are made by the President, with the advice and consent of the Senate.[2] The Regional Administrators may be career or political. The Panel specifically recommended that FEMA fill more executive positions with career executives to foster increased leadership continuity and expertise, especially in the Regional Administrator positions. However, the Panel ultimately concluded that the President and the Secretary should have the flexibility to select a balance of non-career and career executives for key leadership positions. The Panel further recommended that DHS work with the Administration and Congress to revise the legislative requirements for these positions. The Panel discussed that it is equally important to require that candidates for these positions possess the requisite knowledge and career experience in emergency management.

4. **Many reports regarding this transition recommend outreach to the public about possible risks during the transition period, but in August 2004, the Administration raised the threat warning level to "high" for financial institutions in Washington, New York and New Jersey and lowered the level soon after Election Day. Critics said that alarm—for a specific business sector in specific areas of the country—was too broad and the Administration was trying to manipulate the election. Similarly, recent news articles note that DHS could be perceived as seeking to manipulate the election if it releases information about transition risks. Do you have any thoughts about how DHS can avoid such criticisms this year while still informing the public of risks associated with the transition?**

   The subject of communicating possible risks to the public during the transition period was not a specific topic of our study. However, the Panel did consider how best to convey its own message regarding the need for timely transition preparation. Our report identified 22 recommendations tailored to the Presidential timeframes to offer a road map to accomplish a successful transition at DHS with minimum disruption of operations and preparedness. As spelled out in the President's message in the Foreword, *"Evidence suggests that terrorists seek opportunities to take advantage of real or perceived weaknesses in our ability to detect, deter, prevent or respond to attacks and that they view elections and political transitions as periods of increased vulnerability. Terrorists may perceive the 3 to 6 months preceding and following a U.S. national election as a period of opportunity."*

   Terrorists have a history of striking countries during national transitions and we must be prepared for this eventuality. In my experience in law enforcement, changes to the threat

[2] "Public Law 109-295: Post Katrina Emergency Reform Act of 2006" (120 Stat. 1355; Date: 10/04/06).

level and other public announcements should be driven by intelligence and public safety, not by political considerations or by concerns for potential misperceptions or criticism. Communicating focused, factual and relevant information to the public in a timely manner should minimize criticism of DHS.

5. **More than one report regarding the transition, including the Homeland Security Advisory Council Report, suggests that Congress should pass the Fiscal Year 2009 appropriations bills to aid in the transition. Can you speak to whether you think passage of the Fiscal Year 2009 appropriations bills is important to the transition and explain why?**

   This topic was not the subject of the National Academy study, and we are not in a position to offer an assessment of the potential impact of a continuing resolution or specific FY 2009 appropriations bills on the transition.

FROM: John Rollins
Specialist in Terrorism and International Crime
Foreign Affairs, Defense and Trade Division

SUBJECT: Response to Post-Hearing Question for the Record: Keeping the Nation Safe Through the Presidential Transition

The Committee asked the following question:

> *Your report and others regarding the transition, including the Homeland Security Advisory Council Report, suggest that Congress should pass the Fiscal Year 2009 appropriations bills to aid in the transition. Why do you think passage of the Fiscal Year 2009 appropriations bills is important to the transition?*

Response

The Congressional Research Service takes no position on Congress' handling of particular legislation. Some see passage of the Fiscal Year 2009 appropriations bills as aiding transition-related activities of the incoming administration by allowing the new President to focus on the Fiscal Year 2010 budget submission, due no later than Monday, February 2, 2009.[2] While it is permissible for the recently inaugurated President to submit budget revisions related to the Fiscal Year 2009 appropriations bills prior to congressional passage,[3] the new Administration will have approximately eleven weeks after the date of the election and twelve days after inauguration to submit a newly formulated FY2010 budget proposal to Congress.[4] Some presidential transition observers suggest that given the pressures and time constraints associated with transitioning to a new administration, specifically if the incoming President is from a different political party than that of the current President, the new Administration's time may be better spent formulating a forward-looking fiscal year budget to reflect the newly elected President's strategy and policy goals.[5] Such a budget strategy will not preclude the newly elected President from requesting changes to FY2009 appropriations acts as requests for reprogramming of funds to better reflect or align current administration policies may be submitted to Congress throughout the year.

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[2] The Budget and Accounting Act of 1921, as amended, requires the President to submit the annual budget to Congress "on or after the first Monday in January but not later than the first Monday in February of each year." P.L. 67-13; 42 Stat. 20; 31 U.S.C. 1105.

[3] Currently a Continuing Resolution is in effect through March 6, 2009. Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. P.L. 110-329 (Sept. 30, 2008).

[4] The current Administration decided, in April 2008, not to submit a budget proposal for FY2010. U.S. Office of Management and Budget, Memorandum 08-17, Requirements for the FY 2010 Budget Process, Apr. 7, 2008, p. 1, available at [http://www.whitehouse.gov/omb/memoranda/fy2008/m08-17.pdf].

[5] Of note, Congress may authorize the submission or revision of a fiscal year budget after the statutory deadline by enacting an extension in law.

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CRS Report for Congress

2008-2009 Presidential Transition: National Security Considerations and Options

April 21, 2008

John Rollins
Specialist in Terrorism and National Security
Foreign Affairs, Defense, and Trade Division

Prepared for Members and Committees of Congress

2008-2009 Presidential Transition: National Security Considerations and Options

Summary

A presidential transition is a unique time in America and holds the promise of opportunity, as well as a possible risk to the nation's security interests. The 2008-2009 election marks the first presidential transition in the post-9/11 era, and is of concern to many national security observers. While changes in administration during U.S. involvement in national security related activities are not unique to the 2008-2009 election, many observers suggest that the current security climate and recent acts of terrorism by individuals wishing to influence national elections and change foreign policies portend a time of increased risk to the current presidential transition period. Whether the enemies of the United States choose to undertake action that may harm the nation's security interests during the 2008-2009 election, or the new President experiences a relatively peaceful period during the transition, many foreign and domestic policy and security challenges will await the new Administration. How the new President recognizes and responds to these challenges will depend heavily on the planning and learning that occurs prior to the inauguration. Actions can be taken by the outgoing President and President-elect that may ameliorate decision-making activities in the new administration. Whether an incident of national security significance occurs just before or soon after the presidential transition, the actions or inactions of the outgoing Administration may have a long-lasting effect on the new President's ability to effectively safeguard U.S. interests and may affect the legacy of the outgoing President.

This report discusses historical national-security related presidential transition activities, provides a representative sampling of national security issues the next administration may encounter, and offers considerations and options relevant to each of the five phases of the presidential transition period. Each phase has distinct challenges and opportunities for the incoming administration, the outgoing administration, and Congress. This report will be updated as needed.

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2008-2009 Presidential Transition: National Security Considerations and Options

Introduction

A presidential transition — the period from campaigning through placement of new administration personnel — is a unique time in American politics and holds the promise of opportunity as well as a real or perceived vulnerability[1] to our nation's security interests. On a given day the outgoing administration has the ability to change the policies of a nation and possibly affect the international security environment, yet the following day the President and the national security leadership team are replaced by a new set of leaders who may have very different strategy and policy goals.[2] This political dynamic, coupled with the inherent uncertainty accompanying a presidential transfer of power, may provide a target of opportunity that may be too enticing to resist by those who wish to harm U.S. security interests. Unlike other man-made incidents that may occur with little warning, the presidential transition offers a broadly defined time frame in which an enemy of the United States[3] may decide to undertake an incident of national security significance[4] with the

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[1] Throughout this report, numerous references are made to the nation's increased "vulnerability" during times of presidential transition. Vulnerability is the manifestation of a potential threat to inflict harm to an area that is not properly defended, cannot be completely defended, or is indefensible. A better representation of the environment the U.S. may face during the presidential transition is the degree to which the nation is at "Risk"(R). (R) is the product of weighting and multiplying the Threat (T), Vulnerability (V), and Consequences (C) of an incident (TVC=R). (T)'s directed at the electoral process may become known by the federal intelligence community [or the federation of national intelligence activities.] The nation's (V) to a national security-related incident may be increased or decreased based on the targets chosen by enemies of the United States. (C), however, could range from minor to significant based on the severity of an incident and its proximity to the five phases of the transition period.

[2] *The Law of Presidential Transitions*, Boston School of Law Working Paper, William P. Marshal and Jack M. Beerman, 2005. "The outgoing President retains all the formal legal powers of the presidency, yet his last electoral success is four years removed and his political capital is at low ebb. The outgoing President will want to protect his policies or accomplishments from being reversed or undermined and may also want to create obstacles to prevent his successor from too quickly achieving political and policy success. The incoming President, on the other hand, will be focused on beginning her own initiatives and may desire to expeditiously reverse the policies of the previous President." When the incoming and outgoing Presidents are from opposing political parties the conflicts during the transition period may be even more acute.

[3] Enemies that pose a risk to the United States may emanate domestically and internationally and take the form of foreign and American citizens who are aligned with nation states,

(continued...)

hope of manipulating the electoral process or changing the nation's foreign and domestic policies.

Presidential transitions during times of U.S. involvement in military operations and national security-related activities[5] are not unique to the 2008-2009 presidential transition period (see **Appendix A**).[6] However, based on the current international security environment and recent attempts to disrupt transfers of power in other countries, many observers see the United States as lurching toward a period of uncertainty and increased risk (see **Appendix B**). While the mere presence of a upcoming presidential transition does not ensure an incident of national security significance will occur, security experts argue that this window of potential risk is not lost on the enemies of the United States. At present, the intelligence community assesses that "Al-Qaida will increase the frequency, sophistication, timeliness and Western targeting of its propaganda statements as the United States advances toward the presidential election."[7] While many terrorism experts are concerned about the internal and external threats to the United States during the presidential transition period, the intelligence community is "uncertain what impact [terrorist propaganda] statements will have on the Western Muslim community and other individuals who are Al-Qaeda's primary target audience."[8]

According to a presidential transition-related report provided to the Department of Homeland Security (DHS) by the Homeland Security Advisory Committee (HSAC), "briefings, research, and recent history have provided an appreciation of the potential vulnerabilities during transition periods. Not only are we [United States]

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[3] (...continued)
groups, or individuals that pledge allegiance or undertake action adverse to U.S. interests.

[4] While an incident of national security significance could entail a catastrophic natural disaster, this term, for purposes of this paper, is used to describe foreign and domestic security-related man-made acts, including a terrorist attack (in the United States, against interests overseas, or against an Ally), significant offensive action against troops deployed overseas, assassination of a U.S. or foreign leader, seizure of an embassy, a change in the political environment where the U.S. is undertaking stabilization activities, significant foreign power nuclear-related activity, or a foreign power or extremist group taking military action against an ally of the U.S..

[5] For purposes of this report, national security activities encompass all aspects of United States foreign and domestic policy and operations responsible for safeguarding national security interests.

[6] For purposes of this report the presidential transition period is comprised of five phases extending from presidential campaigning activities to the newly elected President's formation of a national security team and production of accompanying strategies and policies. The five phases of the presidential transition period will be discussed later in this report.

[7] "Al-Qaida's 2007 Media Campaign, DHS-FBI Joint Homeland Security Assessment," February 11, 2008, *Congressional Quarterly-Homeland Security.*

[8] Ibid.

aware that vulnerabilities exist, but our enemies are as well."[9] As observed by Frances Townsend, former Homeland Security and Counterterrorism Advisor to President George W. Bush,[10]

> I worry about the period of vulnerability between the time we have nominees for each party through and just after the inauguration of a new President. I think that's a particular period of vulnerability, because of what we know about Al Qaeda's attempts to influence the elections in Spain. We've seen the attacks after Gordon Brown took over as Prime Minister in the U.K. We see in the 2004 election where they were issuing videos days before the [United States] election, including bin Laden talking about the streets in the United States running with blood. We know from their history that Al Qaeda wants to influence elections and have political influence.

The executive branch is not alone in attempting to ensure the country passes power from one administration to the next in a safe and thoughtful manner.[11] However, the outgoing and incoming administrations are viewed as primarily responsible for addressing risks to the nation and taking actions to prevent and respond to any incident that may affect the electoral process. Whether the enemies of the United States choose to undertake action that may harm national security interests during this period of transition or the new President experiences a relative peaceful period shortly after entering office, many national security issues will be awaiting the new Administration. How the newly elected president recognizes and responds to these challenges will "depend heavily upon the planning and learning that takes place during the transition from one Administration to another."[12] During recent presidential transitions,[13] the current and incoming administrations and

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[9] *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf].

[10] Frances Fragos Townsend, C-SPAN interview transcript, January 4, 2008. [http://www.c-span.org/special/Townsend.asp].

[11] The U. S. Congress and state and local governments provide support to various aspects of the presidential transition. Other government and non-governmental entities that offer advice and assistance to presidential transition related activities include General Services Administration, National Archives, Office of Government Ethics, Congressional Research Service, Government Accountability Office, Center for the Study of the Presidency, Council for Excellence in Government, Mandate for Leadership Project, Presidential Appointment Initiative, Reason Public Policy Institute, and the Transition to Governing Project. The United States Presidential Transition, Senate Homeland Government Affairs Committee, last accessed 14 February, 2008. [http://www.senate.gov/~govt-aff/transitions/pta_page6.htm].

[12] Perils of Presidential Transition, Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition, pp 67.

[13] President Harry S Truman is often credited with establishing the tradition of the outgoing President offering Administration transition-related assistance to the incoming Administration. He directed each agency leader to provide him a report on activities related to transitioning the new Administration into power. Shortly after the election of Dwight Eisenhower, President Truman invited him to a meeting at the White House to discuss, among other concerns, national security-related issues. Prior to President Truman's actions and the subsequent enactment of the Presidential Transition Act of 1963, presidential

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Congress have traditionally undertaken numerous activities to facilitate a smooth transfer of executive branch power. Some of the actions often taken during presidential transitions include

- consulting with government and private sector experts who have presidential transition expertise,
- providing information to the President-elect after the election and prior to the inauguration,
- offering operational briefings on ongoing national security matters to prospective presidential nominees and their staff,
- preparing briefings books and policy memos detailing the issues of most concern to the current administration, and
- expediting security clearances for president-elect transition team members.

Other activities that the current and incoming administrations and Congress may wish to consider undertaking during the presidential transition period include

- undertaking public outreach efforts to discuss possible risks to the nation,
- involving the national security representatives of presidential hopefuls in all transition-related discussions,
- establishing joint advisory councils responsible for addressing all transition-related risks,
- requiring the Director of National Intelligence (DNI) to undertake efforts to support the nation's awareness of risks,
- reflecting the national security priorities of the new Administration in the 2009 budget,
- passing the FY2009 appropriations without undue delay;
- quickly assigning newly elected and existing Members of Congress to committees focused on national security,
- holding hearings comprised of national security experts to gather ideas on prospective U.S. national security policies and goals, and
- holding hearings soon after the inauguration of the new President to determine the Administration's national security-related priorities.

National Security Issues the Next Administration Is Likely to Encounter

The next Administration is likely to face many national security challenges on taking office. Some security experts suggest that the presidential transition period of 2008-2009 may be unique given the quantity, diversity, and breadth of security

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[13] (...continued)
transition activities rarely focused on substantive issues. The Presidential Transition Act of 1963 (P.L. 88-277) was enacted on March 7, 1964, and codified at 3 U.S.C. 102. For a more in-depth discussion of historical presidential transition processes and activities, see CRS Report RL30736, *Presidential Transitions*, by Stephanie Smith.

risks confronting the nation. The incoming Administration is likely to face three distinct types of national security challenges that could translate into short- and long-term national security risks. For purposes of this report, the national security challenges the next administration might face include the following:

- **Current U.S. military engagements**: Iraq, Afghanistan, and other military support or training activities related to the global war on terrorism and counter-proliferation efforts.

- **Risks posed in countries and regions of concern**: Iran, North Korea, Russia, China, Republic of Serbia, Venezuela, Cuba, and the Middle East; and

- **Risks associated with contemporary issues**: the role of U.S. foreign policy in international security matters, the role of the military in nation-building activities and diplomatic endeavors, international terrorism, non-proliferation, and homeland security.

While the issues are not exhaustive and may not require the same level of attention and priority based on the new Administration's foreign and domestic security objectives, time devoted to understanding these and other challenges prior to the inauguration to may better prepare the newly elected President to make well-reasoned decisions on assuming office.

The Presidential Transition Period

Many presidential historians argue that during the early days of the new Administration the knowledge and decision-making activities will, in part, be based on information provided by the outgoing Administration. With the presidential transition period running from the formal announcement of candidates for the office of the presidency to long past the inauguration,[14] members of the current Administration and potential incoming Administration may wish to initiate substantive transition activities in an efficient and productive manner as soon as possible.[15] Specifically, some scholars state that "enhanced cooperation and communication between the two Administrations is demanded by national security and foreign policy concerns."[16] It is further observed that, "as the world becomes

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[14] Ibid. "After the inauguration, difficult situations can also arise when a new and untested Administration faces a sudden crisis and emergency."

[15] The Law of Presidential Transitions, Boston School of Law Working Paper, William P. Marshal and Jack M. Beerman, 2005. "For a number of reasons there is now a greater need than any time in our Nation's history for incoming and outgoing Administrations to work cooperatively during transitions periods. To begin with, government is more complex and an incoming Administration faces an inestimable learning curve in assuming office and digesting the mounds of information necessary to be able to understand the powers at its disposal and govern effectively."

[16] Todd J. Zywicki, *The Law of Presidential Transitions and the 2000 Election*, 2001

(continued...)

more dangerous and the risks to harm more immediate, the need for effective and seamless transitions becomes correspondingly greater."[17] Thus, with respect to national security issues in particular, the need for outgoing and incoming Presidents to work together is no longer an option, but an unavoidable demand of the contemporary world.[18]

Considerations and Options that Span the Presidential Transition Period

Throughout the entire presidential transition period, a number of national security-related concerns and opportunities may be presented to the incoming and outgoing administrations. Even under the best of circumstances, the sitting President and President-elect may encounter unexpected issues that can lead to decision-making perils. However, many observers argue that the national security-related collaborative efforts of the current administration and members of the potential new administration coupled with oversight activities throughout the transition period offer the nation the best hope of being prepared to recognize and respond to acts taken to disrupt the transfer of power or change U.S. policies. Congress may wish to request classified and unclassified hearings and reports regarding the Administration's knowledge and efforts related to the following issues.

Possible Actions by Entities Wishing to Disrupt the Presidential Transition Period. Threats to the 2008-2009 presidential election may be numerous with "dangers associated with the transition emanating both from within the homeland and internationally."[19] Some national security observers are convinced that a terrorist group will take action against United Stares interests during the presidential transition period.[20] It is argued that enemies of the U.S. may see the nation as physically and politically vulnerable and that disseminating threatening propaganda or undertaking an incident of national security significance during the election period would likely result in a change in the election results or future policies. Statements or incidents may be undertaken with the desire to demonstrate a group's ability to reestablish its status as an entity to be feared,[21] intimidate the

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[16] (...continued)
B.Y.U.L. Rev. 1573 (2001).

[17] Ibid.

[18] "The Law of Presidential Transitions," *Boston School of Law Working Paper*, William P. Marshal and Jack M. Beerman, 2005.

[19] Robert Landers, "*Dangers in Presidential Transitions,*" Editorial Research reports, pp. 528-529.

[20] "Osama bin Laden is Planning Something for the U.S. Election-Interview of Steve Coll," *Speigel Online*, Erich Follath, April 2, 2008. "I believe that he wants to influence America this time. There is a threat of the terrorist attack on American soil that al-Qaida has long warned of. Osama bin Laden is planning something for the U.S. election"

[21] "New Report tracks Relationship Between Al Qaeda and Jihadist Media," *CQ Homeland Security*, Matt Korade, April 4, 2008. In response to a question about al-Qaeda's troubles
(continued...)

voting public, suggest perceived weaknesses in a given candidate's national security position,[22] change the results of the election, or change future U.S. policies.

Many national security observers speculate that, if an incident of national security significance is to occur, enemies of the United States would prefer to take action just prior to the presidential election date. However, such acts at anytime during the presidential transition period could have desired and unintended effects on the presidential election and resulting policies.[23] Conversely, while many national security experts speculate that Al Qaeda, other extremist groups, and some foreign powers may see the presidential transition period as a desirable time to undertake action against U.S. interests, the mere fact that such activity occurs may not necessarily indicate that the act was committed with the desire to manipulate the results of the election. The timing of such acts may be solely based on the convergence of an entity attaining a desired capability with a perceived best opportunity to successfully complete its objective.

Post 9/11 National Security-Focused Organizations. One factor complicating the 2008-2009 transition is the recent establishment of numerous new national security agencies with responsibilities for preventing future terrorist attacks or harms to U.S. interests.[24] These organizations have not undergone a presidential transition and may see many political appointees depart federal government service prior to the inauguration of the next President. Also, the organizations that existed during the last presidential transition and the new agencies may have employed many new personnel who are not well-versed in addressing matters of national security during times of presidential transition. Additionally organizations that pre-date the attacks of September 11, 2001, and that previously had national security

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[21] (...continued)
in maintaining support for it organization, panel members noted that the possible decline in followers coupled with the upcoming presidential election could be a potent mix for a group desperate to reassert its relevancy.

[22] "Kerry Says Bin Laden Tape Gave Bush a Lift," *New York Times*, Adam Nagourney, January 31, 2005. "Senator John Kerry said on Sunday that the attacks of Sept. 11 were the central deciding thing in his contest with President Bush and that the release of an Osama bin Laden videotape the weekend before Election Day had effectively erased any hope he had of victory."

[23] For example, while the terrorist attacks of March 2004 did appear to have an affect on the election outcome and the Spanish government's support of military actions in Iraq, the new Prime Minister actually increased Spain's commitment to counterterrorism military efforts in Afghanistan. It is speculated that while the tactical operation may have been a success, the long-term results of the attack were counter to the strategic desires of the terrorist group. It may also be worth noting that an incident occurring during the transition period may have a relatively short-term minor effect on a targeted country based in sound principle and engendering resilient societal behavior. While the short-term affects of an attack may change the outcome of an election or a current policies, the attack may have little long-term impact on a country's societal mores and desire for a customary transfer of national power.

[24] Examples of federal government organizations with significant national security responsibilities that were established post 9/11 include, the Homeland Security Council, the DHS, the Office of the Director of National Intelligence, and the National Counter Terrorism Center.

responsibilities, may be asked to devote additional attention and resources to presidential transition-related issues.[25] Based on the length of time between the previous presidential transition, the departure of senior political and career officials, and the influx of new personnel addressing national security issues, it is possible that some federal agencies may not be properly anticipating the attention required or resources needed to support the incoming Administration's preparation and policy familiarization efforts.[26] Some security observers contend that if proper planning has not occurred efforts to support the incoming Administration may require personnel and resources to be transferred. This reallocation could detract from ongoing national security related activities and possibly place the nation at risk.

COG and COOP Concerns. In May 2007, President Bush signed Presidential Directives focused on Continuity Of Government (COG) and Continuity of Operations (COOP) procedures during times of crisis.[27] Contained in these Directives was a provision describing the national essential functions that are to be continued to support the perseverance of the U.S. government during times of crisis. In recognizing the importance to plan for unforeseeable events that may effect the functioning of the nation, the Directives identified a need for a "cooperative effort among the executive, legislative, and judicial branches of the federal government to preserve the constitutional framework under which the Nation is governed and to execute constitutional responsibilities and provide for orderly succession, appropriate transition of leadership, and interoperability and support of the national essential functions during a catastrophic emergency."[28] Some security observers contend that the outgoing and incoming Administrations may wish to coordinate closely throughout the presidential transition period on these two activities.

Planning for the Unforeseen and Communicating Transition Related Information to the American Public. During previous presidential elections, some officials in the federal government have seen the need to address and plan for options that might be considered should the presidential election be delayed. While noting federal election dates are set by law requiring congressional action to change the current schedule, DeForest Soaries, former Chairperson of the United

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[25] "It's a Busy and Costly Presidential Election Cycle for the Secret Service," *CQ Homeland Security*, Rob Margetta, April 3, 2008.

[26] Examples of federal government organizations that could have current national security activities adversely affected by the need to assist incoming Administration transition efforts include the Department of Defense, the State Department, 16 intelligence community organizations, and the U.S. Secret Service — an organization within the DHS.

[27] The term Continuity Of Government is defined as "a coordinated effort within the federal government's executive branch to ensure that national essential functions continue to be performed during a catastrophic emergency." Continuity Of Operations is defined as "an effort within individual executive departments and agencies to ensure that Primary Mission-Essential Functions continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies." National Continuity Policy, jointly designated National Security Presidential Directive- 51 (NSPD-51) and Homeland Security Presidential Directive-20 (HSPD-20), May 9, 2007, White House website.

[28] Ibid.

States Election Assistance Commission, wrote to then-DHS Secretary Ridge on June 25, 2004, that the process and procedures are undertaken in very different manners in the nation's 8,000 voting jurisdictions. Chairperson Soaries stated that DHS and the federal interagency structure provide assistance to federal, state, and local government's by collaborating on a plan to address voting options should a terrorist attack occur around the time of the election.[29] Many security experts argue that federal, state, and local election-contingency planning and coordination should occur during the early phases of the transition period. It is further suggested that, barring such discussions, the issuance of general guidelines, or a genuine effort toward collaboration, the prospects for electoral chaos might occur should an incident of national security significance take place just before or on the date of election.

During all phases of the presidential transition process, many national security experts suspect the federal government will receive information that heightens the risks to U.S. national security interests that may be, in part, based on activities by enemies of the United States attempting to influence the upcoming election.[30] Should such a heightened risk environment occur, some observers suggest that one of the best ways to meet this challenge is by a showing of national unity among the outgoing Administration and individuals vying for the presidency. To support a collegial and collaborative environment, the Homeland Security Advisory Council (HSAC) suggests the nominees issue a joint statement addressing potential threats to the nation or in response to an incident of national significance.[31] Some foreign policy experts suggest joint statements and activities by the current President and the prospective Presidents-elect take place with regularity to put forth a common voice to both the American public and the enemies of the United States that security issues will be addressed in a unified and coordinated manner.

Throughout the presidential transition period the federal government may wish to undertake outreach and education efforts directed at the American public. A public awareness campaign, led by the federal government, discussing a need for citizens to be more-vigilant during the election period and providing insight into what

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[29] Jim Drinkard, "United States Has No Plan for Election Delay Due to Terrorism," *USA Today*, July 12, 2004. Chairperson Soaries, in an subsequent interview, further stated that "each state must decide for itself what to do in the event of a disaster. When you have a national election, that has serious implications, because we don't have a real national standard for what constitutes a disaster. What is a disaster in Alaska may not be a disaster in Alabama. And I think this discussion on a federal level will have to also involve state officials so that we have some national consensus and can offer national guidance on what we mean by a disaster." *Countdown with Keith Olbermann*, Interview transcript, July 13, 2004.

[30] See generally, "McCain Says Al Qaeda Might Try to Tip United States Election," *Reuters*, Steve Holland, March 14 , 2008. When asked if he was concerned that anti-American militants in Iraq might ratchet up their activities to increase casualties in September or October and tip the November election against him, Senator McCain stated, "yes, I worry about it and I know they pay attention (to the election period) because of the intercepts we have of their communications."

[31] Report of the Administration Transition Task Force, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf].

the federal government will do in the event of an incident prior to election day may provide confidence to a concerned voting public. Activities such as this may prove useful in preparing the voting public to be aware of the possibility of an incident of national security significance occurring during the presidential transition period and also may lower the anxiety of citizens planning on participating in the electoral process. With respect to security-related issues in the homeland, many observers argue that awareness on the part of the citizenry offers the best opportunity to provide indicators of anomalies that might be indicative of a group's preparation to undertake criminal activity to affect the presidential election process. To this degree, the DHS HSAC contends that continuous interaction with the media[32] and the public regarding potential threats during this time period will maximize the chances of having a nation prepared for harmful activities that may occur during any phase of the presidential transition. The DHS HSAC specifically opined:

> It is important that the American public become engaged in understanding the unique vulnerabilities posed by this transition period. This will require public education and media engagement during this critical period in our history. Before, during, and after the transition, the public must learn about the choices faced by the Nation, communities, families, and individuals. The public must become a partner with their government, sharing the burden. In addition, DHS should continue to engage the media as an ally in the timely dissemination of accurate and actionable information. DHS must work with the multiple messengers, trusted within diverse communities, to effectively communicate this information.[33]

The DHS has the responsibility to notify the American public of current or prospective threats to U.S. domestic security interests,[34] and the Department of State has the responsibility to alert U.S. citizens located overseas of security related concerns. Both organizations have numerous communication mechanisms to inform U.S. citizens and organizations regarding concerns related to the presidential transition period and, when required, to share threat information. Communication

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[32] It should be noted that numerous reports have been written about the al-Qaeda's use of the media to bring attention to the organization. Similarly, while directly related to the upcoming United States presidential transition, recently Major General John F. Kelly of the 1st Marine Expeditionary Force in Iraq stated that there are "indications that they (al-Qaeda in Iraq) may change their tactics and do some bigger events that capture the attention of the world through the media." Sara A. Carter, "United States General Warns of Bigger Attacks in Iraq," *Washington Times*, March 11, 2008. Many security observers suggest that a significant attack occurring on United States forces deployed overseas just before or after the election may be undertaken to influence the results of the election or test a new Administration's policies and response.

[33] *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf].

[34] Section 203 of the Homeland Security Act of 2002 (6. U.S.C. 124), as amended by sec. 501(c)(1) of the Implementing the Recommendations of the 9/11Commission Act of 2007(P.L. 110-53, 6 U.S.C. 124), assigns the Secretary of DHS has "primary responsibility for providing warning regarding threats or risk from acts of terrorism in the homeland." However, it is common for the FBI or DHS and the FBI to make a statement or disseminate a joint bulletin regarding security issues of concern.

mechanisms for conveying information about the presidential transition period include:

- Department of Homeland Security: Official public announcements to the media, public service announcements, changes to the Homeland Security Advisory System, dissemination of information to state and local fusion centers and to private sector organizations, and posting information to DHS managed websites.

- Department of State: Official public announcements to the media, warden system alerts,[35] travel alerts, country specific warnings, country background notes, and posting information to State Department managed websites.

Considerations and Options Unique to Each Phase of the Presidential Transition Period

Modern presidential transition activities are no longer constrained to the time between the election and inauguration.[36] Some presidential historians argue that, "history tells us that any winning candidate who has not started (transition efforts) at least six months before the election will be woefully behind come the day after the election day."[37] While the time period and phases of a presidential transition are not statutorily derived, for purposes of this paper, the presidential transition period is comprised of five phases extending from presidential campaigning activities to the new President's establishment of a national security team and accompanying strategies and policies. Each phase identifies issues to consider by the outgoing and incoming Administrations and the Congress.[38] The phases of the presidential transition are as follows:

Phase 1: Campaigning by presidential candidates
Phase 2: Selection of party nominees
Phase 3: Election day

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[35] The Warden System allows Americans overseas to receive security warnings and other important notices as quickly as possible. Wardens are American citizens who will contact other Americans with relevant information from the embassy or the Department of State.

[36] "Perils of Presidential Transition", Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition. "Transition efforts in modern presidential campaigns begin well before election day."

[37] The IBM Center for The Business of Government Weblog, 2008 Presidential Transition Initiative, November 6, 2007. [http://transition2008.wordpress.com/].

[38] Transitions in American government power are not reserved for the executive branch. Congressional elections and changes in state and local leadership are also occasions where individuals wishing to harm U.S. national security interests could place the nation at risk. While the focus of this paper is on security implications during a presidential transition, it is acknowledged that planning, prevention, preparedness, response, and recovery activities could also be hampered should an incident of national security concern occur during a congressional or non-federal government election period.

Phase 4: Post election day to prior to the inauguration
Phase 5: Presidential inauguration to formation of the new Administration's national security team and issuance of policy directives

Phase 1: Campaigning by Presidential Candidates. Phase 1 of the presidential transition includes the time frame from campaigning by presidential hopefuls to the national political conventions that officially select the party nominees.[39] This period can last a few months to a year or longer depending on a number of factors, including the current President's desires and constitutional ability to run for re-election, the plans of individuals from the same party as that of the sitting President to challenge the President's re-election bid, and the opposing party's time frame for launching unofficial or official presidential nomination activities.

Outgoing Administration Considerations and Options. A number of activities can occur during the first phase of presidential transition activities that would benefit the incoming President and may prove useful toward providing continuity with respect to U.S. national security matters. As noted in the *Homeland Security Advisory Council Presidential Transition Report*, "it is important that DHS take action now to ensure a seamless and agile transition to new leadership and optimize the new leadership's ability to assume operational control of the Department."[40] Recommendations offered by the Advisory Council that could be undertaken during the first phase of the transition include

- clarifying the meaning of "heightened threat" during the transition period by notifying all homeland security partners of historical patterns;
- developing contingency plans around the homeland security themes of prevent, prepare, respond, and recover;
- providing prospective presidential nominees information regarding lessons learned from incidents occurring during previous leadership transitions; and
- offering operational briefings on ongoing national security matters to prospective presidential nominees and their staff.

The current Administration may wish to consider initiating information exchanges and collaborative efforts with the major party candidates in this, the earliest phase of the transition. Generally speaking, as the campaign for President progresses through the spring and leading up to the presidential conventions, relatively few leading candidates will emerge as viable contenders for gaining the nomination of a given political party. The current Administration could bring this

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[39] The field of presidential hopefuls may be winnowed down during this process with individuals emerging as the de facto party nominee prior to being officially acknowledged as such by the represented political party. 26 USC section 9002 defines a major party as a political party whose candidate for the office of President in the preceding presidential election received 25 percent or more of the total number of popular votes received by all candidates for such office.

[40] *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf].

relatively few number of individuals, and their designated senior national security staff, into briefings and discussions regarding national security issues that will likely be of concern to incoming Administrations. As stated by the former Homeland Security Advisor and Counterterrorism Advisor to President George W. Bush, "over the next 12 months the current Administration has a special obligation to have a far more robust transition plan in a post-9/11 world than we've ever seen before."[41]

An issue of concern to some presidential transition observers is the turnover of personnel occupying key positions in the federal government. There are over 7,000 federal government leadership, management, and support positions that are non-competitively filled by political appointees.[42] Some observers suggest that many of the 7,000 positions have, as part of their primary function, national security responsibilities. Should large numbers of political appointees depart in the months preceding the inauguration, the federal government would likely rely on Senior Executive Service personnel, career diplomats, senior military officers, and senior general-schedule employees for continuity of operations, leadership, and management of most national security related activities. While the occupation of senior policy positions by career government employees may not necessarily be a problem, a number of considerations arise in such an environment.

Appointing career civil servants to mid- to high-level positions in federal departments and agencies has been offered by national security observers as a way to provide continuity during presidential transitions.[43] This action may allow agencies to operate without interruption and provide the new congressionally confirmed or presidentially appointed agency directors with in-house expertise and historical context about the organization. As a proponent of converting some of the federal government's national security leadership positions to career civil servants, DHS Acting Deputy Secretary Schneider noted "it's important to realize that major terrorist attacks, both here and abroad, are often launched shortly before or after national elections or inaugurations. By promoting dedicated civil servants who've proven their mettle, we're not only building for the future, but are helping ensure that during the transition, as the perceived weakness grows, our Department is prepared."[44] While the promotion of civil servants into federal agency deputy positions is welcomed by many national security observers, others are concerned with

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[41] Frances Fragos Townsend, C-SPAN interview transcript, January 4, 2008. [http://www.c-span.org/special/Townsend.asp].

[42] *Policy and Supporting Postings*, Committee on Government Reform, 108th Congress, 2nd Session, November 22, 2004. This report, popularly referred to as "The Plum Book," lists by title, type of appointment, level of position, and, if known, the name of the individual occupying the position for all non-competitive appointees who are serving during a specific Administration. The report is produced during the first year of a new Administration. [http://a257.g.akamaitech.net/7/257/2422/05jan20051520/www.gpoaccess.gov/plumbook/2004/2004_plum_book.pdf].

[43] For example see, "Rossides Set to take TSA Into the Next Administration," Rob Margettta, *Congressional Quarterly-Homeland Security*, January 18, 2007.

[44] "Transition: Heads We Win, Tails You Lose," DHS Leadership Journal, January 19, 2008. [http://www.dhs.gov/journal/leadership/2008/01/transition-heads-we-win-tails-you-lose.html].

the selection process that supports this activity. Some are concerned that the individuals chosen for these positions are being selected by the current Administration's political leadership and that this may be a way for individuals with like-minded political philosophies to maintain control over an agency and pursue policies that are counter to a new Administration.[45]

Possible Role of National Security and Homeland Security Councils. The National Security Council (NSC) is the President's "principal forum for considering national security and foreign policy matters with senior national security advisors and cabinet officials,"[46] whereas as the Homeland Security Council's (HSC) purpose is to "ensure coordination of all homeland security-related activities among executive departments and agencies, and to promote the effective development and implementation of all homeland security policies."[47] The current Administration might consider establishing a joint advisory council that draws on the expertise and experience of both the NSC and HSC to assist with transition issues. This new body could be comprised of political and career staff from the NSC and HSC, outside experts with transition expertise, and members of the prospective president-elects national security team. Organizational responsibilities could include coordinating the presidential transition policies of agencies having national security missions. In assisting the transition process, the entity could attempt to ensure presidential transition period activities are coordinated in an interagency manner and are cognizant of the effects current efforts may have on a new Administration. If so desired by the President-elect, this organization could continue for a period of time into the next Administration. The council could have responsibility for advising the outgoing and incoming Presidents on possible policy implications of national security decisions made and actions taken during all phases of the presidential transition.

Office of the Director of National Intelligence. The Office of the Director of National Intelligence (ODNI) is responsible for assessing and reporting on risks to the Nation and has many organizations that directly or indirectly provide analytical and operational support to the President and senior members of the national security community. The following options are activities that the DNI could undertake to facilitate the federal government's understanding and ability to respond to risks during the 2008-2009 presidential transition.

- Require the National Intelligence Council (NIC) to lead an analytic effort to assess risk to U.S. interests during the presidential transition period.[48] This effort could result in the issuance of a classified and

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[45] Siobhan Gorman, "Homeland Security Handoff-Career Employees Move Into Portions Once Held By Political Appointees," *Wall Street Journal*, January 11, 2008.

[46] White House website, National Security Council. [http://www.whitehouse.gov/nsc/].

[47] White House website, Homeland Security Council. [http://www.whitehouse.gov/hsc/].

[48] The NIC is a "center of strategic thinking within the US Government, reporting to the Director of National Intelligence (DNI) and providing the President and senior policymakers with analyses of foreign policy issues that have been reviewed and coordinated throughout the Intelligence Community. The work ranges from brief analyses of current issues to

(continued...)

unclassified National Intelligence Estimate discussing the intelligence aspects of the upcoming transition.

- Establish a presidential transition Mission Manager to lead and coordinate all federal intelligence and law enforcement analytic efforts.[49]
- Enhance the National Counterterrorism Center's (NCTC) ability to receive and assess threat information.[50]
- Ensure the DHS' Office of Intelligence and Analysis receives relevant threat information in a timely manner to facilitate sharing activities with domestic federal, state, local, tribal, and private sector organizations.[51]
- Enhance the Interagency Threat Assessment Coordination Group's ability to coordinate and report federal and local threat information that may be related to the presidential transition.[52]
- Provide the nation's state fusion centers information and specific indicators of suspicious activity that may portend possible risks associated with the presidential transition.[53]

Incoming Administration Considerations and Options. During phase 1 of the transition, the presidential candidates and their assembled national security teams may be attempting to ascertain the current Administration's national security policies and activities and collaborate with it on issues that may affect the prospective presidency. To support these efforts, according to a senior Administration official, since the summer of 2007, the DHS has been working on a plan to prepare for the presidential transition.[54] While the details of this plan have not been made public, news articles have reported that the former Deputy Secretary of the DHS spent a great

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[48] (...continued)
(strategic) estimates of broader trends at work in the world." NIC website. [http://www.dni.gov/nic/NIC_home.html].

[49] ODNI Mission Managers are responsible for identifying and coordinating intelligence community expertise to address issues of national security interest. See generally, Kevin Whitelaw, "DNI-Mission Manager to Track North Korea," *United States News and World Report*, November 3, 2006.
[http://www.usnews.com/usnews/news/articles/061103/3dni.web2.htm?s_cid=rss:site1].

[50] The NCTC is responsible for combating the terrorist threats to the United States and managing the Nation's counterterrorism intelligence and strategic operational planning activities. NCTC website. [http://www.nctc.gov/].

[51] The Office of Intelligence and Analysis is responsible for using information and intelligence from multiple sources to identify and assess current and future threats to the United States. DHS website. [http://www.dhs.gov/xabout/structure/#1].

[52] The ITACG is a federal-state interagency organization with responsibility for "analyzing and assisting with the dissemination of federally coordinated homeland security, terrorism, and weapons of mass destruction information." Implementing Recommendations of the 9/11Commission Act of 2007, Sect. 210(d), P.L. 110-53.

[53] Fusion Centers: Issues and Options for Congress, John Rollins, Congressional Research Service, January 18, 2008.

[54] Conversation with senior administration official, December, 2007.

deal of time addressing transition-related issues.[55] In consideration of some work already being pursued at DHS, and in making new recommendations, the *HSAC Presidential Transition Report* proposed that the following issue areas be addressed during the Department's transition: threat, leadership, congressional oversight, policy, operations, succession, and training.[56] While many national security observers found the report to be a good effort at addressing transition related issues that require the focus of DHS, others argue that the report fell short of meeting the needs of all facets of the transition period.[57] Specifically, some national security observers argued that the options put forth were to narrow in scope and found the report lacking in the following areas.

- Too much focus on outgoing Administration efforts, and too little attention given to the activities related to preparing the incoming Administration for the challenges it will likely face;
- Too much emphasis on the administrative process of transitioning to a new Administration, rather than ensuring incoming Administration employees are cognizant of current and projected substantive homeland security issues likely to be faced during the first year of the Presidency;
- No discussion of how state, local, tribal, and private sector leaders with homeland security responsibilities should prepare for activities related to the upcoming presidential Administration transition;
- Little detail provided on how training, education, and exercise activities can be used to prepare incoming Administration officials with national security responsibilities to be better prepared to meet current and future challenges; and
- No discussion or apparent plans to use the members of the HSAC task force to provide assistance or support to incoming Administration homeland security leaders.[58]

What is unclear is whether the transition-related efforts pursued by DHS or recommended by the HSAC are being undertaken by other federal agencies with national security responsibilities. Also unclear is the role, if any, of non-federal entities with security responsibilities and members of the prospective presidential candidates national security teams, in participating in the current Administration's transition planning efforts. Current Administration officials responsible for

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[55] "Pressure Points for the Department of Homeland Security," *Congressional Quarterly - Homeland Security Weekly Edition*, October 22, 2007.

[56] While the HSAC exclusively efforts focused on assisting DHS transition efforts, many of the findings and recommendations are considered to be relevant to other organizations with national security responsibilities.

[57] It should be noted that the objective of the HSAC presidential transition report was to provide recommendations to the current DHS Secretary on matters related to homeland security. The report did not focus on issues of possible concern to the incoming Administration's nominee for Secretary of the DHS and does not address transition issues that may be relevant to other federal departments or agencies.

[58] Conversation with senior Administration official and members of the HSAC Task Force, March 2008.

interagency coordination activities have stated that they have, and will continue to, undertake a number of transition efforts designed for the next Administration's national security leaders.[59] The stated focus of these efforts include meeting with government and private sector experts who have presidential transition expertise, preparing briefings books and policy memos detailing the issues of most concern to the current Administration, and developing interagency policy coordination reference manuals.[60] Senior Administration officials also stated that, after election day and prior to the inauguration, the current Administration plans to offer the incoming Administration's national security team the opportunity to attend exercises focused on understanding and testing national security coordination capabilities.[61] While this idea may have merit, some argue that, in order for such an activity to be useful to the incoming Administration, early participation by members of the prospective President-elects national security team should be included in initial discussions of designing the parameters of these exercises. Some national security observers are concerned about the selection of the issues that the current Administration decides to use as the basis for the incoming Administrations exercise activities. Some suggest that the exercises should focus on catastrophic issues; nuclear terrorism (at home or abroad), major natural disaster, major offensive against deployed military forces, or some other significant national security incident. Others opine that the most likely non-catastrophic scenarios should be used as a basis of these exercises: increased threat environment, detonation of an improvised explosive device in the homeland, or some less significant incident. Regardless of the scenario, it does not appear that the goals of the exercises are to convey a sense of subject-matter expertise on a topic or design the perfect prevention or response plan for each possible incident that might affect United States interests. Rather, the training appears to be focused on assisting the incoming national security team members to understand United States national security capabilities and limitations and how the federal government's interagency team might coordinate activities in a heightened risk environment.

Congressional Considerations and Options. Some national security observers see congressional interest in and support of presidential transitions as a crucial aspect of orderly transfers of power in the executive branch. Others argue that Congress should confine its activities to simply providing the funds necessary to support the transfer of presidential authority and act quickly to confirm the President-elect's nominated senior leadership team. Regardless of the level of involvement in the presidential transition desired by the incoming and outgoing Administrations, congressional leaders have already voiced concern about the upcoming election period, and noted a desire to provide oversight and resources to support the change of Administrations.[62] Some suggest that, without early and substantive congressional

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[59] Conversation with senior Administration officials, December, 2007.

[60] Conversation with senior Administration officials, March, 2008.

[61] Ibid.

[62] Lieberman Calls on Senate Budget Committee to Adequately Fund FY2009 Homeland Security Needs, website of the Senate Committee on Homeland Security and Governmental Affairs, February 22, 2008.

(continued...)

involvement in presidential transition activities, foreign and domestic security risks may not be addressed in as full a manner as possible.[63]

Possible Congressional Activity. During phase 1, congressional support and inquiry may include

- appropriating resources to support outgoing and incoming national security collaboration efforts,
- holding classified and unclassified hearings and meetings with the both the incoming and outgoing Administrations to ascertain current transition activities,[64]
- submitting questions to the outgoing Administration to ascertain transition planning activities and the known and projected risks during the transition period, and
- providing a sense of the Congress resolution that notes the importance of effective and collaborative activities between the departing Administration and the incoming Administration.

Congress may also wish for the current Administration to provide

- the names of agency leaders responsible for making national security related decisions during the presidential transition period,
- briefings on the possible risks to the presidential transition process,
- information about the significant national security operations that will be ongoing during the transfer of power, and
- briefing about the Administration's efforts to engage and collaborate with prospective new Administration senior security officials.

Congress may also consider addressing the upcoming presidential transition with legislation requiring the outgoing Administration to refrain from activities that could commit the next administration to national security actions that would unnecessarily bind the hands of the next president.

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[62] (...continued)
[http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=C&PressRelease_id=1626&Month=2&Year=2008].

[63] For listing of congressional legislation addressing various aspects of national security considerations during presidential transitions see **Appendix C**.

[64] See letters, House Homeland Security Chairman Bennie Thompson requesting the DHS to provide details regarding the Department's presidential transition activities. Thompson Questions Chertoff on Administration Transition Plans, House Homeland Security Committee Website, February 7, 2008.
[http://hsc.house.gov/SiteDocuments/20080207172628-83729.pdf].
DHS Secretary Chertoff sent Chairman Thompson a letter in response where he answered some of the questions asked in the Chairman's letter, and claimed executive privilege regarding specific Department transition related activities. Response to Chairman Thompson, Congressional Quarterly Homeland Security, February 14 , 2008.
[http://homeland.cq.com/hs/flatfiles/temporaryItems/20080213-transition.pdf].

An area of apparent congressional interest is the near-term departure of knowledgeable political appointees and career managers during a presidential transition that may significantly hamper the federal government's ability to prevent and respond to issues of national security importance. Chairman Thompson of the House Homeland Security Committee recently observed that vacancies at the DHS are "an enormous security vulnerability should an attack occur during the upcoming presidential transition."[65] Early in the presidential transition period, Congress may choose to determine the executive branch departments and agencies with national security responsibilities, review the projected leadership succession plan, and obtain the names of the individuals who have the authority to undertake action in the event an incident occurs during the transfer of power.[66] In the months leading up to the 2008 presidential election, many national security observers expect that Members of Congress will increase the number of questions posed to current national security leaders about plans to support the presidential transition period and require more specificity with respect to current and future planning efforts.[67]

Phase 2: Selection of party nominee. Phase 2 of the presidential transition includes the time frame from the selection of individuals at the two major political party presidential nominating conventions to the day of the presidential election. This phase will last a few months as the political party conventions usually occur in the summer preceding the November election.[68]

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[65] "Many Vacancies at Homeland Security," *International Herald Tribune*, Brian Knowlton, July 9, 2007. In February 2008, DHS provided to the House Homeland Security Committee a letter regarding Departmental presidential transition related activities. The letter also contained a chart noting the occupancy status of leadership billets. Response to Chairman Thompson, Congressional Quarterly Homeland Security, 14 February, 2008. In response DHS provided a letter to the Chairman delineating senior Department positions that were filled, in the process of being filled, or currently vacant.

[66] "Critical Leadership vacancies Impede the DHS," House Homeland Security Committee, July 2007. [http://homeland.house.gov/SiteDocuments/20070709112923-81091.pdf]. [http://homeland.cq.com/hs/flatfiles/temporaryItems/20080213-transition.pdf].

[67] "I am interested to know if you are beginning to make plans as to how you convey a year hence this department to a new Administration. What steps you might take to lay the foundation to have, hopefully, a seamless transition." Senate Armed Services Committee Holds Hearing on the Defense Authorization Request for Fiscal year 2009. February 6, 2009. Question by Senator John Warner to Secretary of Defense Robert Gates. CRS note: the issue of transition-related activities during the upcoming election was not further addressed during this hearing.

[68] The Democratic National Convention will take place in Denver, CO, from August, 25-28 2008 and the Republican National Convention will take place in Minneapolis, MN, from September 1-4 , 2008. As with previous presidential party nominating conventions, these events will most likely be designated National Special Security Events (NSSE). While formal designation of an NSSE has yet to occur, many federal, state, and local planning activities are currently underway in the host cities to facilitate security prior, during, and after the conventions. *National Special Security Events Fact Sheet*, DHS website, August 9, 2003, last accessed February 6 , 2008.
[http://www.dhs.gov/xnews/releases/press_release_0207.shtm].

Outgoing Administration Considerations and Options. Many national security experts suggest that phase two may be the time when the specter of increased risks to the nation is heightened. Officials at all levels of government may become concerned about national security interests being affected during the time leading up to election day. It is possible that the current administration may consider undertaking military or law enforcement-related actions during this time to prevent a group from disrupting the election or threatening national security interests. Such actions, while possibly needed to safeguarded the nation's security interest, are often the source of frustration as some question the veracity of the threat information and the need for related preventative actions. Some see these activities as pursued purely for political purposes. Others argue that the current national security leaders are placed in an unenviable position of trying to protect national security interests during times of heightened political skepticism.[69]

With the field of potential presidential candidates likely reduced to two major party candidates, the outgoing Administration may wish to consider continuing the historical pattern of routinely providing presidential nominees and their senior staff information and briefings on matters of national security. Scholars who follow matters of national security note that, "in the pre-election period, it has proved feasible and desirable to provide intelligence briefings to candidates from both or even multiple political parties. For the most part this has been done and it should certainly be continued."[70]

Incoming Administration Considerations and Options. Section 7601 (c)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA (P.L. 108-458; 50 U.S.C. 435b)) allows each major party candidate for President to submit, before the date of the general election, requests for security clearances of prospective transition team members who will require access to classified information to carry out their responsibilities as a member of the President-elect's transition team. The Act further states that, to the fullest extent practicable, necessary background investigations and eligibility determinations of prospective transition team members shall be completed by the day after the date of the general election. During phase 2 of presidential transition activities, the prospective Presidents and their staffs will likely undertake efforts to fully understand current United States national security policies and related operational activities, and may request meetings with current Administration security officials. Completion of security clearance reviews for relevant personnel would greatly assist these efforts.

Congressional Considerations and Options. During phase 2 of the federal transfer of executive branch power, Congress may desire to provide resources to federal and non-federal security entities to facilitate the transition efforts,

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[69] "Could 9/11 Haven been Prevented," *Time*, Michael Elliott, August 2, 2002. In response to a question about why the Clinton Administration did not act on information that bin Laden was most likely behind the October 12, 2000 attacks of the USS Cole (three months prior to the end of the administration), a former senior aide stated, "If we had done anything, say, two weeks before the election, we'd be accused of helping Al Gore."

[70] John Halgerson, *Getting to Know the President: CIA Briefings of Presidential Candidates; 1952-1992*, Central Intelligence Agency, May 1996.

effectuate incident deterring activities, and shore up programs that may be required to respond to an incident.

Support to Non-Federal Entities with Security Responsibilities. Some national security observers are concerned that a lack of sufficient coordination and planning between federal and state security entities could affect the presidential electoral results should an incident of national security significance occur prior to or on election day.[71] In addition to providing funds to the incoming and outgoing Administrations to support transition related activities, including national security-related support provided by departments and agencies, Congress may wish to provide resources to non-federal entities responsible for safeguarding the homeland during the presidential transition. Just as all homeland security issues emanate from a local community, an incident occurring in the United States will initially be managed by local responders.[72] Whether it's a man-made incident or natural disaster, some scholars state that all levels of government may wish to consider the constitutional[73] and practical options[74] that would facilitate a transfer of power in the event a domestic security incident occurs prior to or on the day of election.[75] With a possibility of decision-making paralysis during phase two due to the departure of key national security personnel prior to the election, and acting directors assigned to positions of significant responsibility having uncertainty about agency roles and capabilities, federal prevention, response, and recovery efforts could be delayed.

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[71] United States Has No Plan for Election Delay Due to Terrorism, USA Today, Jim Drinkard, July 13, 2004.

[72] *National Response Framework*, January, 2008. Department of Homeland Security. [http://www.fema.gov/pdf/emergency/nrf/nrf-core.pdf].

[73] Some security experts are concerned about state government's ability to ensure federal elections occur in the event of an incident of national security significance. Should such an event occur on the day of the election, many options are available to allow the election to continue, including, keeping polling places open for an extended period of time or rescheduling the election on a different day. Some scholars suggest that, as "the United States Constitution explicitly delegates the authority to conduct presidential elections to the states," it can be argued that "states could create a procedure in advance that would include a provision for postponing an election, for designating particular officials to decide whether or not an election has to be postponed, and for setting out procedures for rescheduling the election." States Should Develop Procedures Now to Deal with Potential Terrorist Disruption of Presidential Election, University of Buffalo News Release, James Gardner, July 29, 2004.

[74] Depending on the location and nature of the incident, should a catastrophic event occur just prior to, or on election day, multi-jurisdictional decisions would be required regarding whether to reschedule the presidential election or allow for a rescheduling of the election in those localities affected by the incident. In order to abide by the Constitution and allow for the incoming Administration to have time to prepare for current and national security challenges, decisions regarding the presidential election would need to be made in a relatively quick manner. The 20th Amendment of the United States Constitution states that the terms of the President and Vice President shall end at noon on the 20th day of January following an election with the terms of their successors beginning thereafter.

[75] "States Should Develop Procedures Now to Deal with Potential Terrorist Disruption of Presidential Election," *University of Buffalo News Release*, James Gardner, July 29, 2004.

Should such a dynamic occur, greater burden will be placed on local homeland security entities to identify risks to local communities and respond to an incident or set of incidents.[76]

Phase 3: Election Day. Phase 3 of the presidential transition is the actual day of the presidential election.[77]

Outgoing Administration Considerations and Options. Consistent with the opportunities for public outreach efforts noted in phase 2, senior federal government leaders may wish address risks to the homeland on the day of election. In addressing any known or possible threats, senior federal officials might offer that citizen involvement in the democratic process is an effective way to demonstrate to those who wish to harm the nation that acts of intimidation will not affect the electoral process. Other actions the Administration might take to support the voting public's confidence in participating in the presidential elections include providing relevant threat information to state homeland security fusion centers in a expedited manner, working with state and local security officials to secure the nation's polling places, and increasing security for suspected targets in the United States to prevent or mitigate damage from attacks meant to disrupt the voting activities.[78]

Incoming Administration Considerations and Options. Resolving the presidential election in a timely manner is crucial to allowing the incoming Administration the time necessary to prepare for current and future national security challenges.[79] The longer the presidential election results are delayed the less time the current Administration has to assist the new Administration, President-elect

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[76] See generally, "Security Officials Gear Up for United States Elections," Carol Eisenberg, *Newsday*, March 8, 2008. When asked about the incoming and outgoing Administration's willingness to respect and listen to each other's (national security) concerns and priorities and the effect they may have on the ability to safeguard the nation, New York State's Deputy Public Safety Secretary Michael Balboni stated, "I would love to see a seamless transition, but I don't really have much confidence that's going to be the case, given all the partisan bickering." He further went on to state that he has told his team to be prepared for anything, and that "we have to continue operating no matter what happens at the federal level."

[77] Normally, the presidential election is a single-day event when the election is held with the results and determination of the President-elect to be ratified by the electoral college shortly thereafter. There are instances, such as the presidential election of 2000, where the determination of the winning candidate did not occur for approximately five weeks. "Given that a presidential election brings wholesale change in personnel, loss of time hampers a new Administration in identifying, recruiting, clearing, and obtaining Senate confirmation of key appointees." *9/11 Commission Report*, July 22, 2004, p. 215.

[78] It should be noted that any actions taken to safeguard and preserve the sanctity of the U.S. electoral process should recognize the tension between undertaking actions in the name of national security interests and acting in a manner that could be perceived as taking action to disenfranchise certain voters, disrupt the voting process, or negatively affect individual privacy and civil liberties.

[79] See generally, "Clock is Running on Presidential Transition Effort," *CNN*, Brooks Jackson, November 27, 2000.

personnel decisions are delayed, and, some security observers would see the U.S. as increasingly at risk due to the uncertainty in who will lead the country.

Congressional Considerations and Options. While the actual day of the presidential election may be uneventful, some observers argue that legislative oversight of transition activities of the current Administration taken to this point may key to ensuring the incoming Administration is as well prepared as possible. In enacting the Presidential Transition Act of 1963, Congress provided the current Administration significant discretion in deciding the level of support to be given to the incoming Administration. In recognizing the potential risks that may be associated with a presidential transition, the Act noted the need for an orderly transfer of executive power.

> The national interest requires that such transitions in the Office of the President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and it people. Accordingly it is the intent of Congress that appropriate actions be authorized and taken to avoid or minimize any disruption.[80]

Phase 4: Post election day to Presidential Inauguration. Phase 4 of the presidential transition includes the eleven-week time frame from the selection of the winning candidate to the date the President-elect is sworn in to office: inauguration day.

Unique Risks to Phase 4. National security considerations unique to this phase of the transition period include incidents of national security significance that are intended to take advantage of the perceived confusion in national leadership. Such incidents may be undertaken with the idea of attempting to have the outgoing and incoming Administrations at odds with one another with respect to presidential decision-making desires and to try and take advantage of perceived interagency coordination confusion.[81] With many of the prior Administration's political appointees stepping down from their positions and the as of yet to be named or confirmed new political appointees placed in their agencies, some are concerned about the ability of the federal government's ability to effectively recognize, prevent, or respond to an incident of national security interest. Some security experts are concerned that the remaining leadership in various departments and agencies, some of whom are presumably career civil servants that are serving in an acting capacity,

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[80] The Presidential Transition Act of 1963, Sec. 2, March 7, 1964. 3 U.S.C. 102.

[81] See also, DHS Secretary Chertoff's January 10, 2008, remarks to the DHS Homeland Security Advisory Committee: "We know that the period of transition is a period of heightened vulnerability, not because we have any specific piece of intelligence but because our observation over the last several years, including as recently as this summer when the new British Administration came in and faced attacks within a matter of days, underscores for us the fact that it is in the transition period, when people are doing the handoff, that there is a natural degree of confusion which creates an invitation to people to carry out terrorist attacks, or other damaging enterprises."

could fall victim to receiving conflicting direction from both the outgoing and incoming national security leaders.

Outgoing Administration Considerations and Options. While some presidential observers argue that there is little motivation for the staff of the outgoing Administration to cooperate with incoming Administration members, others suggest that, when it comes to matters of national security, the desire to protect U.S. interests and preserve the outgoing President's legacy should supersede adverse actions or lack of effort by those soon to depart the White House. It is often observed that the level of animus shown by the outgoing President to the President-elect will have a great deal to do with the cooperation the incoming Administration's transition planning team receives from individuals currently in positions of power. It has also been noted that transitions between Administrations of the same party appear to go smoother. The President's statements and actions with respect to the ongoing transition, specifically as it involves matters of national security, will set the tone and spirit of efforts taken by current staff to assist members of the incoming Administration.[82] Any actions or statements that are perceived to undermine the incoming Administration's policy views on national security matters could be seen as attempting to frustrate the transition process, and have negative security repercussions for the new Administration's efforts to conduct foreign policy or address national security-related issues.[83]

Some presidential historians see the primary role of the outgoing Administration during the post-election day period as facilitating a transparent and productive transition environment. The desire is that such actions will allow the incoming Administration to be in the best possible position to identify and respond to any significant national security issues that may arise soon after taking office. Such security-related strategic, operational, and policy transition-related activities can be offered in the form of briefings, written product, exercises to simulate day-to-day and crisis environments, and other aspects of collaboration and coordination awareness activities.[84] Activities that could facilitate an effective national security transition

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[82] "The chief impediment to establishing the proper links in the past has been the fact that at the highest levels of the policy agencies virtually everyone empowered to put these support arrangements in place has been a political appointee whose loyalties are to the outgoing Administration. Hence they have little at stake in supporting the incoming Administration." John Halgerson, *Getting to Know the President: CIA Briefings of Presidential Candidates; 1952-1992*, Central Intelligence Agency, May, 1996.

[83] See generally, "concerns about the volume, timing, and content of (an outgoing President's) executive orders may be heightened during presidential transition periods, particularly when the opposition party is posed to take control of the White House." CRS Report RS20731, *Presidential Transitions and Executive Orders*, by L. Elaine Halchin, pp. 1. See also, "some argue that outgoing Presidents should exercise restraint in the final months of their terms, while others would support an incumbent Administration's authority to continue to issue regulations through the end of its term." CRS Report RS20730, *Presidential Transitions and Administrative Actions*, by L. Elaine Halchin, pp. 4.

[84] See generally, DHS Secretary Chertoff references providing an exit memo to the next Secretary to note homeland security related concerns. Author unknown, "Homeland Security Cites Success," *United States News and World Report*, February 28, 2008.

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include the providing of timely and relevant national security information, the formation of a council specifically focused on national security issues, and expediting the security clearance process for incoming members of the President-elect's national security team.

Effective Use of Presidential Transition Funds. Prior to 1963, funds were not allocated by Congress to support the presidential transition and coordination between incoming and outgoing Administrations was generally limited to the administrative issues. Since the enactment of the Presidential Transition Act of 1963, Congress has provided the General Services Administration (GSA) funds to support the substantive aspects of the incoming and outgoing change of Administration activities.[85] For FY2009, GSA has requested $8.5 million to support presidential transition efforts. The requested funds include $5.3 million for staffing and training of incoming Administration employees; $2.2 million to provide President Bush with accommodations, a pension, office space and basic staffing, and $1 million to support executive branch briefing, training, and workshop activities for members of the new Administration.[86]

Historically, funds allocated for presidential transition activities have also been used for travel expenses, the hiring of consultants, and reimbursing federal agencies for various types of support.[87] As authorized by the Act, funds provided by GSA to the incoming Administration can only be used from the time period of the day following the general election to 30 days after the presidential inauguration. The Presidential Transition Act of 1963, an amended by the Act of 2000,[88] authorizes the GSA to provide a greater level of support to the President-elect and prospective senior leaders of the incoming Administration. The Act allows the GSA to coordinate briefings for incoming Administration leaders, provide communication devices to these individuals, and create a directory of legislative and administrative materials that would be useful for new Administration leaders.

Ensure the President-Elect is Aware of Issues that May Affect National Security Interests. During this phase of the transition, every effort should be taken to apprise the incoming President and the senior national security staff of current and

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[84] (...continued)
[http://www.usnews.com/blogs/news-desk/2008/02/27/homeland-security-cites-successes.html].

[85] Note: Funds authorized by Congress are only to be used to support post election presidential transition activities. All pre-election transition planning activities are privately financed.

[86] *Budget of the United States Government, Fiscal Year 2009*, Office of Management and Budget, General Services Administration, Page 1065.

[87] GSA, *Media advisory: Presidential transition fact sheet*, November 17, 2000. [http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=8169&channelId=-13259&P=XI&contentId=9025&contentType=GSA_BASIC].

[88] P.L. 106-293, October 13, 2000; 114 Stat. 1035

near-term threats that may affect United States interests.[89] While the new Administration may be aware of many strategic foreign policy and national security issues, activities relating to tactical, operational, and near-term threats will be the items most likely to surprise and negatively affect the new Administration soon after the inauguration. Consistent with section 7601 of IRPTA of 2004 and a recommendation contained in the 9/11 Commission report,[90] Congress requires the outgoing Administration to "prepare a detailed classified, compartmented summary by the relevant outgoing executive branch officials of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force." To assist with Administration national security-related transition efforts, the Act also requires the aforementioned summaries to be provided to the President-elect "as soon as possible after the date of the general elections."[91]

Establishment of a Presidential Transition National Security Coordination Council. The outgoing President may wish to consider creating a Presidential Transition Coordinating Council.[92] However, unlike the make-up of previous Councils, the current Administration may wish to involve members of the President-elect's national security team to participate interagency discussions and decision-making activities. In light of the national security issues the next Administration is likely to encounter and the possibility of increased risk to national security interests during the transition period, the Presidential Transition National Security Coordination Council could focus on current and projected issues that might affect policy formation and the short-term actions of the new Administration.[93] A joint Administration Presidential Transition National Security Coordinating Council could

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[89] See generally, "the CIA (now the responsibility of the Office of the Director of National Intelligence) must provide support not only to the incoming President but also to his senior (national security) assistants as well." John Halgerson, *Getting to Know the President: CIA Briefings of Presidential Candidates; 1952-1992*, Central Intelligence Agency, May, 1996.

[90] *The 9/11 Commission Report*, Chapter 13.4, of effort in Congress, pp. 422.

[91] The Intelligence Reform and Terrorism Prevention Act of 2004, Section 7601, P.L. 108-458, Enacted December 17 , 2004.

[92] Executive Order 13176, 5 U.S.C. 7301, Facilitation of a Presidential Transition, November 27, 2000. [http://nodis3.gsfc.nasa.gov/displayEO.cfm?Internal_ID=EO_13176_&search_term=13176_].

[93] In possible support for such a proposal former Homeland Security Advisor and Counterterrorism Advisor to President George W. Bush stated, "whoever the (incoming) President is has to have a national security team that can receive information and can begin to work together, literally from the time the election results are clear, through the inauguration. There's got to be a very seamless national security, homeland security transition. I've suggested that there ought to be a joint meeting between the national security officials of the current Administration and the incoming Administration and have a table-top exercise. A new Administration will have their own way of doing things, but they certainly deserve the benefit of understanding how we've gone about it during this Administration." Frances Fragos Townsend, C-SPAN interview transcript, January 4, 2008. [http://www.c-span.org/special/Townsend.asp].

- oversee the national security transition related activities of federal departments and agencies;
- facilitate national security focused training and orientation activities to prepare incoming appointees;
- discuss and collaborating on substantive national security issues that are currently underway or pending decision; and
- offer lessons learned from past policy and operational national security activities.

Expedited Security Clearance Processing for President-Elect Transition Team Members and Nominated Members of the New Administration. If not already occurring during an earlier phase of the transition period, soon after the election, it is common for the President elect, Vice President elect, and senior members of the incoming Administration's transition security team to start receiving classified intelligence briefings. For those individuals who do not already possess an active security clearance, the IRPTA of 2004[94] allows the President-elect to submit to the FBI or other appropriate agency the names of candidates to be nominated for high-level national security positions through the level of under secretary as soon as possible after the date of the general elections. Prior to the inauguration, the FBI or other appropriate agencies are responsible for undertaking the background investigations necessary to provide appropriate security clearances to individuals who have been designated by the President-elect as key administration officials. While the adjudication of security clearances is often a concern for individuals who have recently been hired into the federal government, it appears the FBI does have the ability to put forth the resources necessary to ensure senior national security officials are investigated and, where warranted, receive the approval to view classified material in an expeditious manner.[95]

Incoming Administration Considerations and Options. From a national security standpoint, phase 4 of the transition period is quite possibly the most hectic and exciting. With eleven weeks between election day and the inauguration ceremony, the outgoing and incoming Administrations have much work to accomplish. As the presidential transition period continues and the window for affecting the electoral process narrows, some see this phase as the most likely time for an enemy of the United States to undertake an action to attempt to throw the country into presidential decision-making chaos. With the campaigning and the election no longer a concern, the President-elect will have little time for celebration and reflecting on the past, as collaboration with the current Administration being seen as an essential element of future success. In this regard the HSAC Administration Task Force has proposed,

> the incoming and outgoing Administrations work closely together toward a shared commitment to ensuring a smooth transition of power. This is facilitated by a positive attitude and open mind in both incoming and outgoing Administrations, combined with the willingness to respect and listen to each

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[94] Section 7601 (f)(1).

[95] Terry Frieden, "FBI to Speed Presidential Transition Background Checks," *CNN*, November 27, 2000.

other's concerns and priorities. The same attitude must also characterize the behaviors of the senior career personnel who remain with the Department and will be counted on to ensure a smooth transition between Administrations.[96]

While numerous transition-related activities commence shortly after a presidential election, some national security experts suggest that none is more important than the efforts undertaken by the national security and intelligence communities to assist in providing information and context to the incoming President and the accompanying new national security team. Given current and projected security challenges, "the transition can no longer be taken for granted as a honeymoon [period] and significant attention needs to be provided to managing the transition."[97] While the incoming Administration has eleven weeks to prepare for assuming the presidency, many activities will need to occur.[98] The President-elect will formally announce leaders of the transition team; personnel will be interviewed to possibly occupy positions in the new Administration; and interaction with the outgoing Administration, Congress, and foreign leaders may occur. The incoming Administration may also:

- Select cabinet members, with the desire to formally submit to Congress, soon after the presidential inauguration (phase 5), a prioritized list of names of those individuals selected to fill key national security leadership positions.
- Select non-statutory members to be appointed to the National Security Council, Homeland Security Council, and others to serve as the President's and Vice-President's senior national security advisors. Generally, other senior agency positions are left vacant until the Senate has confirmed the President's nominee and the individual has joined the organization. While many senior leaders of the national security community require Senate confirmation,[99]

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[96] *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf].

[97] "Perils of Presidential Transition," Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and international Relations*, Winter/Spring 2001 edition. The authors further stated: " The United States is the sole remaining superpower, and other countries will look to it for leadership on many matters, whether the government is in a transition period or not."

[98] "Perils of Presidential Transition," Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition. The authors further stated: "The time frame of eleven weeks is simply inadequate for extensive planning in the policy or process areas. Presidential candidates need to do all they can to ensure an orderly, organized, and politically profitable transition. If Presidential candidates are successful (during the Phase for transition period), then their Presidencies can begin on a confident note. If they are unsuccessful, foreign policy (and national security) issues may overwhelm them and their presidency."

[99] Department leaders with significant national security responsibilities requiring Senate confirmation include the Secretaries of State, Defense, Energy, Justice, Treasury, and Homeland Security, the Director of National Intelligence and numerous intelligence community agency chiefs, and the Director of the FBI.

other senior political staff with significant national security responsibilities do not require Senate confirmation, including staff of the NSC and HSC.[100]

- Create a presidential transition website to seek out individuals with national security expertise who will be needed to meet the upcoming challenges and opportunities[101]
- Request current Administration political appointees to remain in their jobs through the inauguration and possibly the confirmation of new national security leaders to allow for continuity and collaboration.[102] Overlap in key positions is allowed for limited circumstances. While agencies cannot employ multiple individuals in the same job billet ("dual incumbency"), options exist to temporarily allow both outgoing and incoming Administration personnel to be assigned to an organization.[103]
- Select career federal employees with significant national security expertise to be detailed to the transition team.[104] Specific focus

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[100] Of note, it should be recognized that, while the NSC does maintain a cadre of full-time career employees that will presumably stay in place during a presidential transition. It appears the HSC is primarily comprised of political appointees with few career detailees from cabinet level agencies. The decision making ability and effectiveness of policy and operational direction provided to departments and agencies by the HSC may be lessened due to fewer numbers of permanent personnel and the possibility of a lack of expertise to address the various aspects of homeland security related issues. Interestingly, security experts are divided on whether future Administrations may see the need for a separate NSC and HSC. Many national security experts think that homeland security is a subset of national security. Future Administrations may only establish a NSC with an office responsible for addressing the nexus of national security and homeland security issues contained therein.

[101] "Bush Campaign Creates Website for Presidential Transition," December 4, 2000, *CNN*.

[102] While it is customary for the current Administration's political appointees to resign prior to the new President taking office, specifically if the incoming Administration is of a different political party, "it is common for the incoming Administration to ask certain persons to remain in their jobs during the transition to ensure needed continuity during the initial period of staffing." United States Office of Personnel Management, Transition to a New Presidential Administration, OPM website. [http://www.opm.gov/transition/trans20r-ch1.htm].

[103] To support national security continuity efforts and to allow incoming Administration officials to have the benefit of the knowledge and experience of their departing counterpart, OPM offers the following options: an agency can establish a different job billet to employ the designated successor for a brief period of time, OPM may authorize the use of SES limited appointment authorities for short periods of time for temporary executive positions, and agencies may establish temporary transition Schedule C positions for non-executive positions to help with transitions. United States Office of Personnel Management, Transition to a New Presidential Administration, OPM website. [http://www.opm.gov/transition/trans20r-ch1.htm].

[104] "Any employee of any agency of any branch of Government may be detailed to the office of either the President-elect or the Vice-President-elect on a reimbursable basis and with the consent of the lending agency head." United States Office of Personnel Management, Transition to a New Presidential Administration, OPM website.

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given to members of the military, intelligence community, and diplomatic corps with expertise in the policy priorities of the new Administration.

- Request substantive briefings on policies and programs of concern to assess historical challenges prior to deciding to revise or eliminate current activities.

Some security observers are concerned about a perceived leadership void that can occur during the transition period when the outgoing Administration has constitutional authority, but diminished influence, and the President-elect has much influence, but no authority.[105] However, actions can be taken by the outgoing President and President-elect to ameliorate any suspected appearance of presidential decision-making ambiguity. Issues of foreign policy were hotly debated during the presidential campaign of 1992. After the general election, in which Bill Clinton was elected President, many wondered if the President-elect would attempt to initiate foreign policy changes prior to the inauguration. During the transition period, President-elect Clinton addressed these concerns by stating, "President Bush is to be viewed as the sole voice of United States policy and that the greatest mistake any adversary could make would be to doubt America's resolve during this period of transition."[106]

Also during this phase of the transition period the incoming Administration may wish to discuss prospective strategy and policy changes to national security programmatic activities with Members of Congress. If the new Administration desires to announce any new initiatives or changes to existing national security policy or programs, much work will have to be done between the time of the inauguration and the time in which the budget will need to be transmitted to Congress. After the inauguration, the new Administration will have approximately two weeks to submit to Congress a revision of the fiscal year budget proposal submitted by the previous Administration.[107]

Congressional Considerations and Options. During phase 4, Congress has required some agencies, such as DHS, to have a current senior departmental official "develop a transition and succession plan to be presented to the incoming Secretary and Under Secretary for Management to guide the transition of management functions in a new Administration."[108] The deadline for submitting the plan is the first of December of the year in which a presidential election occurs. While this legislative requirement appears to provide agency transition guidance that some security experts argue was lacking during previous transfers of power, others

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[104] (...continued)
[http://www.opm.gov/transition/trans20r-ch1.htm].

[105] CRS Report RL30736, *Presidential Transitions*, by Stephanie Smith.

[106] Bill Nichols, "Clinton Sets New Sights." *USA Today*, November 5, 1992, p. A1.

[107] CRS Report RS20752, *Submission of the President's Budget in Transition Years*, by Robert Keith.

[108] Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, Sec, 2405.

see potential problems in the manner in which it will be implemented. For the current Administration's transition plan to be of strategic substantive value, some observers recommend that the individual responsible for drafting the plan should be a career civil servant with a multi-year term appointment. This requirement would allow the main author and proponent of the transition plan to remain with the agency for a prescribed period of time and provide continuity and advice to a new Administration.[109]

Traditionally, Congress is out of session during much of the phase 4 transition period and may also be undergoing a change in membership. Thus congressional oversight activities during this phase are uncommon. However, some security experts contend that given the current risks to U.S. national security interests, a special session of Congress may be beneficial to ensuring the two Administrations are properly coordinating on national security-related issues. Once Congress returns to session and the new members are sworn in, little time is available prior to the presidential inauguration to inquire about past actions and recommend changes. A special session of Congress might be considered soon after the election to ascertain what the outgoing and incoming Administrations will do with respect to transition-related activities. If still in session during the later stages of phase 4, Congress may wish to hold additional hearings to assess the administration's progress on stated national security transition-related activities. Congressional concerns during this phase might include the status of incoming and outgoing Administration collaboration efforts, how resources are being expended and toward what purpose, and to ascertain the incoming Administration's national security foreign and domestic policy goals. Congress may also wish to make itself available during phase 4 to address resource requests that emanate from the two Administrations should an incident of national security significance occur.

Phase 5: Presidential Inauguration: Placement of New Administration Officials and Formation of New Policies. Phase 5 of the presidential transition includes the time frame from the presidential inauguration to a period when the new Administration has its senior national security leaders confirmed, designated other non-congressionally confirmed political appointees and advisors in place, and established and implemented new national security policies. This phase can last a few months to well into the first year of the presidency.

Unique Risks to Phase 5. National security considerations unique to this phase of the transition period would include incidents of national security significance that are intended to subject the new Administration to a crisis and test the actions and policies of the new leaders.[110] An incident of national security significance could occur while the new Administration's national security leadership positions are vacant; personnel have been confirmed, but are new to their respective

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[109] Rob Margetta, "Better Management Key to Transformation at Homeland Security," *Congressional Quarterly*, December 14, 2007.

[110] "As recent history has shown, the most vulnerable period is 30 days prior to the election through six months after the change in Administrations." *Report of the Administration Transition Task Force*, Homeland Security Advisory Council, January, 2008. [http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf].

positions; or national security policies are being developed.[111] Entities that wish to affect United States national security interests may see this time period as uniquely vulnerable, with the President and newly assigned staff being perceived as ill-equipped to handle a domestic or foreign national security crisis.

Departed Administration Considerations and Options. While the outgoing Administration will no longer have constitutional responsibility or authority for safeguarding the country, the actions that were or were not taken prior to the presidential inauguration will be a part of the departing President's legacy. The "Protective Power"as referenced in the presidential oath "has been interpreted as investing the President with expansive authority to take actions necessary to protect the property and personnel of the United States from attack or other dangers."[112] Some scholars argue that the President's duty to protect the country is not limited to the time in which the office was occupied with responsibility extending into the next President's term to a point at which the new Administration has had reasonable opportunity to organize itself and formulate national security policies. As such, any "failure to alert and cooperate with the incoming President with respect to imminent dangers facing the nation directly exposes the country to substantial risk,"[113] and may negatively affect the previous President's legacy.

Similarly, the outgoing President should be cautious of any activity taken in the last few days of the Administration or after the inauguration that could hamper the incoming Administration's transition efforts. Such actions might include

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[111] For example, less than five weeks after the first inauguration of President Clinton, February 26, 1993, the first attack on the World Trade Center occurred. Whether the attacks were coincidentally timed with the new presidency or the perpetrators perceived an opportunity to test the new Administration is a debate among national security experts. Also, less than eight months after President George W. Bush was sworn in as the nation's forty-third President Al-Qaeda launched a series of attacks on New York City and the Pentagon in Arlington, VA, with a fourth hijacked plane crashing in Shanksville, PA. At the time of the attacks, 227 of 508 (45%) of President Bush's top political positions had been filled, with 106 of the individuals in these positions on the job for less than eight weeks. Lowell Feld, "The Intelligence Community Could Not Connect the Dots, Was the Lack of Political Appointees On the Job a Reason Why?," *War Politics and Literature*, 2002.

[112] In re Neagle, 135 United States 1 (1890); Henry P. Monaghan, *The Protective Power of the Presidency*, 93 Colum. L. Rev. 1, p. 14-15 (1993).

[113] "The Law of Presidential Transitions," *Boston School of Law Working Paper*, William P. Marshal and Jack M. Beerman, 2005. The authors went on further to state: "The new Administration cannot be expected to sift through complex information, much of it classified and much of it conflicting, regarding potential dangers to the United States upon taking office and still be able to craft an effective response. Reliance on the advice and direction of the previous Administration is absolutely necessary to protect the United States An outgoing President's refusal to provide that [national security related] information and warn his successor as to potential dangers contradicts his protective duties. Accordingly, the outgoing President's decisions whether or not to brief his successor on domestic and international threats to national security are not optional. "To preserve, protect, and defend" means cooperating to the fullest degree to protect the United States against impending danger."

- establishing or revising national security organizations, policies, or programs that are clearly counter to the positions of the incoming President;
- interacting with foreign leaders that may have the perception of attempting to portray future U.S. foreign policy desires;[114] and
- undertaking any steps that would have a negative effect or produce unintended national security consequences.

New Administration Considerations and Options. The newly elected President, who will wish to quickly set an agenda and move toward implementing goals stated during the campaign, may find the issuance of executive orders and other presidential directives as a way to distinguish new policies from the outgoing President. This may be particularly desirable when outgoing and new President are from different parties, and such changes might offer the appearance of instituting change in the early days of the new Administration.[115] Likewise, the new Administration may wish to quickly promulgate new national security policies and strategies for departments and agencies that have national security responsibilities. While the issuance of new strategies and policies may not, in and of themselves, make the country safer, they will convey the new Administration's national security priorities and provide the nation an opportunity to assess the new President's intentions. In undertaking efforts to memorialize the new President's national security policies, many national security observers suggest that the new President may be well served to proceed cautiously and take the time to review and assess current policies,[116] and listen to the views of outgoing political officials and remaining career government, military, and diplomatic personnel prior to implementing significant changes in current strategies or operations.[117] To support continued transition efforts and to be afforded the opportunity to learn of the previous

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[114] Ibid. "The President must be aware and solicitous of the likely directions that the new President may take on foreign affairs issues and not work in a manner that may undermine the ability of the new President to achieve those goals."

[115] CRS Report RS20731, *Presidential Transitions and Executive Orders*, by L. Elaine Halchin.

[116] Regardless of the previous experience of the President and assuming best efforts are expended to support the transition by outgoing Administration officials, the new President's thoughtful decision-making efforts could encounter the challenges of a "three-part syndrome; (1) being caught by surprise by events in the domestic or foreign arena, (2) attempting to demonstrate a capacity to lead resulting in the President making hasty decisions, and (3) [perceiving] the need to demonstrate that the Administration is superior to the previous by quickly reorganizing organizations and enacting new policy." "Perils of Presidential Transition," Glenn P. Hastedt and Anthony J. Eksterowicz, *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring 2001 edition.

[117] Responding to a reporter's questions about the upcoming presidential election and possibly advice given to the candidates to not get "locked-in" to a plan for Iraq, Lt. General Odierno stated that, "from a military perspective do an assessment and ask the military leaders involved to give you the current assessment and then make a decision on where we want to go in Iraq; what are their goals in Iraq, what is their policy, and what do they want to achieve." DoD Website News Transcript, DoD News Briefing with Lt. Gen. Odierno from the Pentagon Briefing Room, Arlington, Va., March 4, 2008.

Administration's national security policy and program successes and failures, the new President may wish to have prior Administration officials maintain their security clearances and routinely receive briefings regarding current and emerging threats to United States interests.[118]

Congressional Considerations and Options. Some presidential historians suggest that legislative inquiry and support during the incoming Administration's transition efforts is crucial if Congress' is to provide effective oversight during the new presidency. Professor Williams of the Massachusetts Institute of Technology argues that, "the coming transition to a new Administration and Congress opens a window for reform of the organizational structures and processes that surround planning and resource allocation for homeland (and national) security in the executive branch and Congress."[119] While the transition is an opportunity for Members and staff to interact and have substantive discussions regarding the national security policies and goals of the new Administration, some presidential historians note that "transitions are hit-and-miss affairs that handicap the new President in shifting from campaigning to governing and create problems for the Congress."[120] Should the new Administration not make an effort to avail Congress of its foreign and domestic security policy intentions and if Congress does not undertake an active role in understanding the policies and direction of the new Administration, both entities might encounter frustration as neither will feel it is receiving the necessary support to fully uphold its responsibilities. As noted by Mr. Ink, President Emeritus of the Institute of Public Administration, new appointees are in danger of stumbling during the first crucial weeks and months of an Administration, not so much from what they are striving to do, but from how they are functioning and a lack of familiarity with the techniques that are most likely to get things done in a complex Washington environment."[121] In overseeing and supporting the new Administration's national security objectives, Congress has a number of activities it can undertake.

Prioritize Hearings for Nominated Senior Executive Branch Leaders Who Have Significant National Security Responsibilities. A congressional authority that is often noted for making it possible for the incoming Administration to be in the best position to address national security issues shortly after inauguration is to quickly confirm qualified key political appointees.[122] While Congress will also be

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[118] If desired, all former Presidents and Vice Presidents are afforded the opportunity to receive classified briefings. Some suggest the new administration might benefit from other senior national security officials retaining their security clearance and being granted continued access to classified information.

[119] Cindy Williams, "Strengthening Homeland Security: Reforming Planning and Resource Allocation," *2008 Presidential Transition Series*, February, 2008 (IBM Center for the Business of Government).

[120] Dwight Ink, Committee Report, *Statement to the Senate Committee on Government Affairs Regarding the Presidential Transition Act of 2000*, July 18, 2000.

[121] Ibid.

[122] While there is no proscriptive order in which the incoming President should nominate,

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undergoing a transition having just been sworn in two weeks prior to the presidential inauguration, some analysts see this as the ideal time for the new Congress to meet with the incoming President's national security leadership team and put in place a foundation to allow for expedited confirmation hearings soon after the President takes the oath of office. As noted by a recommendation of the 9/11 Commission Report of 2004:[123]

> Since a catastrophic attack could occur with little or no notice, the federal government should minimize as much as possible the disruption of national security policymaking during the change of Administrations by accelerating the process for national security appointments. We (9/11 Commission) think the process could be improved significantly so transitions can work more effectively and allow new officials to assume their new responsibilities as quicky as possible.

Consistent with recommendations contained in the 9/11 Commission report, IRPTA of 2004[124] provides a sense of the Congress regarding an expedited consideration of individuals nominated by the President-elect to be confirmed by the Senate. The Act further holds that the Senate committees to which these nominations are referred and the full Senate should attempt to complete consideration of these nominations within 30 days of submission by the newly elected President. In undertaking this responsibility, many security observers see a healthy tension between Congress' desire to act quickly to hold confirmation hearings and the need to ensure that individuals with the relevant national security background and experience have been put forth by the President-elect. In many cases, highly qualified career Senior Executive Service personnel will be in an acting capacity for some of these Senate confirmed positions. Thus the perceived urgency to fill these positions quickly may be negated while Congress ensures individuals capable of meeting the demands of the position are selected and confirmed. Congress may also

- work with the new Administration to understand its national security priorities and where applicable have the changes in policies and programs reflected in the 2009 budget;
- pass FY2009 appropriations without undue delay;
- quickly assign new and existing Members of Congress to committees focusing on national security issues to allow these individuals to receive briefings and understand the issues for which they have oversight;
- hold hearings comprised of national security experts to gather ideas on prospective U.S. national security policies and goals; and

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[122] (...continued)
or Congress should hold hearings regarding, new senior Administration officials with national security responsibilities, a review of the cabinet positions noted in the Presidential Succession Act of 1947 (3 U.S.C. Section 19) and the previous administration's National Security Council and Homeland Security Councils may provide some assistance in prioritizing personnel placement activities.

[123] 9/11 Commission Report, July, 2004, Chapter 13, p. 422.

[124] Section 7601(b).

- hold hearings soon after the new Administration has produced its national security strategies, policies, and presidential directives to discuss objectives and determine presidential priorities.

Conclusion

While the first presidential transition in the post 9/11 era is of concern to many national security observers, risks during the transition period may be minimized with proactive executive branch and congressional actions. It is likely the new President will face many national security-related challenges upon taking office. Whether the enemies of the United States choose to undertake action counter to the nation's security interests or the new President experiences a relatively peaceful period during the transition, the new Administration's recognition and response to these challenges will depend heavily on the preparation and education activities that have occurred prior to the inauguration. While it may be impossible to stop an incident of national security significance during the presidential election process, there are steps that can be taken during all phases of the transition to lessen the risks to the nation. Such actions may be helpful in preparing the nation for possible risks to the presidential election period and mitigating the effects of acts taken by those that wish to cause confusion during the transfer of presidential power. The transition-related actions or inactions of the outgoing and incoming Administration may have a long-lasting affect on new President's ability to effectively safeguard United State's interests and may also effect the legacy of the outgoing President.

Appendix A. Recent Military Operations Occurring During United States Presidential Transition Periods[125]

Presidents	Military Operations
Carter to Reagan	In the course of a secret operation to rescue the American hostages held in Iran, a collision between a helicopter and a transport aircraft caused the deaths of eight United States servicemen on April 25, 1980.
Reagan reelection	United States forces invaded the Caribbean island of Grenada in October 1983.
Bush to Clinton	President Bush announced United States participation in the enforcement of "no-fly" zones in Iraq on September 16, 1992.
Bush to Clinton	United States armed forces were dispatched to Somalia to participate in a United States-led United Nations response to humanitarian crisis. President Bush reported the deployment to Congress on December 10, 1992.
Clinton transition	President Clinton, on January 21, 1993, stated that his administration would continue the Bush Administration's Iraq policy.
Clinton transition	In response to an unsuccessful assassination attempt on former President Bush by Iraqi agents, the United States launched missiles targeting the Iraqi intelligence service headquarters on June 26, 1993.
Clinton reelection	President Clinton, on December 21, 1995, notified Congress that over 20,000 members of the United States armed forces would be deployed in support of the NATO forces implementing the Bosnian peace agreement.
Clinton reelection	United States armed forces were deployed in Liberia in order to evacuate United States citizens and third-country nationals who had taken refuge from the deteriorating security conditions in the United States embassy, and to defend the embassy. President Clinton notified Congress of the deployment on April 11 and May 20, 1996, noting that the deployment would continue until the security situation improved.
Clinton reelection	United States military forces were dispatched to the Central African Republic to provide enhanced security for the United States embassy in the capital, Bangui, and evacuations as necessary. The deployment was reported to Congress on May 20, 1996.

[125] Table prepared by George Mangan, Information Research Specialist, Knowledge Services Group, CRS, March 13, 2008. This table is based on deployment information contained in CRS Report RL32170, *Instances of Use of United States Armed Forces Abroad, 1798-2007*, by Richard F. Grimmett.

Presidents	Military Operations
Clinton to Bush	United States military operations against Iraqi air defense forces continued in 1999 and 2000 in enforcement of the declared "no-fly" zones.
Clinton to Bush	President Clinton notified Congress on January 19, 1999, that United States forces continued to participate in the NATO-led stabilization force in Bosnia, in numbers reduced from the original deployment.
Clinton to Bush	President Clinton, on February 25, 1999, notified Congress of the continued deployment of United States military personnel in Kenya following the attack on the United States embassy there in August 1998.
Clinton to Bush	United States and NATO forces began a campaign of air strikes against Yugoslavia on March 24, 1999, in response to Yugoslavia's campaign of repression against ethnic Albanians in Kosovo. Additional United States forces provided humanitarian relief support from bases in Albania and Macedonia.
Clinton to Bush	A limited deployment of United States forces was sent to support the U.N. multinational force sent to restore peace in East Timor. President Clinton notified Congress on October 8, 1999.
Clinton to Bush	President Clinton notified Congress on October 14, 2000, of the deployment of approximately 100 armed forces personnel to provide assistance in Yemen in the wake of the terrorist attack on the *USS Cole*.
Bush reelection	Military operations against Iraq began on March 19, 2003, President Bush reported to Congress on March 21st. He notified Congress on March 20 of the continuation of a number of military operations in the war on terrorism, including actions against al-Qaeda militants in Afghanistan, cooperative operations with Pakistan in the border areas, maritime antiterrorist operations, and training in counterterrorism for other cooperating nations' armed forces. He also notified Congress on May 14, 2003 of continued United States deployment in Kosovo and adjoining countries, and on July 22nd of continued deployment in Bosnia.
Bush reelection	President Bush reported on February 25, 2004, that a combat-equipped force had been sent to Haiti to augment security forces at the United States embassy and to protect United States citizens and property. Additional forces were dispatched within two weeks, partly to make preparations for the arrival of a U.N. multinational force.

Appendix B. Representative Examples of Incidents of National Security Interest Occurring During Periods of Governmental Transition[126]

Appendix B provides a representative listing of incidents of terrorism that have occurred during times of transitions of heads of state. The criteria for inclusion in this chart was based on the aggressor's real or perceived intent to change the course of an election or affect future policy of the country during a time of transfer of presidential authority. It should be noted that, barring relatively few examples, there is little evidence that incidents of national security significance were planned for a specific date prior to an election. While varying levels of planning occur prior to an incident, as with most criminal acts, the leader directs, or the individuals act, when opportunity for the best possible outcome is presented. With respect to times of presidential transition, the most optimal time for an attack, for a variety of reasons, may not present the best opportunity for the aggressors to attempt an incident. As such, the potential time frame for risk is present during any phase of the transition, with the effects of an incident differing based on the location of the event, the proximity to the election date, and the reaction and actions of the U.S. national security enterprise.

Many security experts believe that some of the incidences noted below had a significant impact on the outcome of the country's national election or subsequent policies. National security observers are fearful that terrorists groups may see some of the incidences as successes and feel embolden to attempt to affect future national transfers of power by launching attack just before the election. These groups may see the timing of such an action as a viable strategic opportunity to further the goals of their cause. However, it should be noted, other security experts suggest that incidences of national significance taken prior to a national election could produce a reaction that is counter to the long-term goals of the terrorist group.

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[126] Prepared by George Mangan, Information Research Specialist, Knowledge Services Group, CRS, February 28, 2008.

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Iran Hostage Crisis "Radical students" stormed the United States embassy in Tehran and took hostage diplomats, other staff, and Marine guards. The incident did not initially appear intended to affect the upcoming United States presidential elections, but, ultimately, as the standoff lengthened, was generally agreed to have had a significant influence on the electoral contest between President Jimmy Carter and Ronald Reagan.[127]	United States, Islamic Republic of Iran.	November 4, 1979- January 20, 1981. Pre- and post-election; hostages were released as Ronald Reagan was sworn in as President.
Northern Ireland, 1982 Violence in opposition to October 20, 1982, elections to form a Provincial Assembly caused more than 30 deaths by early December, including those of three Royal Ulster Constabulary policemen killed when their vehicle drove over a remote-controlled bomb.[128]	United Kingdom, Irish Republican Army, militant Protestant groups.	1982. Transition period following elections to Provincial Assembly.

[127] Mickolus, Edward F., *Transnational Terrorism: A Chronology of Events, 1968-1979,* Westport, Connecticut, Greenwood Press, 1980, as updated in subsequent editions. During the Presidency of Jimmy Carter, Iranian militants stormed the United States Embassy and took 66 Americans captive. While many national security experts suggest the taking of hostages in the United States Embassy in Iran in November 1979 was in response to United States policies, it does not appear that this activity was a direct attempt to affect the United States presidential election of 1980. However, many national security observers suggest the hostage taking actions by the Iranian militants, coupled with the duration that the hostages remained in captivity (444 days) and the United States military's failed rescue attempt in April of 1980, was a contributing factor to President Carter not being reelected. On January 20, 1981, Ronald Reagan was inaugurated President and the hostages were released later that day.

[128] "A Vicious Tribalism' Alarms Ulster," *New York Times*, October 31, 1982; "Flight Of Talent Called Peril To Ulster's Future," *New York Times*, December 13, 1982.

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Bombing of Marine Barracks, Beirut, Lebanon A truck bomb destroyed the compound housing United States Marines near Beirut airport, killing 242 Americans. Islamic Jihad claimed responsibility for the attack. The Reagan Administration's Lebanon policy quickly became a campaign issue due to questions raised by Democratic presidential candidates.[129]	United States, Islamic Jihad.	October 23, 1983. Pre-election.
Bioterrorism in the United States Disciples of Bhagwan Shree Rajneesh deliberately contaminated salad bars in ten restaurants with salmonella, causing over 700 people to become ill. The plot was designed to put out of action enough voters so that Rajneesh's followers could swamp the polls and elect an all-Rajneeshi slate of candidates, thereby taking over the county government, with which the Rajneeshis had disputes.[130]	Wasco County, Oregon, followers of Bhagwan Shree Rajneesh.	September 9, 1984. Pre-election.

[129] "Democrats Expect To Campaign On Lebanon Issue," *New York Times*, October 25, 1983.

[130] Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Assassination of President of Lebanon President Rene Moawad was killed when a remote-controlled bomb detonated as his car passed over it. Twenty-three other persons were also killed.[131] He had held office for only 17 days.	Government of Lebanon, unknown parties.	November 22, 1989. Transition period.
Assassination of Rajiv Gandhi Former Indian Prime Minister Rajiv Gandhi, campaigning for his Congress Party in national elections, was killed, along with 14 others, when a female suicide bomber detonated herself next to him at a campaign appearance.[132]	Congress Party (India), Liberation Tigers of Tamil Eelam (LTTE).	May 22, 1991. During national voting period.
IRA Attacks in Britain The Irish Republican Army conducted a bombing campaign in Britain explicitly aimed at influencing the upcoming general election: "These attacks signal our determination and resolve to focus the government's attention on their war in Ireland. As they face into a general election, our volunteers will continue to force their occupation of part of our country onto the British political agenda."[133]	United Kingdom, Irish Republican Army.	March 1992. Pre-election.

[131] "Lebanese Lawmakers Meet To Plan Election Of Slain President's Successor," *New York Times*, November 24, 1989, p. A3.

[132] Mickolus, Edward F., *Terrorism, 1988-1991,* Westport, Connecticut, Greenwood Press, 1993.

[133] "I.R.A. Is Vowing Further Attacks In Effort To Disrupt British Election," *New York Times*, March 2, 1992.

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Omagh Bombing, Northern Ireland, 1998 News reports cite speculation that a bomb attack that killed at least 28 people and wounded over 200 was carried out by the I.R.A. splinter group "Real I.R.A." in an attempt to wreck the peace agreement overwhelmingly approved by referendum in both Northern Ireland and the Irish Republic.[134]	United Kingdom, "Real I.R.A."	August 15, 1998. Post-referendum transition period.
Russian Apartment Building Explosions Massive explosions caused heavy casualties in nighttime attacks on apartment buildings, one in Dagestan, two in Moscow, and another in Volgodonsk. The four blasts over a 16 day period killed approximately 300 people.[135] Government officials blamed Islamic extremists for the attacks, which occurred in the last year of Boris Yeltsin's presidency, shortly after the appointment of Vladimir Putin as Prime Minister.	Russia, Islamic extremists from the Caucasus area (as stated by Russian authorities).	September 1999. Transitional period leading up to presidential election.

[134] "The Day After In Ulster Town: Now 'It's Back,'" *New York Times*, August 17, 1998, p. A1.

[135] "Russia's War Hits Home," *Newsweek*, September 27, 1999.

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Assassination of State Assembly Member, Threats Against Elections A Pakistan-based group claimed responsibility for the assassination of a member of the new Jammu and Kashmir Assembly, Abdul Aziz Mir. During the elections for the Assembly, which were held the previous fall, the group had threatened to kill anyone participating in the campaign.[136]	India, Save Kashmir Movement.	December 20, 2002. Pre-election and transition period.
Suicide Bombing of Commuter Train, Russia A suicide bomber detonated over 20 pounds of explosives aboard a commuter train in the Stavropol region (near Chechnya). Forty-seven persons were killed and 155 injured, many seriously. The attack took place two days before national elections.[137]	Russia, unknown parties (Chechen independence leader Aslan Maskhadov denied responsibility).	December 5, 2003. Pre-election.

[136] Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.

[137] Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Bombings of Commuter Trains, Madrid, Spain Ten backpack bombs set off in crowded commuter trains killed 191 people and injured nearly 2,000. Although the government claimed that the Basque separatist group ETA was responsible, many Spaniards believed that the attack was in retaliation for their government's support of the United States' actions in Iraq, and voted into office the Socialist Workers' Party, whose leader, Jose Luis Rodriguez Zapatero, had promised to withdraw all 1,300 Spanish troops from Iraq.[138]	Spain, al-Qaeda affiliates.	March 11, 2004. Pre-election.

[138] Source: Praeger Security International's Terrorism, Homeland Security, Strategy database.

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Attempted Bombings of London Nightclub District and Glasgow Airport Two men believed to be hardline Islamists carried out two bombing attempts early in the transition period between the governments of Prime Ministers Tony Blair and Gordon Brown. The first was the attempted bombing of an area of nightclubs in London's West End, using fuel bomb devices placed in two Mercedes Benz automobiles. The terrorists' remote detonation attempts failed and the bombs were disarmed. In the second incident, the attackers rammed a blazing Jeep Cherokee loaded with extra fuel into the terminal at Glasgow airport. The driver, Kafeel Ahmed, an engineer, later died of burns in hospital. The passenger, identified as Dr. Bilal Abdulla, a British National Health Service physician, was not seriously injured.[139]	United Kingdom, radical Islamists, possibly Al Qaeda sympathizers.	June 29-30, 2007. Governmental transition period.

[139] "Britain Under Attack As Bombers Strike At Airport," July 1, 2007; "Five Under Guard As Police Link London and Glasgow Attacks, July 2, 2007; "Airport Bomb Suspects 'Left Behind Suicide Note Detailing Their Motives,'" July 5, 2007; all from *The Times* (London).

Type of Incident and Brief Description	Parties Involved	Date(s); Pre-election or Transition Phase
Assassination of Former Prime Minister, Pakistan Former Pakistani Prime Minister Benazir Bhutto, campaigning for parliamentary elections to be held January 8, 2008, was killed along with over 20 other persons in an attack attributed to militant Islamists. A suicide bomber, possibly accompanied by an accomplice firing pistol shots, detonated next to her car following a political rally. Various reports assigned responsibility for the assassination to Al Qaeda's second-in-command, Ayman Al-Zawahiri, or to Baitullah Mehsud, a top Taliban commander in the South Waziristan region of Pakistan. The elections were postponed.[140]	Pakistan, Islamist militants	December 27, 2007. Pre-election.
Murder of Former Local Government Official, Spain A former city council member in northern Spain was shot to death in front of his wife and child by a suspected ETA gunman. The principal Spanish political parties condemned the attack and suspended campaigning for national elections due to be held two days later.[141]	Spain, ETA.	March 7, 2008. Pre-election.

[140] Source: Terrorism Knowledge Base, Memorial Institute for the Prevention of Terrorism [http://www.tkb.org].

[141] "Killing In Spain Curtails Campaign," *New York Times*, March 8, 2008.

Appendix C. Congressional Legislation Addressing Various Aspects of National Security Considerations During Presidential Transitions, in Chronological Order (1963-2008)

Congress and Session Introduced	Date Introduced	Bill	Title	Public Law (date became law)	Time Since Last Transition[a]	Time Until Next Scheduled Transition[a]
108th, 2nd Session	Sept. 7, 2004	S. 2774	9/11 Commission Report Implementation Act of 2004		3 years, 8 months	4 months
108th, 2nd Session	Sept. 8, 2004	H.R. 5024	9/11 Commission Recommendations Implementation Act of 2004		3 years, 8 months	4 months
108th, 2nd Session	Sept. 9, 2004	H.R. 5040	9/11 Commission Report Implementation Act of 2004		3 years, 8 months	4 months
108th, 2nd Session	Sept. 14, 2004	H.Res. 775	Expressing the sense of the House of Representatives with respect to the continuity of Government and the smooth transition of executive power		3 years, 8 months	4 months
108th, 2nd Session	Sept. 23, 2004	S. 2845	Intelligence Reform and Terrorism Prevention Act of 2004	P.L. 108-458 (Dec. 17, 2004)	3 years, 8 months	4 months
108th, 2nd Session	Sept. 24, 2004	H.R. 10	9/11 Recommendations Implementation Act		3 years, 8 months	4 months
108th, 2nd Session	Oct. 5, 2004	H.R. 5223	National Intelligence Reform Act of 2004		3 years, 9 months	3 months
88th, 1st Session	Apr. 24, 1963	H.R. 4638	Presidential Transition Act of 1963	P.L. 88-277 (Mar. 7, 1964)	2 years, 3 months	1 year, 9 months

Note: Prepared by Ryan Granger, Information Research Specialist, Knowledge Services Group, CRS, February 28, 2008.
a. As of date introduced.

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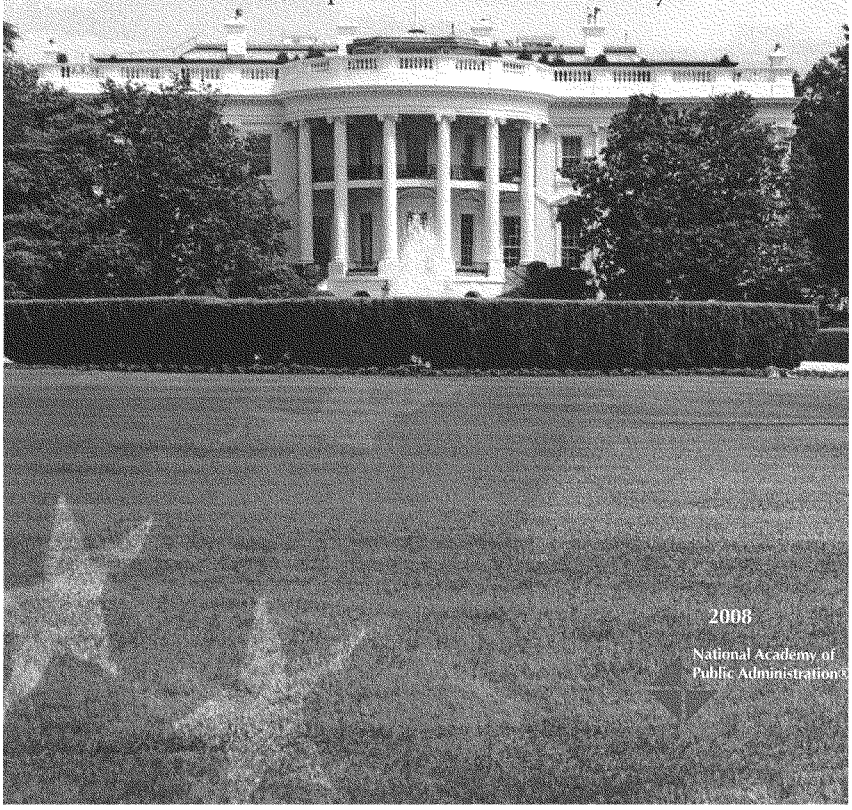

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National Academy of Public Administration®

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NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

For the U.S. Congress and the U.S. Department of Homeland Security

June 2008

Addressing the 2009 Presidential Transition at the Department of Homeland Security

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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FOREWORD

Since the terrorist attacks of September 11, 2001 and the subsequent creation of the U.S. Department of Homeland Security (DHS), the United States has made significant progress in the fight against terrorism, both at home and abroad. These efforts have continued to evolve as the Nation has adapted to new threats and new realities. The intelligence community's 2007 National Intelligence Estimate concludes that "the U.S. Homeland will face a persistent and evolving terrorist threat over the next three years. The main threat comes from Islamic terrorist groups and cells, especially al-Qa'ida, driven by their undiminished intent to attack the Homeland and a continued effort by these terrorist groups to adapt and improve their capabilities."[1] Over roughly the last year, terrorist plots were disrupted in Great Britain, Denmark, Germany and Spain, as well as Fort Dix, New Jersey, John F. Kennedy Airport and elsewhere.

Evidence suggests that terrorists seek opportunities to take advantage of real or perceived weaknesses in our ability to detect, deter, prevent or respond to attacks and that they view elections and political transitions as periods of increased vulnerability. Terrorists may perceive the 3 to 6 months preceding and following a U.S. national election as a period of opportunity. Extended vacancies in political positions and changes in leadership in key DHS operating units—particularly when combined with terrorist motives to affect the outcome of the election or the success of the newly elected administration—could substantially increase the risk that a terrorist attack will be attempted in the United States.

This means that at any given point—during the general election contest, the period between the election and inauguration, and immediately following the inauguration—the President must have in place a cadre of leaders and advisors whom he or she trusts and who:

- Are politically empowered to act.
- Can fully grasp the significance of the available intelligence.
- Have the experience and mettle necessary to act on that intelligence.
- Are intimately familiar with the National Response Framework and the roles and responsibilities of the many players.
- Have established relationships with relevant private sector partners and government officials (both career and political) in their own department, in other federal departments, at the State and local level, and internationally who will need to mobilize resources to prevent or respond to a terrorist attack.

Having these foundations established and experience in place cannot be imparted by a briefing book; there will be no time for "on-the-job" training.

---

[1] Director of National Intelligence, *National Intelligence Estimate: The Terrorist Threat to the U.S. Homeland.* July 2007 at http://www.dni.gov/press_releases/20070717_release.pdf.

Imagine, for example, a terrorist attack on the New York City subway system similar to or even worse than the 2005 London attacks—explosive devices set off almost simultaneously in multiple locations underground, with large numbers of casualties, extensive and prolonged infrastructure disruption, including massive power outages and telecommunications disruption, and intelligence that suggests additional attacks could be planned. Now imagine that this occurs on January 20, 2009. Will the President's new National Security Team, including the Secretary of Homeland Security, be prepared to trust the judgment of the career officials who seek approval to work with officials across the region or Nation to shut down airports, move troops onto city streets, or ban trucks from the tunnels and bridges that connect the city to the goods that are critical to daily life? Will minutes or days be lost to the process of understanding the full range of options available before decisive actions are taken?

While the focus, thus far, has been largely on the risk of terrorism, it is equally important that the Federal government is prepared to respond immediately to natural disasters. Like terrorists, Mother Nature cares little about our desire for a calm, orderly Presidential transition. A massive earthquake in San Francisco could cause uncontrollable fires, create gigantic plumes of toxic smoke, shut down both Oakland and San Francisco International Airports, and result in thousands of fatalities. DHS leadership must be prepared and able immediately to identify and prioritize the decisions that must be made, make those decisions, and mobilize and coordinate the deployment of resources across the Federal government—in Defense, Transportation, Housing, Treasury, and elsewhere—as well as supporting the efforts of State and local governments and the private sector.

The Academy Panel has made a number of important recommendations to help DHS with the upcoming Presidential transition. This report aligns recommended strategies with key events—the political conventions, the election, the inauguration and beyond. Identifying and filling critical positions, training new executives and working aggressively to get the next President's homeland security team in place are vital steps that need to be taken. To succeed in these efforts, DHS also will need the support of Congress and the White House.

The Panel also focuses on two issues that, left unresolved, will continue to make it difficult for DHS to fulfill its mission. First, the Panel believes that there is more work to do to overcome resistance to DHS headquarters' role in integrating the work of the individual components. This was one of the founding goals for the department. Second, the Panel notes the problems created for DHS by the multiple congressional oversight committees to which it reports. The Panel found that this oversight has stretched DHS resources, made it difficult to enact important legislation and created a potential for policy disarray.

The Academy was pleased to undertake this study. I would like to thank the Academy Fellows who served on the Panel; their insights and guidance were excellent. I also want to thank DHS executives and other stakeholders for their time and cooperation. Finally, I extend my appreciation to the study team for its hard work in producing this important and timely report.

Jennifer L. Dorn
President
National Academy of Public Administration

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ACRONYMS

2SR	Second Stage Review
Academy	National Academy of Public Administration
ATTF	Administration Transition Task Force
CBP	United States Customs and Border Protection
CIS	United States Citizenship and Immigration Services
CSIS	Center for Strategic and International Studies
DEA	Drug Enforcement Administration
DHS	United States Department of Homeland Security
DoD	United States Department of Defense
DSO	Deputy Secretary for Operations
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
GAO	Government Accountability Office
GSA	General Services Administration
HHS	United States Department of Health and Human Services
HSAC	Homeland Security Advisory Council
HSC	Homeland Security Council
HSPD	Homeland Security Presidential Directive
ICE	United States Immigration and Customs Enforcement
ICS	Incident Command System
IG	Inspector General
IPA	Intergovernmental Personnel Act
NIMS	National Incident Management System
NPPD	National Protection and Programs Directorate
NRF	National Response Framework
NRP	National Response Plan
NSC	National Security Council
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PA	Presidential Appointment
PAS	Presidential Appointment Requiring Senate Confirmation
SAC	Special Agent in Charge
SES	Senior Executive Service
SL	Senior Level Executive
ST	Scientific/Professional Executive
TSA	Transportation Security Administration
TSES	Transportation Security Senior Executive Service
USCG	United States Coast Guard
USSS	United States Secret Service

EXECUTIVE SUMMARY

The U.S Department of Homeland Security (DHS) was created in January 2003 to prepare for and respond to national emergencies, with an emphasis on preventing terrorist attacks. The largest federal reorganization since the creation of the U.S. Department of Defense in the late 1940s, DHS' establishment brought together 22 separate agencies and more than 200,000 employees to form the third largest agency in government. Melding the efforts of these wide-ranging and disparate organizations into an integrated and comprehensive approach to homeland security was the new department's stated goal.

Since its founding, DHS has undergone continuous change; it has built new organizations from the ground up, undertaken two major departmentwide reorganizations and absorbed new or expanded responsibilities that were not part of its original charter. The department also has been the focus of enormous public scrutiny, either because of its highly visible responsibilities—witness recent efforts to secure the southern border with Mexico—or due to a major mission breakdown, such as the response to Hurricane Katrina in 2005. The perception of the department and its ability to protect the homeland is poor, as demonstrated by surveys of both the public and DHS employees. This continuously changing environment, coupled with major ongoing operational responsibilities, has provided DHS leaders with a continuous "white water" management environment. With the 2008 Presidential election on the horizon, DHS leadership is about to turn over responsibility for managing this complex and challenging organization to a new team.

Recent history demonstrates that political transitions present an opportunity for terrorists to take advantage of real or perceived weaknesses in a nation's ability to detect, deter, prevent or respond to attacks. The final report of the National Commission on Terrorist Attacks upon the United States (9/11 Commission) raised concerns about the impact of future transitions on the government's ability to deal with terrorism. Due partly to the delayed resolution of the 2000 election, the incoming Bush administration did not have its deputy Cabinet officials in place until Spring 2001 or its sub-Cabinet officials in place until that summer. Historically, getting the Presidential team in position has been a slow process. The Commission strongly pushed for changes to the process so that the Nation is not left vulnerable to these types of delays in a post-9/11 world, particularly at DHS which soon will face its first Presidential transition.

With a forthcoming Presidential change on the horizon and concern that a departure of significant members of DHS' leadership team could further reduce the department's capabilities, congressional leaders thought it prudent to review DHS' senior staffing structure and composition, as well as assess and benchmark senior career training and development programs; these leaders were "concerned that the department and its components will not be able to function effectively when the change in administration occurs in 2009."[2] Congress and DHS asked the National Academy of Public Administration (Academy) to look at these issues and provide guidance. This report is the result of the request. Chapter 6 details the Academy Panel's recommendations and a suggested timeline for implementation.

[2] Senate Report 110-37.

This study has focused on DHS' senior leadership cadre—political appointees and career civil servants—and the department's existing and anticipated plans to make the transition go smoothly. In addition to an extensive review of reports and data from DHS and outside sources, the study team interviewed 81 individuals representing each of DHS' major components, individuals with broad government experience at all levels and others from the private sector and academia with homeland security perspectives.

To provide helpful and practical guidance to DHS, the Panel proposes that the department take the following steps tailored to Presidential transition timeframes. Specifically:

- Now until this summer's national party conventions. Focus on quickly completing, updating and executing its transition plans; identify key operational executive positions; ensure that training and joint exercises are begun; and implement the hiring and training proposal in this report.
- From the national party conventions to the election. Consistent with the recommendations of the 9/11 Commission and "Sense of the Senate" provisions, work with Executive Branch agencies and Congress to reach out to the Presidential candidates to identify potential homeland security transition team members and help them obtain security clearances by Election Day.
- From the election to the inauguration. Work with the incoming administration, the Executive Branch and Congress to ensure that the new Secretary of Homeland Security is sworn in on Inauguration Day; that key executives are identified and voted on by the Senate as quickly as possible, recognizing that any day a critical position is vacant is a "gap" in our homeland security coverage; and that transition training and joint exercises are provided to executive appointees and nominees.
- Following Inauguration Day. Continue training of new appointees, nominees and careerists to build trust and operational performance, and reexamine current executive positions and allocations to support administration priorities. Within the first six months of the new administration, conduct a "capstone" scenario exercise to evaluate the effectiveness of transition planning, training and overall operational readiness.

The Panel also has overall observations that are important for framing the results of this study:

- The Panel has heard or reviewed many observations about DHS executive staffing, specifically that the department has too many senior executives and/or has too high a ratio of political appointees to career executives. No entity has provided a formula or guidelines for the specific optimum number of executives or political appointees in an agency, using agency size as measured by either staffing or budget. However, the Panel concludes that the total number of DHS executives and the percentage of political appointees are well within the norms of other Cabinet-level agencies. However, DHS must shift more executives to field locations in immigration and border management agencies and change non-career deputy officials, FEMA regional administrators and other officials to career executives.

Concern about the nation's vulnerability during a Presidential transition stems from the potential for leadership gaps in the transition of DHS senior leadership, compromising the department's ability to respond to an attack. There are several important elements to consider in this regard:

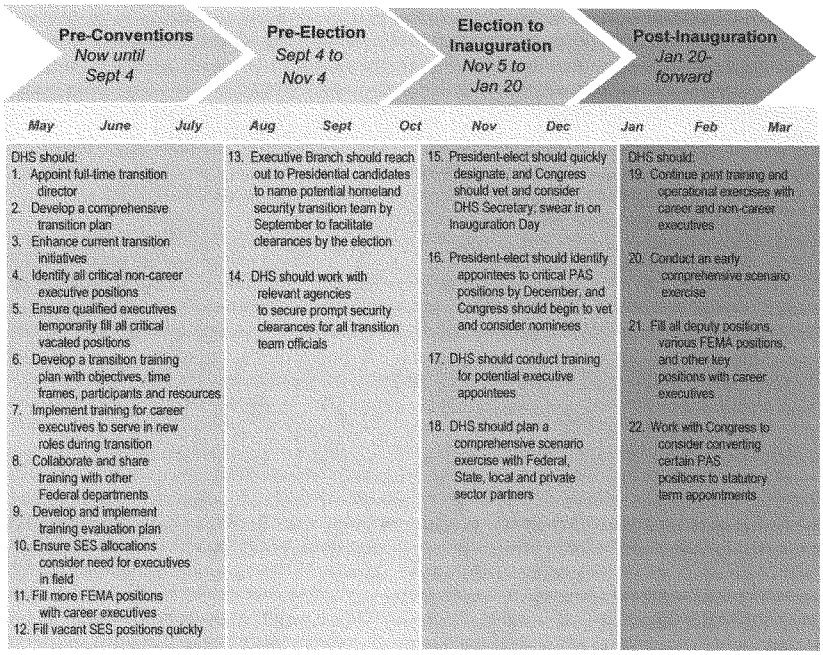
- Given that operational chains of command for DHS components will remain largely intact during the transition, the components' ability to respond to crises should not be seriously compromised *on an individual agency basis*. These agencies should be able to meet their mission responsibilities with the same degree of competence as during a non-transition period. If the crisis involves the coordination of multiple DHS components, however, the absence of key headquarters leaders could significantly increase the risk of DHS and other agencies not being able to respond appropriately.
- The Secretary of Homeland Security is the principal federal official for domestic incident management and responsible for coordinating federal operations and response to terrorist attacks, major disasters and other emergencies. Coordination with other federal agencies, state and local governments, and the private sector is a critical DHS responsibility. Leadership gaps from one leadership cadre to the next could be very problematic if an incident occurs during the transition period.
- A loss of public confidence in DHS could result should a homeland security crisis take place when senior leadership is not completely in place or fully prepared.

This report and others have strongly urged DHS to take certain steps to provide a "seamless transition" from one leadership cadre to the next. The Panel was pleased to note that the department has taken some steps to help it to be well positioned for the transition. However, there remain important areas that must be addressed if the department is to be completely prepared. To the greatest extent possible, incoming DHS leadership—including the Secretary and key staff—must be in place on Inauguration Day or shortly thereafter. This requires the support and cooperation of other federal agencies with background check and clearance responsibilities, as well as the Congress given its confirmation role and responsibilities.

It is not surprising that DHS has not fully achieved its intended role—providing an integrated and comprehensive approach to homeland security—given the sheer scope of its mission and the difficulties it has faced since its founding in 2003. The Panel believes that the department's key components still largely operate as "stand alone" entities, although important steps are being taken at headquarters and in the field to improve intra-departmental coordination and collaboration. However, to the extent that components operate independently in areas that call for a more collaborative approach, DHS operational efficiency or effectiveness will suffer and its stated objectives will remain out of reach. This reality will provide a major challenge for the leadership team appointed by the next President.

Exhibit 1 shows the Academy Panel recommendations which are discussed in greater detail in Chapter 6.

Exhibit 1: Academy Panel Recommendations for a Comprehensive Transition Program



CHAPTER 1
INTRODUCTION

> *The ability of the government to carry out its primary function of responding to the wishes of its citizens through executing the laws depends crucially on capable civil servants. And the effectiveness of these civil servants in the Executive Branch is intimately linked with the quality of the leadership of the executive branch, that is, Presidential appointees.*
>
> James P. Pfiffner, Professor
> School of Public Policy, George Mason University

ORIGINS AND PURPOSE OF THIS STUDY

The responsibilities of the U.S. Department of Homeland Security (DHS) are among the most vital in government. The legislation creating the department charges it to:

- Prevent terrorist attacks within the United States.
- Reduce the vulnerability of the United States to terrorism.
- Minimize the damage, and assist in the recovery, from terrorist attacks that occur within the United States.
- Carry out the functions of entities transferred to the department, including by acting as a focal point regarding natural and manmade crises and emergency planning.[3]

As detailed in Chapter 2 of this report, the President also designated the Secretary of Homeland Security as the principal federal official responsible for domestic incident management and coordination to prepare for, respond to and recover from terrorist attacks, major disasters and other emergencies within the United States.[4]

In establishing DHS, Congress appreciated the difficulties of an undertaking of this magnitude and significance. The reality and severity of the threats to homeland security convinced Members that the difficulties inherent in the reorganization were worth the benefits that could flow from it. More than five years later, the department faces significant organizational and human resources challenges that directly impact its ability to carry out its responsibilities.

Transitions to a new President and administration, positive occurrences in our democracy, nonetheless present governance challenges of their own. The President's new policy and leadership team must absorb a huge amount of information and the timeframe for doing so is short. Meanwhile, members of the outgoing administration will leave with most non-career leaders departing by Inauguration Day. The time between the election and the inauguration is

[3] P.L. 107-296, November 25, 2002.
[4] Homeland Security Presidential Directive/HSPD-5, February 23, 2003.

less than three months, giving the incoming President very little time to put his or her new governing team together. The growing length of the appointments and confirmation process for those assuming Advise and Consent positions further delays the time it takes Presidents to get key leadership personnel on board and operating effectively.

Adding to these challenges is the concern that terrorists may attempt to take advantage of perceived vulnerabilities during the transition period. Terrorists attacked New York City in 1993, shortly after President Clinton first took office; New York City and the Pentagon in 2001, 8 months after President George W. Bush took office; Madrid, 3 days before Spain's 2004 national elections; London in 2005, 2 months after the British national elections; and Glasgow's airport in 2007, within hours of the appointment of a new British Prime Minister and Cabinet.

OBJECTIVES, SCOPE AND METHODOLOGY

Given the ongoing importance of DHS' mission and the special challenges posed by the 2008 election transition period, Congress asked the Academy to examine and report on the department's leadership and personnel readiness.

The Conference Report on the Emergency Supplemental Appropriations for FY 2007[5] noted that:

> The conferees agree with the Senate's concern that the management and administrative challenges facing the department will increase unless a stronger focus is placed on hiring, training and maintaining career leaders. In particular, the conferees are concerned that the department and its components will not be able to function effectively when the change in administration occurs in 2009.

Public Law 110-28, May 25, 2007, referred to House Report 110-27 and specifically made appropriations to

> ...the (DHS) Office of the Under Secretary for Management for an independent study to compare the DHS senior career and political staffing levels and senior career training programs with those of similarly structured Cabinet-level agencies.

DHS subsequently engaged the Academy to undertake the study requested by Congress.

Objectives

As directed by Congress and DHS, the Academy undertook a set of tasks. These tasks and the Academy's analysis for each of them appear in this report as outlined below.

[5] House Report 110-107, April 24, 2007.

DHS Executive Profile (Chapter 3)

1. Assess the appropriateness of the overall number of executives for DHS, given its size and broad mission objectives.
2. Assess the department's allocation between career and non-career executives.
3. Compare the department with similarly structured agencies' career and non-career executives.
4. Identify gaps in the department's career senior leadership structure, including risks associated with changing leadership during a Presidential transition.

Transition Training (Chapter 4)

5. Assess the adequacy of career SES and other career development training programs as they relate to the transition.
6. Compare DHS' transition training programs with those of similarly structured Cabinet-level agencies.

Transition Plans—Leadership Continuity (Chapter 5)

7. Review DHS planning for the transition and propose changes to address any gaps.

Final Recommendations and Implementation Plan with Transition-Based Timeline (Chapter 6)

Through these tasks, the Academy's goal was to help DHS identify and remedy leadership and management gaps that currently exist or could arise during the Presidential transition. The final recommendations contained in this report include an implementation schedule to assist the department in addressing the gaps or potential gaps identified through this study.

Methodology

The Academy appointed six Fellows to the expert Panel directing and overseeing this study. Appendix A provides their names and biographies, including their relevant experience and expertise. Four Panel meetings were held during the 7-month engagement to guide the study and work of the Academy's project team.

Throughout the course of this study, which began in October 2007 and ended in April 2008, the project team conducted extensive research on homeland security issues, transition procedures, career versus political management issues and other relevant themes. Appendix B has a bibliography and list of studies reviewed.

Interviews were critical to the project's methodology. The project team met with 81 officials, including DHS executives from departmental and operating components and regional offices;

executives from outside agencies; members of the Homeland Security Advisory Council;[6] former DHS officials; management officials from the Department of Defense, Department of State, Department of the Treasury, Department of Agriculture, Office of the Director of National Intelligence, Federal Bureau of Investigation (FBI), Office of Management and Budget (OMB), and Office of Personnel Management; and academics and other experts from various organizations. Appendix C has a comprehensive list of individuals contacted and interviewed.

The project team analyzed extensive information on DHS' executive resources. This included information maintained by the department's Chief Human Capital Office and Personnel and Payroll System, and personnel and payroll data from the Transportation Security Administration (TSA), which are maintained separate from DHS' other personnel data. Additional data included DHS requests for additional Senior Executive Service (SES) positions from OPM; the location and occupational mix of executive resources for three DHS components: United States Immigration and Customs Enforcement (ICE), United States Customs and Border Protection (CBP), and United States Citizenship and Immigration Services (CIS); the number of Federal Emergency Management Agency (FEMA) career and non-career executives over the past 10 years; the turnover of DHS career and non-career executives over the past 4 years; the ethnicity and gender profile of DHS executives; the critical position database developed by DHS for its succession planning program; and DHS' orders of succession

To compare DHS' executive profile to other departments, the project team analyzed data contained in FedScope, OPM's online database on federal civilian employment. FedScope provides information on the civilian workforce for all departments and agencies, except some intelligence agencies. The most recent data available at the time of the study was as of September 30, 2007. They provide information only on employees in filled positions and do not include details on some agencies covered by personnel systems other than title 5, U.S. Code. For example, TSA executive data are not separated from all other employee data; this limited the team's analysis of TSA executives. The team staff also analyzed some information from OPM's Executive and Schedule C system on other departments' executive profiles. These data provided information on vacant positions, but the team determined that they were not sufficiently current or reliable for detailed analysis. To assist in the analysis of other departments' executive profiles, the team used information from the Leadership Directory.[7]

The project tasks called for comparisons with similarly structured departments and agencies. The consensus among officials interviewed was that there were no departments similar to DHS. Some DHS law enforcement agencies can be compared to other such agencies; the team compared executive/employee ratios with ICE, the U.S. Secret Service, Bureau of Alcohol, Tobacco, Firearms and Explosives, Drug Enforcement Administration and FBI law enforcement. Other comparisons were made among DHS' headquarters offices and the Departments of State, Treasury, Justice and Defense, and overall with all 15 Cabinet-level departments.

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[6] The Homeland Security Advisory Council (HSAC) provides advice and recommendations to the Secretary on matters related to homeland security. It is composed of leaders from state and local government, first responder communities, the private sector and academia.

[7] Leadership Directories, Inc. provides information on the leaders of major U.S. government, business, professional and nonprofit organizations.

The project team also analyzed DHS' departmentwide transition plan initiatives and training as provided by headquarters, including plans for transition training being developed by the Council for Excellence in Government.

CHAPTER 2
TRANSITION ENVIRONMENT AND CHALLENGES

Every federal agency faces challenges when transitioning from one Presidential administration to the next. For DHS, these challenges are compounded by the complexity and importance of its mission, the newness of the organization itself and the ever-changing landscape of operational issues with which it has to contend. To understand the challenges fully, it is important to be aware of the department's evolution, including its formation, significant reorganizations and shifts of responsibility among its components, changes to national incident response plans, and the multiple levels of Executive and Legislative Branch oversight. Further complicating the transition are the negative views of DHS held by its employees, and the public.

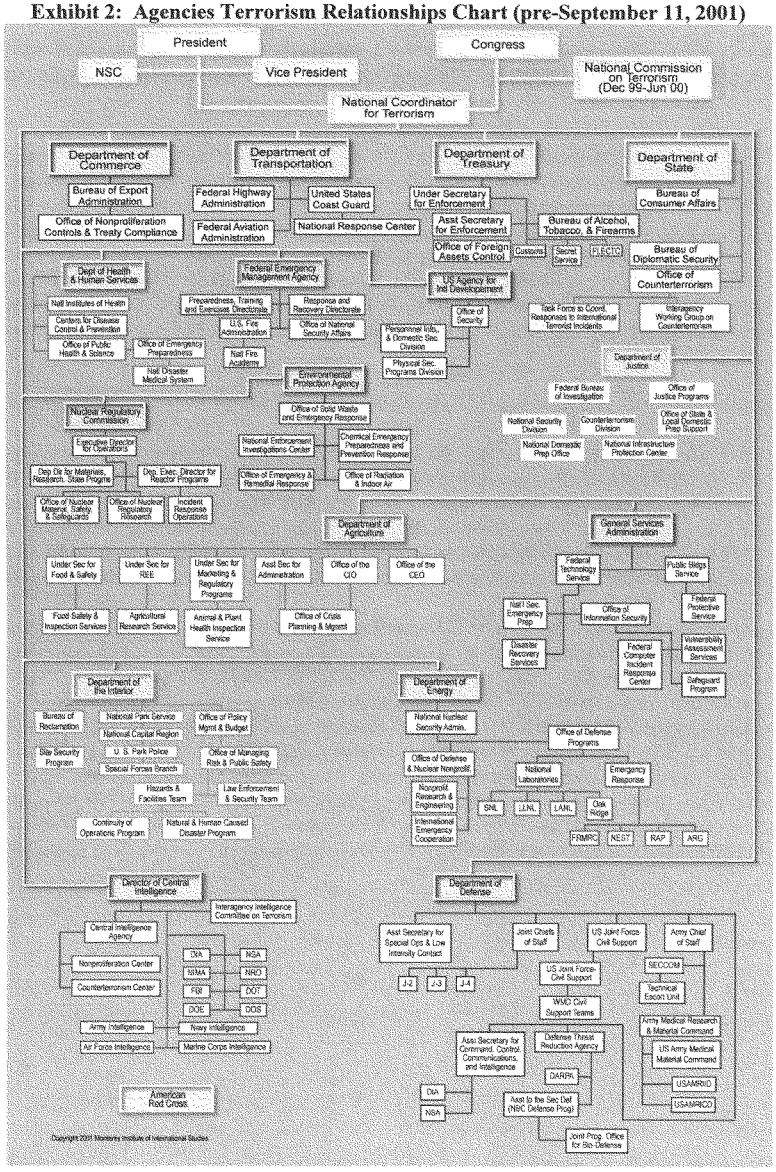
THE FORMATION OF DHS

The U.S. Department of Homeland Security (DHS) is charged with protecting the security of the American homeland. Its primary missions are to "prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation" and to "ensure safe and secure borders, welcome lawful immigrants and visitors, and promote the free flow of commerce."[8] Born in the aftermath of the September 11, 2001 attacks on the World Trade Center and the Pentagon, the department brought together government agencies responsible for domestic security.

The 9/11 attacks served as a sharp wake up call regarding the federal government's capability to prevent terrorists attacks on the homeland. There was widespread concern about the seeming ease with which the terrorists entered and remained in the United States and the inability of federal agencies to "connect the dots" concerning the evidence of the upcoming attacks. In October 2001, President Bush issued an Executive order establishing the Office of Homeland Security within the White House to coordinate counterterrorism efforts. Exhibit 2 depicts the confusing array of entities that made up the pre-9/11 organization for homeland security. It shows the agencies, programs and offices that had a role in anti-terrorism, counterterrorism and domestic efforts at that time, as well as the organizational relationships among them. President Bush selected Pennsylvania Governor Tom Ridge to head the office and lead the coordination efforts.

[8] U.S. Department of Homeland Security Mission statement.

Exhibit 2: Agencies Terrorism Relationships Chart (pre-September 11, 2001)



Source: Center for Nonproliferation Studies

The public response to Governor Ridge's appointment was generally favorable. At the same time, there were concerns that this new position did not possess the authority or resources needed to centralize the homeland security function and that Ridge's advisory position gave him no control over the many agencies involved. The appointment also troubled some Members of Congress because their oversight role was minimized under the structure. Legislation based on the recommendations of the Commission on National Security/21st Century[9] was soon introduced to establish a Cabinet-level Department of Homeland Security. The Bush administration initially opposed such a step; as support grew, however, the White House began its own design work and unveiled its plan in June 2002.

A small group of aides devised a plan which was reviewed only by senior White House officials prior to being approved by President Bush. The plan, which came as a surprise to the Cabinet officials most affected by it, was unveiled in June 2002 following 6 weeks of meetings. Many viewed the lack of open debate among key players, which was designed to expedite the process by limiting review, as setting in motion some of the organizational problems that plague DHS to this day.

Following several months of debate focused primarily on a new personnel system, Congress passed legislation establishing the new department along the lines proposed by the White House and the earlier congressional legislation. On November 25, 2002, the President signed into law the Homeland Security Act, which led to the largest federal reorganization since the creation of the Department of Defense in 1947. Governor Ridge was named the department's first Secretary.

The Secretary of Homeland Security was designated as the principal federal official for domestic incident management with responsibility for coordinating federal operations within the United States to prepare for, respond to and recover from terrorist attacks, major disasters and other emergencies. DHS coordinates the federal government's resources when any one of four conditions applies: (1) a federal department or agency has requested DHS' assistance; (2) the resources of state and local authorities are overwhelmed and federal assistance has been requested; (3) more than one federal department or agency has become substantially involved in responding to the incident; or (4) the Secretary has been directed to assume responsibility for managing the domestic incident by the President.[10]

DHS also supports state and local governments with planning, equipment, training and exercise activities; provides assistance to develop all-hazards plans and capabilities; and ensures that federal, state and local plans are compatible. The department coordinates with the private and nongovernmental sectors to ensure that planning, equipment, training and exercise activities are adequate and to promote partnerships to address incident management capabilities

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[9] The U.S. Commission on National Security/21st Century/Hart-Rudman Commission was chartered to review U.S. national security requirements for the next century. The Commission's report, published in September 1999, warned that, in the course of the next quarter century, terrorist acts involving weapons of mass destruction were likely to increase. "Americans will likely die on American soil, possibly in large numbers," it said.
http://en.wikipedia.org/wiki/National_Commission_on_Terrorism

[10] Homeland Security Presidential Directive/HSPD-5. February 23, 2003.

DHS' First Organization

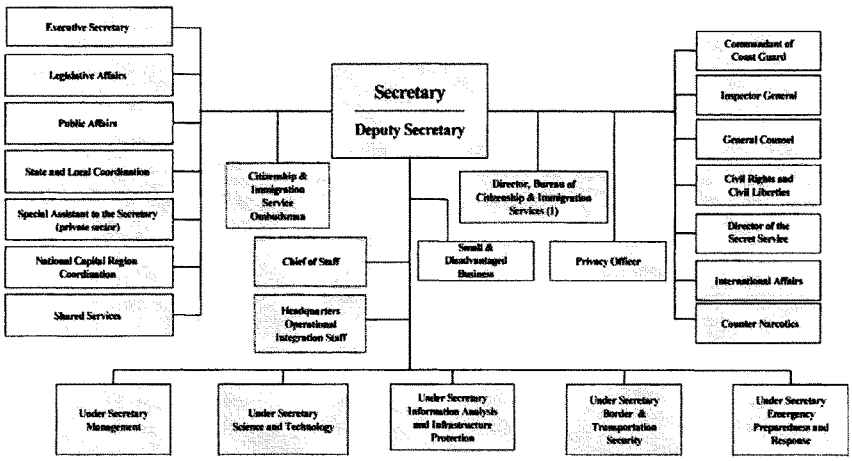
DHS initially organized operations into four major directorates: Border and Transportation Security, Emergency Preparedness and Response, Science and Technology, and Information Analysis and Infrastructure Protection. Exhibit 3 outlines the offices and components of each directorate and their legacy department.

Exhibit 3: Original DHS Organization

Directorate	Office or Component (Agency of origin shown in parentheses)
Border and Transportation Security	• U.S. Customs Service (Treasury) • Immigration and Naturalization Service (part) (Justice) • Federal Protective Service (General Services Administration) • Transportation Security Administration (Transportation) • Federal Law Enforcement Training Center (Treasury) • Animal and Plant Health Inspection Service (part)(Agriculture) • Office for Domestic Preparedness (Justice)
Emergency Preparedness and Response	• Federal Emergency Management Agency • Strategic National Stockpile & the National Disaster Medical System (Health and Human Services) • Nuclear Incident Response Team (Energy) • Domestic Emergency Support Teams (Justice) • National Domestic Preparedness Office (FBI)
Science and Technology	• Chemical, Biological, Radiological and Nuclear Countermeasures Programs (Energy) • Environmental Measurements Laboratory (Energy) • National Biological Weapons Defense Analysis Center (Defense) • Plum Island Animal Disease Center (Agriculture)
Information Analysis and Infrastructure Protection	• Federal Computer Incident Response Center (GSA) • National Communications System (Defense) • National Infrastructure Protection Center (FBI) • Energy Security and Assurance Program (Energy)

The U.S. Secret Service (Treasury) and the U.S. Coast Guard (Transportation) were included, but remained intact and reported directly to the Secretary. Immigration and Naturalization Service adjudications and benefits programs reported directly to the Deputy Secretary as the U.S. Citizenship and Immigration Services. Exhibit 4 shows DHS' initial organization chart.

Exhibit 4: DHS Organization Chart—March 2003



A DHS Inspector General (IG) report, issued 1 year following the department's creation, noted that the "reorganization had elements of a merger, divestiture, acquisition, and startup."[11] Progress was noted in numerous areas, but the report stated that integrating 22 separate components into a "single, effective, efficient and economical department" remained the biggest challenge. The report also focused on the difficulty of changing FEMA's mission from one which was geared toward natural disasters to one which included the ability to respond to terrorist attacks. Contract management, grants management, financial management, information technology management, human capital management, intelligence matters, border security and transportation security all were cited as areas presenting significant challenges.

Fallout from the response to the Gulf Coast hurricanes in 2005, problems stemming from TSA-driven changes to airport security, perceived weaknesses in border security, control of illegal immigration and other issues led to a widespread view that DHS was failing at its fundamental missions. Given the extraordinary scope of its responsibilities, it was—and is—difficult to find many days when some aspect of DHS or it components did not make the news,[12] in an often unflattering light.

The 2005 Reorganization

On December 2, 2004, Secretary Ridge announced that he would resign his position effective February 1, 2005. Federal Judge Michael Chertoff was nominated by the President and later

[11] Review of the Status of Department of Homeland Security Efforts to Address Its Major Management Challenges. DHS IG Office of Audit. OIG-04-21, March 2004.
[12] For example, a search on Google for the week of January 31 to February 6, 2008 generated more than 500 news articles referencing DHS.

confirmed as the new Secretary of Homeland Security on February 15, 2005. Chertoff quickly initiated a Second Stage Review (2SR) of DHS' organization, operations and policies to be driven by six imperatives:

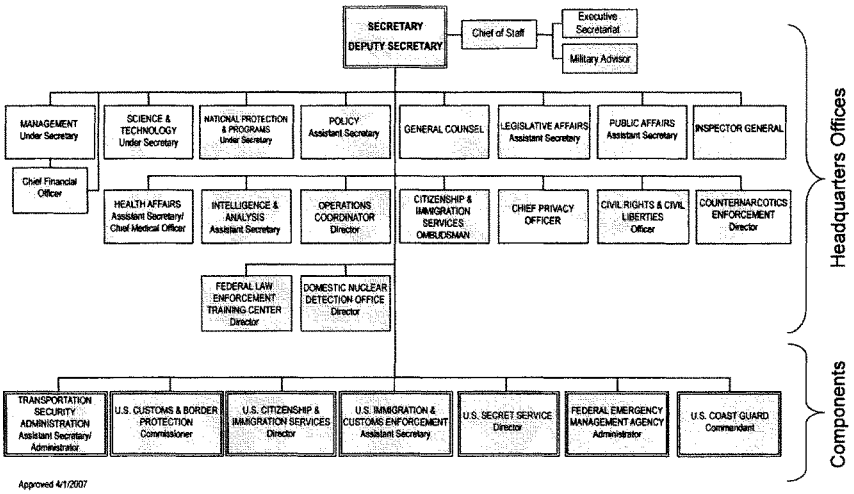
1. Increase preparedness, with a particular focus on catastrophic events.
2. Strengthen border security and interior enforcement and reform immigration processes.
3. Harden transportation security without sacrificing mobility.
4. Enhance information sharing with state, local, tribal and private sector partners.
5. Improve DHS stewardship, particularly with stronger financial, human resources, procurement and information technology management.
6. Re-align the DHS organization to maximize mission performance.

Numerous significant structural changes were made as a result of the 2SR review, including the formation of a new, departmentwide policy office; changes in how DHS manages intelligence and information sharing responsibilities; formation of a new Operations Coordination office and other measures to increase operational accountability; and a consolidation effort to integrate the department's preparedness mission.

A fundamental change took place when the four directorates with responsibility for managing the components were replaced with a structure in which all seven primary operational components report directly to the Office of the Secretary. A position of Director of Operations Coordination was created to work with DHS components and other federal agencies to ensure that actions were well coordinated and executed in a timely fashion. However, the Secretary said this new organization was not to "disrupt our operators in the field, nor will it interfere with component chains-of-command."[13] This office was to serve as the hub for crisis management, as well. The resulting and current organization, shown in Exhibit 5, has 24 direct reports to the Secretary/Deputy Secretary.[14]

[13] Statement of Secretary Michael Chertoff. U.S. Department Of Homeland Security. Before the Senate Committee on Commerce, Science and Transportation, July 19, 2005.
[14] DHS' current organization is a result of 2SR, the Post-Katrina Act, and a January 2007 Sec. 872 notice.

Exhibit 5: Current DHS Organization Chart



Legislation Strengthens FEMA's Role

There have been more recent changes to DHS' organization. The Post-Katrina Emergency Reform Act, signed by President Bush on October 4, 2006, gave FEMA a quasi-independent status similar to the U.S. Coast Guard. Specifically, the act transferred the following offices from the Preparedness Directorate to FEMA: the U.S. Fire Administration, Office of Grants and Training, Chemical Stockpile Emergency Preparedness Division, Radiological Emergency Preparedness Program and Office of National Capital Region Coordination. Second, the head of FEMA was renamed an Administrator and Deputy Administrator/Chief Operating Officer and Deputy Administrator for National Preparedness positions were created. Third, the act required that FEMA be led by no more than four Deputy Administrators, each of whom would be a Presidential Appointment Requiring Senate Confirmation (PAS) position. Fourth, several functions were left in the Preparedness Directorate, subsequently renamed the National Protection and Programs Directorate (NPPD). Fifth, the act created the Office of Health Affairs, led by the Chief Medical Officer, which includes the Weapons of Mass Destruction and Biodefense, Medical Readiness and Component Services Divisions.

National Response Plan / National Response Framework

Changes have been made to coordinate the nation's response to disasters, as well. Beginning with the creation of FEMA in 1979, the government developed a Federal Response Plan—later evolving into the National Response Plan (NRP)—which took a comprehensive "all hazards" approach to domestic incident management.

The plan was severely tested by the Gulf Coast hurricanes that struck Louisiana and Mississippi in 2005. In testimony[15] on the national response to Hurricanes Katrina and Rita, then-Comptroller General David M. Walker stated that:

- Because the storms were not designated as a catastrophic incident,[16] the additional provisions of the NRP were not triggered.
- The efforts of all federal agencies involved in the response remained disjointed because the Principal Federal Official's leadership role was unclear.
- The NRP framework did not yet have the types of detailed plans needed to better delineate capabilities that were required or how such assistance would be provided and coordinated.
- The NRP base plan and its supporting catastrophic provisions needed to be supported and supplemented by more detailed and robust implementation plans.

A 2006 DHS IG report[17] noted that integrating the department's 22 components into a cohesive whole remained its biggest challenge. As for FEMA's performance during the Gulf Coast hurricanes, the report stated that earlier IG reports had pointed out weaknesses in some FEMA operations and that Hurricanes Katrina and Rita presented an unprecedented opportunity for fraud, waste and abuse. FEMA was widely criticized for its hurricane response efforts; though some systemic conditions were cited as contributing to poor performance, Members of Congress also raised concerns that problems might have stemmed from FEMA's move to DHS and the resulting organizational and budget changes.

GAO found an incomplete understanding of roles and responsibilities under the NRP, leading to misunderstandings, problems and delays. A contributing factor was the fact that Secretary Chertoff had become Secretary just 8 months earlier and much of the department's senior leadership had changed.

The problems highlighted by the Gulf Coast storms led DHS, working with a broad array of stakeholders at all levels of government, to develop a new, 90-page National Response Framework (NRF)[18] as the successor to the 427-page NRP. The NRF was designed to:

- Be scalable, flexible and adaptable.
- Always be in effect.
- Articulate clear roles and responsibilities among federal, state and local officials.

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[15] Statement by Comptroller General David M. Walker on GAO's Preliminary Observations Regarding Preparedness and Response to Hurricanes Katrina and Rita to the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, February 1, 2006.

[16] A catastrophic incident is one that results in extraordinary levels of mass casualties, damage or disruption severely affecting the population, infrastructure, environment, economy, national morale and/or government functions.

[17] Major Management Challenges Facing the Department of Homeland Security. Office of Inspector General. Office of Audits. OIG-06-14, December 2005.

[18] The website for NRF, which is effective March 22, 2008, is http://www.fema.gov/emergency/nrf/aboutNRF.htm.

The NRF also restored FEMA's authority to coordinate federal disaster operations. Management responsibilities during a disaster response remain with DHS headquarters officials, but FEMA makes operational decisions about deploying federal resources in most disasters. Additionally, the DHS Secretary no longer has to designate an Incident of National Significance to initiate an aggressive response. The NRF now spells out plans for dealing with different types of crises.

DEFINING DHS HEADQUARTERS' ROLE

DHS' creation was an enormous undertaking conducted in a highly charged environment over a very short period of time. During this period, some observers commented that the process needed to proceed more slowly and deliberately and include the input of the organizations involved. The most optimistic forecasts estimated that it would take 5 to 10 years for DHS to become fully functional. Headquarters' difficulty fostering an integrated and comprehensive—"one DHS"—approach to homeland security is not surprising; nonetheless, it remains an elusive challenge for department leaders who recognize this as an important issue. Numerous reports suggest specific steps that DHS could take to advance this approach.

By both necessity and design, component organizations routinely work together in the field. The responsibilities of TSA, CBP, ICE and others require close cooperation and coordination on a number of issues. Efforts are being made to have corresponding component headquarters elements work in a more integrated fashion, but this effort has a long way to go.

Among the factors that combine to make integrating DHS component activities one of the most daunting tasks in government are the mix of organizational cultures (which include some of the oldest and youngest federal agencies); the reorganizations and multiple levels of Executive and Legislative Branch oversight; the mission challenges highlighted by the response to the Gulf Coast hurricanes of 2005; and the problems dealing with illegal immigration and border security.

In 2006, Secretary Chertoff asked the Homeland Security Advisory Council (HSAC) to provide recommendations "for creating, achieving and maintaining an empowering, energetic, dedicated, mission-focused culture within the department." The report,[19] issued in 2007, made several recommendations designed to help DHS integrate its overall approach to its mission and create a positive organizational culture:

- Recommendation 1: DHS Headquarters Must Further Define and Crystallize Its Role. *DHS leadership needs to ultimately define the role of headquarters so that the operational components can focus on their operational strengths, while the headquarters provides the overall policy, supports integrating processes where appropriate to leverage individual component strengths, and creates the organizational alignment necessary for overall DHS success. It is important that DHS headquarters not assume final operational responsibility for component missions but rather take responsibility for providing the effective vision, policies and resources to ensure the successful execution of all component missions.*

[19] Homeland Security Advisory Council. Report of the Culture Task Force, January 2007.

- Recommendation 2: Implement Homeland Security Management and Leadership Models. *DHS should adopt a closed loop management model that sets the key relationships between strategic accountabilities, organizational units, performance expectations and management processes to achieve DHS goals. DHS should also adopt a leadership and training model, including "joint duty and training" experience that will help all DHS leadership to focus collaboratively on key leadership expectations and objectives*
- Recommendation 3: Establish an Operational Leadership Position. *The (HSAC'S Culture Task Force) believes there is a compelling need for the creation of a Deputy Secretary for Operations (DSO) who would report to the Secretary and be responsible for the high level department-wide measures aimed at generating and sustaining seamless operational integration and alignment of the components. We recommend that the position be a career federal employee in order to provide continuity and freedom from political influence.*

To bring about a more integrated approach, the report also suggested specific headquarters roles:

- Establish overall DHS strategy and annual operational and financial performance objectives.
- Insure DHS performance against operational and financial objectives through oversight of DHS component commands.
- Actively engage with DHS component commands in their strategies, investments and leadership development.
- Rely on DHS component commands for day-to-day execution of DHS objectives.
- Sponsor and lead DHS values, ethics and compliance standards.
- Sponsor initiatives that have DHS-wide impact on performance.
- Manage shared DHS services.
- Lead and coordinate interface with Congress and other governmental agencies and organizations.

DHS has taken steps to develop a common leadership development model that includes a departmentwide Senior Executive candidate development program and the promotion of joint duty assignments. However, the headquarters role remains unclear and DHS has not established a career Deputy Secretary for Operations.

Other studies have focused on the difficulties of creating a cohesive, integrated approach at DHS. A 2008 study on strengthening homeland security[20] suggested that improving the department's planning and resource allocation processes could help integrate the budgets and policies of the individual components. It noted that when DHS was first formed, its staff understood that the

[20] Strengthening Homeland Security: Reforming Planning and Resource Allocation. Cindy Williams, Principal Research Scientist. Security Studies Program. Massachusetts Institute of Technology. Washington, D.C.: IBM Center for the Business of Government, 2008.

legacy components would be reluctant to give up budget and autonomy to the new department. As a result, DHS instituted a planning, programming, budgeting and execution system in order to create an effective, integrated process. The report suggested there is much to be done before this will be accomplished. The congressional budget process—with 86 committees and subcommittees having jurisdiction over different DHS components—is seen as a major contributor to this shortcoming.

As noted earlier, DHS' current organizational structure has all seven primary operational components reporting directly to the Office of the Secretary. An Operations Coordination Office works with component leadership and other federal agencies to help ensure that actions are well coordinated and executed in a timely fashion, but it has no role in coordinating field operations. FEMA officials commented that the role of the Operations Coordination Office should not be to coordinate operations as it would conflict with the role of FEMA National Response Coordination Center and the statutory role of FEMA to manage inter-agency operations. Other headquarters officials believed that additional coordination is needed.

With few exceptions, each component could stand on its own as an independent organization; there are very few integrated activities at headquarters. This raises questions about its ability to take a strategic approach to managing the components. An important step as been a recent effort to strengthen the operations coordination function (discussed in Chapter 5) to develop options for the Secretary should an event occur requiring coordination across components.

DHS is aware of the need for further integration in a number of areas. In her recent testimony before the House Committee on Homeland Security, Subcommittee on Management, Investigations and Oversight, Deputy Under Secretary for Management Elaine Duke identified key elements in DHS' strategy to create a more integrated department.[21] These include

- Improving acquisition and procurement throughout the department.
- Strengthening the requirements and investment review processes.
- Acquiring and maintaining human capital.
- Seeking efficiencies across the enterprise in the use of resources.
- Making the key management systems, such as financial and human resources, world class.
- Acquiring funding and approval for DHS' consolidation at St. Elizabeth's West Campus and efficient realignment of all DHS off-campus locations.

[21] Statement of Elaine Duke, Department of Homeland Security, Deputy Under Secretary for Management. *The Future of DHS Management.* Testimony before the House Committee on Homeland Security, Subcommittee on Management, Investigations and Oversight, April 9, 2008.

EXECUTIVE AND LEGISLATIVE BRANCH OVERSIGHT

The Homeland Security Council (HSC), the successor to the Office of Homeland Security, was created by Homeland Security Presidential Directive 1 on October 29, 2001. Led by the Assistant to the President for Homeland Security and Counterterrorism, its mission is to "ensure coordination of all homeland security-related activities among executive departments and agencies and promote the effective development and implementation of all homeland security policies." As with the National Security Council, HSC has a full-time staff and is composed of the Cabinet Secretaries and White House senior officials with homeland security responsibilities. Given its policy coordination and advisory responsibilities, HSC interacts frequently with DHS and its establishment led to creation of a homeland security branch in OMB.

Congressional oversight of DHS has taken on extraordinary dimensions with 86 congressional committees and subcommittees having some responsibility for the department or its components. The impacts of this complexity are illustrated in a report by the Center for Strategic and International Studies (CSIS)[22] which observed, "Congress has failed to remove a major impediment to effective homeland security: the balkanized and dysfunctional oversight of the Department of Homeland Security." The report made several observations and recommendations for Congress:

- DHS is still responsible to everyone, which makes it accountable to no one.
- Homeland security needs to be guided by a smaller set of members of Congress, who can develop long-term expertise on homeland security issues and be responsible for developing a strategic and well-informed perspective that can guide and advise the department.
- Partial reform or piecemeal efforts will be ineffective. DHS will be insufficiently accountable unless true reforms are made to place the majority of oversight responsibility in one committee in each chamber of Congress. The current situation poses a clear and demonstrable risk to our national security.
- Both the House and Senate should each create strong standing committees for homeland security, with jurisdiction over all DHS components.

The 9/11 Commission noted an excessive number of congressional committees with oversight responsibilities for DHS and recommended that Congress create a single point of oversight for homeland security. In 2005, the Senate Committee on Governmental Affairs was given jurisdiction over matters related to DHS and renamed the Committee on Homeland Security and Governmental Affairs. The House made the Committee on Homeland Security a permanent committee that same year. While improvements,, these changes have not resolved the issue of the excessive number of oversight committees as demonstrated by HSAC's January 2008 report calling on Congress to "implement the 9/11 Commission recommendation to reduce the number

[22] Untangling the Web: Congressional Oversight and the Department of Homeland Security. A White Paper of The CSIS-BENS Task Force On Congressional Oversight of the Department of Homeland Security, December 10, 2004.

of congressional oversight committees and subcommittees from its current unwieldy eighty-six."[23]

The report *Strengthening Homeland Security: Reforming Planning and Resource Allocation*[24] also cited several major problems for DHS caused by this complex congressional jurisdiction:

- It is difficult for the DHS Secretary to align resources to strategy. Component leaders who feel they are not getting their fair share can circumvent the process by going to one of their congressional committees of jurisdiction.
- Intersecting jurisdictions make it difficult to pass important authorizing legislation.
- DHS leaders report to many committees and subcommittees which opens the door to policy disarray as the department receives conflicting guidance from multiple committees or their staffs.
- There are numerous requests for testimony and information. From January to July 2007, DHS provided 195 witnesses to 141 hearings and presented more than 1,500 briefings to congressional committees.

Many interviewed during the course of this study cited the "excessive amount of oversight" that the department receives as an impediment to effectiveness.

Contemporaneous with the creation of the Department of Defense in 1947 was the formation of the Senate Committee on Armed Services and the House Armed Services Committee, the first-ever single committee in each body responsible for national defense. Just as these efforts a half century ago were meant to streamline and improve legislative oversight over military affairs, Congress now needs to reconsider its approach to homeland security.

VIEWS OF DHS

DHS employees rank their department at or near the bottom in most categories of government-wide surveys. Describing the results of OPM's 2006 Federal Human Capital Survey, a Washington Post[25] article stated that, "The employees have spoken...and sent a jolt through the Department of Homeland Security, which scored last or almost last in job satisfaction, leadership and workplace performance...To a large extent, the 2006 responses by Homeland Security employees closely track what employees said in 2004, an indication that the department may face a significant morale problem in some of its bureaus." Based on the results of this survey, the Partnership for Public Service and American University's Institute for the Study of Public

[23] Homeland Security Advisory Council. Report of the Administration Transition Task Force, January 2008.
[24] Loc Cit.
[25] Homeland Security Employees Feeling the Blues. Stephen Barr. *Washington Post*. January 31, 2007.

Policy Implementation found that DHS ranked 29th out of 30 large departments and agencies in their 2007 Best Places to Work Rankings.[26]

Although DHS consistently scores poorly in such surveys, employee perceptions vary widely from one component to another. The U.S. Coast Guard and U.S. Secret Service receive high marks as agencies where good performance is rewarded, that have good communications and offer opportunities for advancement. TSA, however, receives very low ratings in the same categories. OPM again will administer the Federal Human Capital Survey in Summer 2008, with results expected to be released in January 2009.

The public's view of DHS reflects similar concerns. According to one account, expectations for DHS were low from the start: "The first national opinion poll (December 2002) regarding the newly created Department of Homeland Security (showed that only) 13 percent of Americans polled by the Gallup Organization say they have confidence that the new department will make them 'a lot' safer. Nearly 4 in 10 Americans expect that the new department will not make the country any safer.[27]

The 2005 Gulf Coast hurricanes and the corresponding DHS/FEMA response dealt a severe blow to both entities' reputations. Said one account: "Less than half of Americans in a national survey said they hold favorable views of the Federal Emergency Management Agency, a sign that the Bush administration's sluggish response to Hurricane Katrina continues to shape perceptions of the agency. FEMA came in last, for a second consecutive year, in the survey, which asked respondents to give their views of 22 agencies.[28]

A recent Associated Press poll[29], summarized in Exhibit 6, illustrates the public's view of DHS and two of its major components, TSA and FEMA, as compared with other federal agencies:

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[26] Partnership for Public Service and American University Institute for the Study of Public Policy Implementation. 2007 Best Places to Work Rankings http://bestplacestowork.org/BPTW/about/. This analysis uses data from OPM's Federal Human Capital Survey.

[27] Gallup Poll: Homeland department draws poll skepticism. Ann McFeatters. *Post-Gazette National Bureau*, December 4, 2002 http://www.post-gazette.com/nation/20021204securenat2p2.asp

[28] FEMA's Image Still Tarnished by Katrina. Stephen Barr. *Washington Post*, January 29, 2008.

[29] Conducted by Ipsos Public Affairs. December 17-19, 2007.

Exhibit 6: Public View of Federal Agencies

Executive Branch Agency	Favorable (percentage)	Unfavorable (percentage)	No Answer (percentage)
Postal Service	89	10	1
Federal Bureau of Investigation (FBI)	77	17	6
Department of Defense (DoD)	65	29	6
Social Security Administration (SSA)	64	32	4
Environmental Protection Agency (EPA)	63	31	6
Food and Drug Administration (FDA)	62	32	6
Department of Homeland Security (DHS)	**60**	**34**	**6**
Department of Education	59	38	3
Central Intelligence Agency (CIA)	58	30	12
Transportation Security Administration (TSA)	**56**	**25**	**19**
Internal Revenue Service (IRS)	56	39	5
Federal Emergency Management Administration (FEMA)	**49**	**41**	**10**

Source: Associated Press, December 2007

These views by the DHS' employees and the public could further complicate efforts for a smooth transition.

FINDINGS

The primary objective of this study is to provide an assessment of DHS' plans to address the Presidential transition. Much of that assessment, detailed in the next three chapters, focuses on specific steps that the department has taken with regard to executive staffing and training and transition planning. These steps, which take place in a highly challenging environment, are necessary but not sufficient given DHS' organizational dynamics.

The Panel believes that the transition requires a strong reliance on career executives to play a key role in providing the stability needed as the senior political leadership turns over. Reliance on career civil servants to play the "bridging" role through this period should be an essential strategy for both current and future DHS political leadership. The department is taking steps to make this happen, but it is just as important for the incoming political team to embrace the approach if it is to be successful.

An important task for every agency is getting incoming non-career appointees to appreciate career executives as people who "care about the long-term health of their organizations and embody the institutional memory of their agencies"[30] and who can help implement the new President's policy and organizational goals. It is critical for DHS and its mission to provide a focused national approach to homeland security. Both current DHS leaders and members of

[30] David Maranto, Beyond a Government of Strangers: How Career Executives and Political Appointees Can Turn Conflict to Cooperation, 2005: Lexington Press.

congressional committees with DHS oversight can help transmit this important message to the incoming administration.

The Panel believes that defining the proper role of DHS headquarters and taking an integrated approach to managing individual components will challenge the department's leaders for years to come. Nonetheless, it is an effort that must continue for DHS to meet the substantial goals set for it upon its creation. The issues discussed in the next three chapters—related to staffing, training and transition planning—are vital. At the same time, it is imperative to recognize that the broader task of integrating DHS' many missions and operating components is the key to its long-term effectiveness.

CHAPTER 3
DHS' EXECUTIVE PROFILE

One of this study's key tasks was to analyze DHS' executive profile as part of an overall analysis of the department's transition efforts. This chapter responds to the first four project tasks:

1. Assess the appropriateness of the overall number of DHS executives, given the department's size and broad mission objectives.
2. Assess the department's allocation of career and non-career executives.
3. Compare DHS with similarly structured agencies' career and non-career executives.
4. Identify gaps in the department's career senior leadership structure, including risks associated with changing leadership during a Presidential transition.

The following sections provide background information on DHS' executive profile, the adequacy of its executive resources, the extent to which career or non-career appointees fill executive positions, and gaps in the department's leadership structure. The comparison with other agencies—Task 3—is made in the first two sections. The Panel's findings are provided at the conclusion of the chapter and its recommendations are provided in Chapter 6.

DHS' TOTAL NUMBER OF EXECUTIVES

Like other departments, DHS has three broad types of executive positions:

1. Executive level positions that are either Presidential appointment with Senate confirmation (PAS) positions or Presidential appointment (PA) positions. These positions are established in statute.
2. SES positions that are either career-reserved (must be filled by a career appointment) or general (can be filled by either a career or non-career appointment). Non-career appointments to the SES cannot exceed 25 percent of the agency's SES position allocation—governmentwide, only 10 percent of SES positions may be filled by non-career appointees.[31] Agencies also may use term appointments of up to three years to fill SES positions.
3. Senior Level (SL) and Scientific/Technical (ST) positions which are high-level positions that do not meet requirements for the SES.

As of March 20, 2008, DHS had 775 executive positions, of which 636 positions were filled and 139 positions were vacant. These positions are summarized in Exhibit 7.

[31] DHS has 8 percent (57 positions) of its 695 SES positions filled by non-career appointments. All other references in this report to the percent of executives who are non-career include all non-career executives (PAS, PA and non-career SES).

Exhibit 7: Summary of DHS Executive Positions

Type of Position	Total	Filled	Vacant
Executive Level			
PAS (non-career)	20	19	1
PA (non-career)	6	4	2
Total Executive Level	26	23	3
SES/TSES			
Non-Career SES/TSES	[a]	57	[a]
Career SES/TSES	[a]	481	[a]
Term SES/TSES	[a]	33	[a]
Total SES/TSES	695 [b]	571	124
SL/ST			
SL	29	21	8
ST	25	21	4
Total SL/ST	54	42 [c]	12
Total All Executives	775	636	139

Notes:

a) SES/TSES positions can be filled by non-career, career or term appointments. Thus, the only breakdown available for SES positions is when they are filled.

b) OPM has authorized DHS with 536 SES positions, 29 SL positions and 25 ST positions. The department also has 150 additional TSA TSES positions for a total of 740 positions. DHS notes that, as of March 20, 2008, it had created nine additional "floater" positions to provide the time to fill executive positions.

c) Three SL/ST positions are filled with term appointments.

Source: DHS Executive Resources

Exhibit 8 shows how these executive positions are distributed across DHS components.

Exhibit 8: Distribution of DHS Executives by Position and Component

Component	PAS	PA Non-Career	SES/ TSES Non-Career	SES/ TSES Career	SES/ TSES Term	SL/ ST	Vacant	Total Executive Positions	Total Civilian Employees
Headquarters									
Domestic Nuclear Detection Office		1		5			1	7	
Intelligence and Analysis	1		1	13		4	6	25	
Management	1		1	31	1	3	13	50	
National Protection and Programs Directorate	1	1	4	7		1	14	28	
Office of General Counsel			4	5		3	8	20	
Office of Health Affairs	1			1		7	2	11	

Component	PAS	PA Non-Career	SES/ TSES Non-Career	SES/ TSES Career	SES/ TSES Term	SL/ ST	Vacant	Total Executive Positions	Total Civilian Employees
Office of Inspector General	1			11			1	13	
Operations Coordination				4	1		1	6	
Office of the Secretary	3	1	14	3	2		5	28	
Policy	1		4	5	4	5	5	24	
Science and Technology	1		1	7	2	17	8	36	
Total Headquarters	10	3	29	92	10	40	64	248	3,417
Operating Components									
Customs and Border Protection	1		4	76	3		22	106	47,254
Citizen and Immigration Services	1		5	38			7	51	8,588
Federal Emergency Management Agency	4	1	15	34	4		19	77	16,119
Federal Law Enforcement Training Center				8			1	9	1,141
Immigration and Customs Enforcement	1		2	50	1		14	68	16,825
Transportation Security Administration	1		2	124	15		9	151	56,966
US Coast Guard [a]	1			12			2	15	7,716
U.S. Secret Service				47		2	1	50	6,587
Total Non-Headquarters	9	1	28	389	23	2	75	527	161,196
TOTAL	19	4	57	481	33	42 [b]	139	775	164,613

Notes:

a) Coast Guard includes only the Commandant of the Coast Guard and civilian executives, not any other senior uniformed executives.

b) Three SL/ST positions are filled with term appointments.

Source: DHS Executive Resources Office as of March 20, 2008 (for executives); FedScope as of September 30, 2007 (for employees).

As shown in Exhibit 8, the great majority of DHS executives are SES members. The department had 139 vacancies in executive positions as of March 20, 2008. This total included one PAS

position, two PA positions, 124 SES positions,[32] and 12 SL/ST positions. The SES vacancies included 93 career SES vacancies, 5 non-career SES vacancies and 26 SES positions that were not designated as career or non-career. The last section of this chapter has a more complete discussion of these vacancies.

ADEQUACY OF DHS EXECUTIVE RESOURCES

No clear criteria specify the appropriate number of senior executive positions in a federal organization. When assessing requests from departments and agencies for additional positions, OPM uses various broad criteria included in section 3132 of title 5, U.S. Code, in addition to its own criteria; it also consults with OMB about the resource implications of requested increases.

First, an agency must initially determine and persuade OPM that the position is classifiable above the GS-15 level, the highest level in the General Schedule.[33] This test is met if the proposed position meets the functional criteria set forth in 5 U.S.C. 3132(a)(2). Exhibit 9 outlines these criteria and shows examples of the types of responsibilities that support them.

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[32] Except where stated otherwise, the use of SES in this report refers to both SES and TSES positions.

33 Classification of the grade of General Schedule positions includes such factors as the program scope and effect, the organizational setting, the supervisory and managerial authority exercised, the extent of personal contacts, the difficulty of typical work that is directed, and other conditions. 5 U.S.C. 5104(15) defines grade GS-15 level work as follows:

Grade GS–15 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with very wide latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute specialized programs of marked difficulty, responsibility, and national significance, along professional, scientific, technical, administrative, fiscal, or other lines, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) *to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.*

Exhibit 9: Criteria for Assessing Requests for SES Positions

SES criteria as set forth by 5 U.S.C. 3132(a)(2)	Specific Responsibilities Outlined by OPM
Directs the work of an organizational unit.	• Assesses policy, program and project feasibility. • Determines program goals and developing implementation plans. • Designs an organizational structure to promote effective work accomplishment. • Sets effectiveness, efficiency, productivity and management/internal control standards.
Held accountable for the success of one or more specific programs or projects.	• Obtains the resources necessary to accomplish the program or project goals and assuming responsibility for their effective use. • Deals with key officials from within and/or outside the agency to gain understanding and support for the program or project.
Monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustment to such goals.	• Monitors work status through formal and informal means to evaluate progress toward objectives • Assesses overall effectiveness, efficiency and productivity of the organization. • Identifies, diagnoses and consults on problem areas related to implementation and goal achievement; and makes decisions on alternative courses of action.
Supervises the work of employees (other than personal assistants).	• Requires accomplishment of work through combined technical and administrative direction of others. • Constitutes a major duty occupying at least 25 percent of the position time. • Meets at least the lowest level of Factor 3 in the *General Schedule Supervisory Guide* based on supervision of non-contractor personnel.
Otherwise exercises important policy-making, policy-determining, or other executive functions.	• Reviews staff recommendations on policies developed to affect the organization's mission; considers political, social, economic, technical and administrative factors with potential impact on the recommended policies; and approves the policies.

Source: OPM

To assess an agency's request for additional SES positions (assuming the positions meet the functional criteria), OPM asks agencies to submit the title and organizational location for the specific position requested and to provide for each position the following information: mission-critical factors giving rise to the need; the source of funding to support the initiative; the outcomes anticipated from each additional executive position; the number of FTEs expected to report to the position; and an organization chart identifying all current and proposed SES positions. Agencies also are asked to prioritize current and proposed new positions, and to provide an analysis of "how the agency can best meet the highest priority needs by redirecting resources from lower priority areas."[34] In the case of its last two requests for additional spaces in 2007, DHS did not include the prioritizing or analysis of redirected resources.

[34] Memorandum for Heads of Departments and Selected Independent Agencies, "Biennial Review of Executive Resource allocations for FY 2008 and 2009, OPM, January 31, 2007 attachment, "Supporting Requests for Additional Allocations, pp. 1–3.

Based on its review of the detailed justification, consultation with OMB and an understanding of an agency's SES and broader human resources management status, OPM advises the agency of its increased allocation of SES spaces and indicates which positions are approved and not approved. The written feedback to DHS for its March 2007 increase was limited with respect to why a position was not approved; in some cases, however, DHS learned that OPM believed the position description was not sufficient to support an SES classification.

A formal analytical assessment of the adequacy and appropriateness of DHS' SES allocations rightly relies on a global position management review that analyzes the agency's SES allocations in the context of established position management principles.[35] "Position management" is predicated on a comprehensive review of the existing organizational structure. Given the duration of this study, the Panel did not conduct an independent top-down review of the existing DHS structure and sub-structures, usually a 2-year process. Thus, a comprehensive determination of the sufficiency of the SES numbers must be tied to a deeper level review of the DHS structure and associated staffing levels.

The Panel based its assessment of the adequacy of SES resources on the leadership needed for new programs and required by workforce increases; an examination of DHS' 2SR operational review to obtain organizational information; an assessment of the demographic profile and current executive staffing levels of filled and vacant positions; an analysis of the staffing level of comparable field component executives; and a comparison with other similar Cabinet-level agencies. Neither OPM nor OMB provided substantive criticism of the last two DHS requests for an increased allocation.

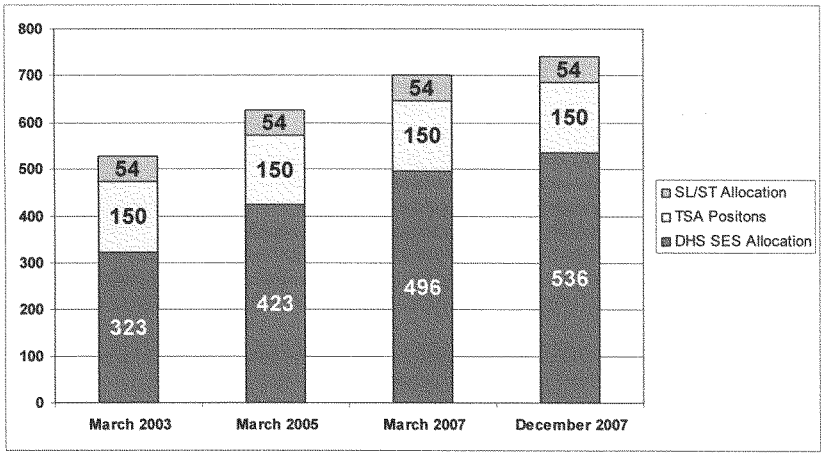
Increases in the Number of DHS SES Executives

Since its creation in 2003, DHS has rapidly expanded its number of SES positions. The department inherited a number of components from Justice and Treasury that were generally lower graded with fewer SES positions than other organizations. This dynamic, combined with the increased importance of homeland security generally and to border and immigration missions specifically, has resulted in DHS seeking and receiving approval for many new SES positions. As shown in Exhibit 10, the OPM allocation of SES positions has increased 66 percent, from 323 positions when DHS was created in March 2003 to 536 positions in December 2007. In addition, DHS has 150 TSES positions in TSA[36] and 54 SL/ST positions.

[35] Position management is the continuous and systematic process of assuring that organizations and positions are structured efficiently and economically. It is the series of steps that managers and supervisors go through to determine the type of organizational structure that is required to fulfill the function(s) assigned to a particular unit, how many positions are needed, and how positions should be designed.

[36] Although most senior executive service positions are authorized by OPM, TSA's positions are not. DHS has agreed with TSA that the number of the TSA executives (TSES) positions can range from 150 to 165 positions.

Exhibit 10: Increase in DHS SES Allocations



Note: In addition to the 740 positions authorized (536 SES, 150 TSA, and 54 SL/ST), DHS has 20 PAS positions that are not included in their allocations. DHS has also created 15 "floater" positions to help maximize the number of SES positions actually filled given the turnover in positions. Therefore the total number of executive positions at DHS is the 740 indicated in this Exhibit (Exhibit 11), plus the 20 PAS positions and the fifteen "floating positions" for a total of 775 as shown in Exhibit 9.
Source: DHS Executive Resources Office

DHS officials believe that a further increase in its SES allocation is needed. In an October 19, 2007 letter to Chairman Bennie G. Thompson, U.S. House Committee on Homeland Security, former Deputy Secretary Michael Jackson stated that, "Continued growth in DHS senior managerial levels is appropriate for our mission and growth trajectory." He noted that management growth was needed to decrease reliance on contractors, implement mandates from the chemical security legislation and staff the recently authorized Office of Assistant Secretary for Health Affairs and congressionally reorganized FEMA. Responding to these concerns, OPM granted DHS an additional 40 SES positions in December 2007. Since that time, departmental components and offices have developed information to support the need for another 131 positions.[37] As of March 2008, DHS was determining whether it would seek more.

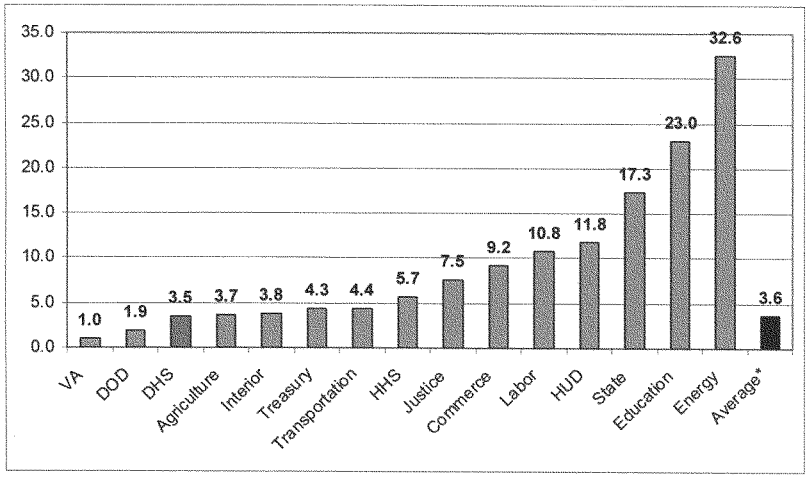
Number of DHS Executives Compared With Other Departments

A key aspect of this study was a comparison of DHS' executive profile to that of other departments. There are various ways to accomplish this task; two criteria are the ratio of employees to executives and the dollar volume of budget authority that an executive oversees.

[37] DHS has indicated that the majority of these SES positions would be for career appointments, but could fill any general position with a non-career appointment.

DHS has 3.5 executives (SES, PAS and PA) for every 1,000 employees, fewer than all departments except DoD and VA. Exhibit 11 compares DHS' number of executives with other departments.

Exhibit 11: Number of Executives per 1,000 Employees

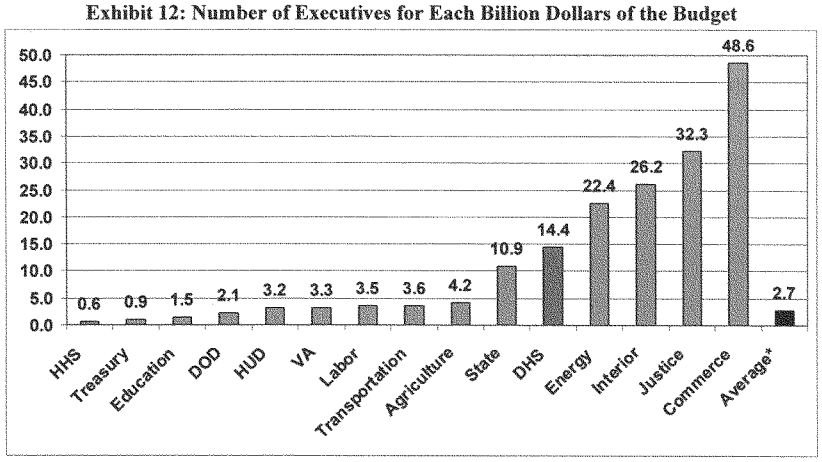


* Average is the total number of executives divided by the total number of employees divided by 1,000 for all 15 departments.
Source: FedScope as of September 30, 2007 adjusted for TSA executives, which are not identified in FedScope. FedScope data only include information on filled positions. Information on all executive positions should be included in OPM's Executive and Schedule C System, but this information is not current or complete.

Exhibit 11, which provides an overall comparison with other departments, demonstrates that DHS is on the low end of total executives per 1,000 employees on a department-by-department comparison. Compared with the governmentwide total of all department executives and all department employees, DHS' ratio is at the average. It is important to note that DoD, VA, State and HHS have a significant number of executives who are in compensation systems other than the SES and not included in this information. These include military leadership and executives at VA's Department of Medicine and Surgery, the State Department's Foreign Service, DHS' Public Health Corps and in medical and scientific positions at the National Institutes of Health.

Comparing executives to the budget of federal departments, the number of DHS executives overseeing each billion dollars of the budget exceeds those in ten departments and is less than those in four departments. At DHS, 14.4 executives oversee each billion dollars of the budget. Governmentwide, the average for the 15 Cabinet departments is 2.7 executives for each billion dollars.

Exhibit 12: Number of Executives for Each Billion Dollars of the Budget



* Average is the total number of executives divided by the total budgeted dollars divided by 1 billion for all 15 departments.
Source: Budget data are FY 2007 actual budget authority shown in the FY 2009 Budget of the United States; FedScope as of September 30, 2007, which includes only filled positions and is adjusted for TSA executives not identified in FedScope.

Again, such broad comparisons need to be viewed with caution given departments' different operating structures and missions. Beyond these general comparative analyses, consideration should be given to the fact that different departments have different types of responsibilities and workforces. For example, some agencies manage large amounts of grants, others conduct their work primarily through contractors and still others are significantly operational.

SES Positions in Border and Immigration Field Offices

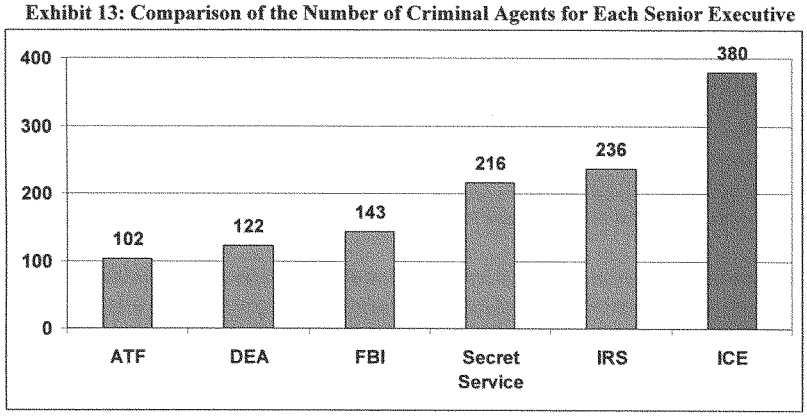
DHS officials interviewed said additional senior executive positions are needed in the field locations of Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Citizenship and Immigration Services (CIS). Officials in these components stated that increased border enforcement and immigration responsibilities have resulted in the need for more field executives to lead the programs.

ICE is an investigative agency that is responsible for securing the United States by enforcing immigration and customs laws, protecting Federal buildings and other key assets, and providing law enforcement support in times of national emergency. The agency documented its needs for additional executives in a September 2007 "Senior Executive Service Position Request Strategic Plan" that provides a rationale for additional SES spaces and reflects concern over a "highly fragmented deployment of executive positions in the field and a shortage of executive positions to head critical headquarters and field program and leadership roles." With respect to consolidating executive leadership in top field offices, ICE believes that all Special Agent in

Charge (SAC) and Field Office Director positions should be at the SES level given their responsibilities and because they are at that level in such comparable law enforcement agencies as the FBI and DEA. Currently, only 16 of 26 ICE SACs are SES executives. For example, an ICE official said the FBI in Manhattan has one Assistant Director and six SACs, all of whom are SES. In contrast, the New York City SAC is the only ICE SES member in the New York area; the deputy and the SACs in New Jersey, Baltimore and Philadelphia are GS-15s.

ICE's key occupation is Criminal Investigator, GS-1811, a common occupation in other law enforcement agencies. It has 6,049 criminal investigators, the largest occupation of its 16,975 employees.[38] Analysis shows that 5,695 agents are in the field, of whom only 15 are senior executives—a ratio of 1 executive for every 380 agents. The project team compared this ratio with five other agencies with more than 2,000 criminal agents. As shown in Exhibit 13, ICE has the highest number of field agents for each SES field executive of these agencies.

Exhibit 13: Comparison of the Number of Criminal Agents for Each Senior Executive



Source: FedScope as of September 2007.

CBP is responsible for protecting the Nation's borders to prevent terrorists and terrorist weapons from entering the United States, while facilitating the flow of legitimate trade and travel. Its officials said they need 60 to 70 additional SES positions, noting that law enforcement needs a lower ratio of management to employees, especially along the southern border where its mission has expanded rapidly. CBP officials told the project team that some field locations have a GS-15 supervising very large offices.

Comparing CBP with other law enforcement agencies is imprecise because only several of its employees are criminal agents. Seventy percent are Customs and Border Protection Inspectors and Border Patrol Agents, 99 percent of whom are based in the field. However, only 7 SES Border Patrol Agents and 20 Directors of Field Operations and Port Directors are field-based.

[38] As of March 23, 2008, ICE had 17,295 on-board employees (includes full time and part time employees, those on LWOP, volunteers, etc.).

Overall, 33 field executives in CBP supervise 45,000 field CBP employees. The large border states have large numbers of employees with few executives, as shown in Exhibit 14.

Exhibit 14: CBP Executives and Employees in Key States

State	Senior Executives	Total Employees	Number of Employees for Each Executive
Texas	9	11,207	1245
California	6	8,001	1334
Arizona	3	4,787	1596
New York	4	3,527	882
Florida	2	2,878	1439
New Mexico	0	1,517	∞

Source: FedScope as of September 2007.

CIS, responsible for administering immigration and naturalization adjudication functions and for establishing immigration services policies and priorities, is the third DHS component voicing the need for additional field executives. Although their number of SES positions had grown from 15 to 50 positions, CIS officials reported that they could benefit from an additional twenty. They noted that most of those positions deemed necessary would be in the field, not headquarters.

CIS is a service organization and it is difficult to find exact comparisons with other federal agencies. Sixty-five percent of all CIS employees are in General Inspection and Investigation Compliance and Compliance and Inspection Support occupations and 95 percent of them are based in the field. Overall, CIS has 7,552 field employees with 15 field executives—a ratio of 1 executive for every 500 employees. Officials noted that 15 field executives are not sufficient to cover its four regions, 26 domestic districts, and three international districts. Some field organizations have from 600 to 1,000 employees with GS-15s managing the office.

Exhibit 9, shown earlier in this chapter, outlines the criteria that OPM considers when determining whether SES positions are warranted. Key responsibilities for field executive positions in CIS, ICE, and CBP meet several of them. For example, an ICE field director is responsible for directing district programs that call for securing the United States by enforcing immigration and customs laws; protecting Federal buildings and other key assets; providing law enforcement support in times of national emergency; eliminating vulnerabilities that pose a threat to the Nation's borders; enforcing economic, transportation and infrastructure security; and significantly minimizing the potential threat of terrorist acts against the nation. This position meets four of the five broad criteria for an SES position, including directing the work of an organizational unit; being held accountable for the success of a program; monitoring progress toward organization goals; and supervising the work of employees.

Several factors support the need for more DHS SES positions in field locations. These include:

- leadership for new programs and programs that are enhanced by virtue of additional resources, authority, a higher priority status or a combination of these factors, examples being border security and immigration, identity security, cyber security and operations

- leadership required by a substantially increased workforce to ensure sufficient direction and oversight, such as Border Patrol Agents
- supplementary leadership, often in the form of deputy positions, to ensure sufficient depth and continuity
- appropriate classification for certain GS-15 positions that have grown in responsibility and authority to the point that they should be established as an SES position
- the lack of equivalency with other agencies regarding executive level law enforcement positions

As noted earlier, DHS components have submitted requests for an additional 131 SES positions. These requests are being reviewed in the Office of the Under Secretary for Management for possible submission to OPM, yet the department has not decided whether to pursue additional ones at this time. If it does, this request will reflect not only component priorities but departmental ones based on which requested positions most clearly align with the department's priority programs, taking funding sources, congressional interest and other factors into consideration. In late 2008, OPM will conduct a biennial review of SES allocations that will provide DHS an opportunity to request additional spaces.

CAREER VERSUS NON-CAREER EXECUTIVES

An analysis of DHS' career/non-career executive profile was another key study task. There has been significant debate over the appropriate balance between non-career and career employees in government agencies. On the one hand, it is argued that reducing the number of political appointees drawn from outside the civil service deprives the President of the ability to bring new energy, perspective and responsiveness to federal programs. In addition, it is believed that top political leaders, such as Cabinet Secretaries, require an immediate staff that is trusted, loyal and politically aligned with the President's agenda. On the other hand, those in favor of reducing the number of political appointees—or replacing them with career executives—have pointed to the management advantages of career executives; that is, their subject area expertise, public management experience and longer tenure arguably are beneficial to continuity and the efficient operation of government programs.

OPM has not developed specific criteria for the types of positions that career appointments or non-career appointments should fill. It has outlined the criteria for the type of position that should be designated career-reserved and therefore must be filled with a career appointment. Such positions are created to "ensure the impartiality or the public's confidence in the impartiality, of the government." Career reserved positions "involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major policies of the administration or agency." Career officials must occupy various occupations, including adjudication and appeals; audit and inspection; civil or criminal law enforcement and compliance; contract administration and procurement; grants administration; investigation and security matters; and tax liability.

Using the definition of career-reserved positions, it can be posited that positions potentially to be filled by non-career appointees are those that, as a function of their duties, require commitment to the policies of the President and administration they serve. Non-career appointee qualifications are not scrutinized against the same executive criteria as career appointees. The overarching consideration for the latter is their potential to implement and/or execute the duly established policies of the President and administration.

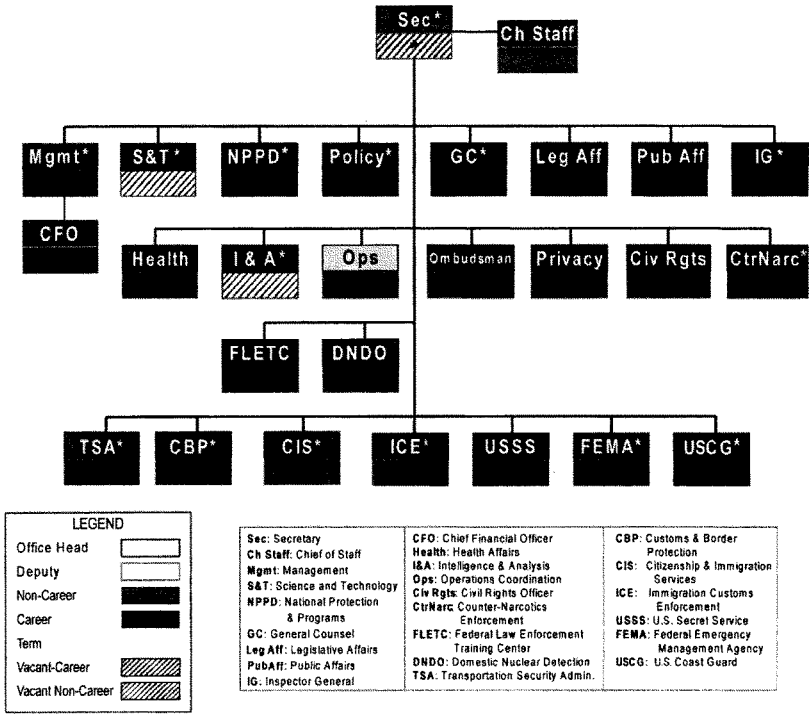
Nearly all non-career executives will leave as a result of the Presidential transition. At DHS, approximately 11 percent (83 of 775) of all executive positions are non-career. About 13 percent (80 of 636) of filled executive positions are non-career. This distribution will change somewhat as DHS implements executive staffing plans related to the transition. Acting Deputy Secretary Paul Schneider stated in the January 19, 2008 issue of the *DHS Leadership Journal*, "As part of (transition) planning, we're filling some of the top jobs previously held by political appointees with career professionals....By promoting dedicated civil servants who've proven their mettle, we're not only building for the future, but are helping ensure that during the transition...our department is prepared." Examples of this approach are the appointments of career deputies in CBP and TSA. In addition, career appointees filled three FEMA Regional Administrator positions.

It is interesting to note that some positions currently filled by non-career SES appointees would have been filled by career appointees if sufficient candidates had responded to merit staffing announcements; examples include the Chief of Staff and Assistant Director for Public Affairs positions at ICE. DHS officials noted that some post-Katrina Regional Administrator jobs at FEMA were filled on a non-career basis rather than career in order to hire qualified persons on an expedited basis.[39] Hiring a non-career employee or a term employee can take just a few weeks; in contrast, DHS' career executive hiring process averages several months when using an open announcement/competitive process. However, non-career employees cannot receive recruiting or relocation incentives which are available to career executives.

DHS' 80 non-career executives fill key executive positions, including Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, deputies and other key officials. Exhibit 15 shows the 54 DHS executives filling the head and deputy positions based on the department's organization chart. Of the 54 positions, thirty are non-career.

[39] FEMA officials point out that the Regional Administrator positions have largely been non-career appointments because various Administrations have wanted to reserve the positions for non-career appointments.

Exhibit 15: DHS Senior Leadership Positions by Type of Appointment



*** PAS Appointment**

Source: DHS Executive Resource Data as of March 20, 2008.

As depicted in Exhibit 16, the large operating components have fewer non-career executives than headquarters offices. FEMA is the exception; its executive profile is discussed in the next section.

Exhibit 16: Career/Non-Career Profile of Filled DHS Executive Positions

Component	Non-Career	Percent Non-Career	Career	Percent Career	Term[a]	Total
Headquarters						
Domestic Nuclear Detection Office	1	17%	5	83%	0	6
Intelligence and Analysis	2	11%	17	89%	0	19
Management	2	5%	34	92%	1	37
National Protection and Programs Directorate	6	43%	8	57%	0	14
Office of General Counsel	4	33%	8	67%	0	12
Office of Health Affairs	1	11%	8	89%	0	9
Office of Inspector General	1	8%	11	92%	0	12
Operations Coordination	0	0%	4	80%	1	5
Office of the Secretary	18	86%	3	14%	2	23
Policy	5	26%	8	42%	6	19
Science and Technology	2	7%	23	82%	3	28
Total Headquarters	42	23%	129	70%	13	184
Operating Components						
Customs and Border Protection	5	6%	76	90%	3	84
Citizen and Immigration Services	6	14%	38	86%	0	44
Federal Emergency Management Agency	20	34%	34	59%	4	58
Federal Law Enforcement Training Center	0	0%	8	100%	0	8
Immigration and Customs Enforcement	3	6%	50	93%	1	54
Transportation Security Administration	3	2%	124	87%	15	142
U.S. Coast Guard	1	8%	12	92%	0	13
U.S. Secret Service	0	2%	49	98%	0	49
Total Non-Headquarters	38	9%	391	86%	23	452
TOTAL DHS	80	13%	520	82%	36	636

Note:

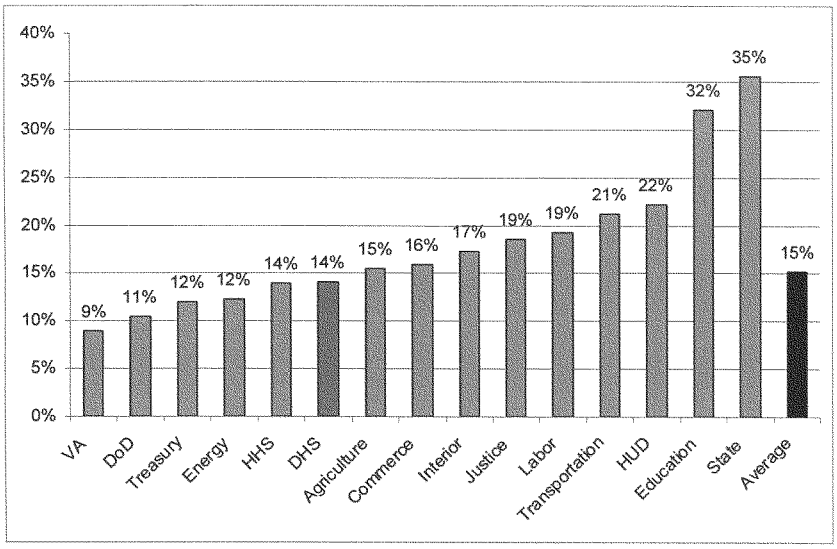
a) Term executive appointments at DHS have largely been used to fill temporary expert needs. The overwhelming majority of the incumbents in these positions have had long-term careers in the government. .A small number of these executives have previously held political positions.

Source: DHS Executive Resources as of March 20, 2008.

Career/Non-Career Mix Compared With Other Federal Departments

To compare DHS' career/non-career executive mix with other departments, the project team used information in OPM's FedScope as of September 30, 2007. The data showed that 14 percent of DHS' executives were non-career, which differs from more recent DHS data showing 13 percent. DHS' percentage of non-career executives is slightly lower than the governmentwide average of 15 percent. Exhibit 17 compares the DHS' percentage of non-career executives to other departments.

Exhibit 17: Percentage of Executives That Are Non-Career



Source: FedScope as of September 30, 2007 (for filled positions; adjusted for TSA executives not identified in FedScope). Accurate information from OPM on authorized executive positions is not available.

Compared with other departments, the percentage of DHS' currently filled non-career executives (14 percent) ranks it as one of six departments with the lowest percent of non-career executives, alongside VA, DoD, Treasury, Energy and HHS.

In addition to determining the overall percentage of non-career executives, it also is important to show the percentage of key non-career executives in a department's headquarters structure. Exhibit 15 depicts the 54 career/non-career positions on DHS' organizational chart; of that number, 30 positions or 56 percent are non-career. The project team then analyzed the career/non-career mix of other departments based on their headquarters organizational charts: State, Justice, Treasury and Defense.[40] The results of this analysis are shown in Exhibit 18.

[40] These departments were chosen because they also have homeland security responsibilities.

Exhibit 18: Selected Department Senior Leadership Positions

Department	Non-Career Executives*	Percent Non-Career	Career Executives	Percent Career	Total Executives
DHS	30	56%	24	44%	54
State	57	66%	29	34%	86
Justice	44	59%	31	41%	75
Treasury	45	49%	46	51%	91
Defense	70	59%	49	41%	119

* Includes PAS, PA and non-Career SES appointments.
Source: OPM's Executive and Schedule C System as of January 31, 2008 supplemented with information from Leadership Directory.

The percentage of key positions at these departments filled by non-career appointments range from 49 percent at Treasury to 66 percent at State. DHS' 56 percent is similar to that of the other large departments with homeland security responsibilities.

Leadership Continuity and the Role of Career Executives

Various studies have highlighted the importance of leadership continuity. Because non-career employees generally stay in a position fewer than 2 years, longer fixed-term appointments established by statute or career executives must provide that continuity. For example, an Academy study for the FBI outlined options for organizing the bureau's management functions and noted that, "Regardless of which option the FBI selects for organizing its management functions, it should address its difficulties with leadership continuity." In describing the need for Chief Operating Officers and Chief Management Officers, GAO also spoke to the importance of leadership continuity and ways to achieve it. In a November 2007 report, GAO stated, "Given that organizational results and transformational efforts can take years to achieve, agencies need to take steps to ensure leadership continuity in the (Chief Operating Officer/Chief Management Officer) position."[41] It included term or career appointments as possible mechanisms to increase leadership continuity.

Fixed-term appointments established in statute can instill a long-term focus, but they also may reduce rapport with a new Administration's non-career leadership team. Several term appointments for senior federal positions have been established to promote and enhance continuity and independence. These include:

- the 5-year term of the Chief Operating Officer of the Air Traffic Organization in the Federal Aviation Administration
- the 10-year term of the Director of the FBI
- the 3- to 5-year term of the Chief Operating Officer of Federal Student Aid in the Department of Education

[41] U.S. Government Accountability Office, *Organizational Transformation: Implementing Chief Operating Officer/Chief Management Officer Positions in Federal Agencies*, GAO-08-34, November 2007.

- the 5-year term of the Commissioner of the Internal Revenue Service
- the 6-year term of the Commissioner of the Social Security Administration

Some experts interviewed by GAO said such fixed-term appointments could protect "the incumbent from undue political influence" and enhance the "continuity of leadership in the agency."

Use of Career and Fixed-Term Appointments

Leadership continuity also could be enhanced if specific non-career leadership positions were converted either to fixed term or career appointments. Several officials, both inside and outside DHS, thought that several non-career positions should be filled with career executives. In January 2007, the DHS Homeland Security Advisory Commission Culture Task Force stated that the department should establish a Deputy Secretary for Operations to report to the Secretary and be responsible for high level departmentwide integration and alignment of the components. The task force report recommended that the position be a career executive to provide continuity and freedom from political influence. It was envisioned that this official also would be in a position of continuity to help drive organizational maturation and reinforce the culture required for the long-term success of DHS and its components.

In its January 2008 report, the DHS Homeland Security Advisory Council Administration Transition Task Force recommended that Congress and current DHS leadership "continue to reduce the number of senior political appointees so that there is a more even mix of career and Presidential appointed senior positions to maintain continuity and historical knowledge." The task force did not identify specific political positions that should be redesignated as career.

One option is to convert some positions to fixed-term appointments, similar to those identified earlier in this chapter. For example, one official suggested that the Assistant Secretary of ICE be made a 5-year term position. It was noted that law enforcement positions are not meant to be partisan. In addition, as discussed in Chapter 2, one presidential candidate has suggested that the FEMA Administrator have a fixed term. These positions are largely operational and less policy oriented. PAS appointees may be chosen from career ranks. For example, Under Secretaries at the Department of Veterans Affairs have 4-year term PAS appointments and often are chosen from the non-partisan career executive ranks. Making a PAS position a fixed-term appointment requires a change in authorizing legislation.

Several DHS offices and components have indicated that career executives should fill certain non-career positions.[42] These include one position in an operating agency, the CBP Assistant Commissioner for International Affairs and Trade Relations, and several positions in headquarters, specifically:

[42]This information was developed as a part of DHS' succession planning database. More information on this database is contained in Chapter 5.

- Deputy Under Secretary for Operations in Intelligence and Analysis
- Deputy Under Secretary for National Programs and Protection
- Director for Immigration Refugee and Asylum Affairs in the Office of Policy
- Director of the Visa Waiver Program in the Office of Policy
- Chief of Staff in Science and Technology
- Director of the Interagency Programs Division in Science and Technology
- Chief of Staff in the Office of the Under Secretary for Management
- Chief Human Capital Officer
- Chief Financial Officer

To provide greater continuity, some officials suggested that all Deputy Under Secretary positions, Deputy Assistant Secretary positions, and deputy positions in other DHS offices and components be filled with career executives. Currently, most offices have a career deputy, but there are exceptions. Offices that do not have a career deputy or second-in-charge position include FEMA, CIS, the National Programs and Protection Directorate, Office of Policy, Office of General Counsel and Office of Public Affairs. In addition, several offices have career deputy positions, but the positions are not filled, including Science and Technology, Intelligence and Analysis, the Office of Legislative Affairs and Office of the Chief Financial Officer.

Based on these data and analysis, the Panel believes it important that offices and components have top leadership that includes both career and political appointees. Each has an important role and set of responsibilities to carry out. An effective mix of career and non-career positions can ensure that these officials complement each other and create positive synergy.

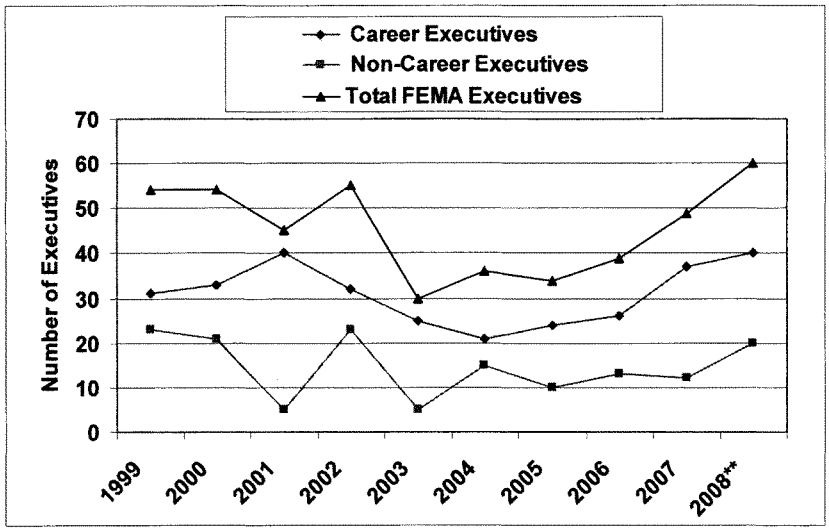
FEMA Non-Career Executive Positions

FEMA is the key DHS component that needs to address its number of non-career executives. As shown in Exhibit 16, FEMA stands out in terms of its number and percentage of non-career executives when compared to other department offices and components. It has 20 non-career executives, 4 term executives and 35 career executives. The 20 non-career executives include 6 of the 10 Regional Administrators. FEMA also has 19 vacant executive positions,[43] one non-career, 11 career and seven not designated. Nearly all current and former DHS officials interviewed said FEMA should have significantly fewer non-career executives; they specifically recommended that career executives fill Regional Administrator positions.

FEMA has a history of filling a large number of executive positions with non-career executives. Exhibit 19 shows that the number of career executives has remained relatively constant, but the number of non-career executives has fluctuated, primarily with the change in Administration in 2001 and DHS' creation in 2003.

[43] As of April 23, 2008, FEMA had 3 SES selections pending on-boarding in the next 30 to 40 days, 3 in final interviews; and 8 closed announcements in the ranking process.

Exhibit 19: FEMA Career and Non-Career Executives, 1998 to 2008



* Data as of September 30.
** 2008 data are as of March 20, 2008.
Source: FedScope (1998 through 2007); DHS Executive Resources (2008)

A position-based breakdown of FEMA's non-career positions indicates that as of March 20, 2008:

- Five are PAS positions and one is a non-career SES position designated by the President under the Stafford Act:[44]
  - the Administrator and Deputy Administrator (PAS)
  - three top-level positions: Associate Administrator, Grants Program; Deputy Administrator for National Preparedness; and Assistant Administrator, U.S. Fire Administration (PAS)
  - Director, Small State and Rural Advocate/Director, Community Preparedness (Stafford Act)
- Fifteen are SES non-career positions (administratively determined):
  - nine Assistant Administrator, Deputy Administrator, and Director positions for major program areas
  - six Regional Administrator positions

[44] PAS and PA positions are all established in statute. The non-career SES position designated by the President is shown in the exhibits in this report as a PA position.

In the past year, three Regional Administrator positions were converted from non-career to career. One such position is currently vacant as of March 20, 2008.

The 1993 Academy report, *Coping with Catastrophe: Building an Emergency Management System to Meet People's Needs in Natural and Manmade Disasters*, found that FEMA had too many political appointees and recommended that non-career positions be limited to the Director and Deputy Director, and that a career Executive Director be appointed, as well. Fifteen years later, current and former FEMA officials interviewed agreed. Specifically, they viewed the Regional Administrator position as more appropriate for career appointment.

Views were more mixed on whether other FEMA non-career positions should be career. The agency has non-career appointees in several positions, including the Assistant Directors for Disaster Assistance, Disaster Operations, Mitigation, National Continuity Programs and National Capital Region Coordination. Similar positions for other operating components are career. These executives are responsible for primary FEMA programs and, with the exception of the National Capital Region Director, all have career deputies. As they are general SES positions, DHS has the authority to fill them with either career or non-career appointees.

FEMA officials themselves have indicated that a number of positions currently filled by non-career executives should be converted to career. Providing input to a DHS succession planning database, FEMA recommended that all of its Regional Administrator positions be converted to career executives, noting that the positions require:

- comprehensive knowledge of the principles, practices and organizations that affect the emergency management activities in the United States and of the operations, policy and program concerns of significant emergency management constituencies
- ability to work with diverse interests and viewpoints to achieve consensus on goals and objectives
- knowledge of organization and program management theories, principles and techniques
- ability to exercise leadership and manage a diverse and complex organization

FEMA officials believe that these skills can best be provided by a career executive who also would provide leadership continuity. They also noted that the Assistant Administrator of the U.S. Fire Administration and the Assistant Administrator of National Continuity Programs should be career.[45]

GAPS IN THE DHS CAREER SENIOR LEADERSHIP STRUCTURE

Another critical study task was to identify gaps in DHS' career senior leadership structure, including risks associated with changing leadership during a Presidential transition. Because most of the non-career leadership will leave with transition, career executives must fill many

[45] In April 2008, FEMA began efforts to recruit a career executive to fill the position of Assistant Administrator, U.S. Fire Administration.

positions until new non-career executives are sworn in. DHS' plans to address leadership continuity are discussed in Chapters 4 and 5.

Vacant Executive Positions

A large number of vacancies is a major gap in DHS' career leadership structure. As noted earlier, there were 139 vacant executive positions as of March 20, 2008.[46] Most are for career SES, but there are three non-career positions: Deputy Secretary, Chief Information Officer and Chief Human Capital Officer.[47] The department has indicated that careerists will fill the other vacancies, senior executive positions, except for five positions being held for non-career appointments. Those 139 vacancies are spread across department offices and components; the largest percentage of vacant executive positions is in the National Protection and Programs Directorate. In addition, DHS has flagged 34 of the 139 vacant positions as critical. Exhibit 20 shows the distribution of these vacancies.

Exhibit 20: DHS Executive Positions

Component of Office	Total	Filled	Vacant	Percent Vacant	Vacant Positions That Are Critical[a]
Headquarters					
Domestic Nuclear Detection Office	7	6	1	14%	1
Intelligence and Analysis	25	19	6	24%	2
Management	50	37	13	26%	4
National Protection and Programs Directorate	28	14	14	50%	7
Office of General Counsel	20	12	8	40%	0
Office of Health Affairs	11	9	2	18%	0
Office of Inspector General	13	12	1	8%	0
Operations Coordination	6	5	1	17%	1
Office of the Secretary	28	23	5	18%	0
Policy	24	19	5	21%	0
Science and Technology	36	28	8	22%	4
Total Headquarters	**248**	**184**	**64**	**26%**	**19**

[46] DHS components and offices have identified critical positions as a part of DHS' transition planning efforts. This initiative is discussed in Chapter 5.

[47] The positions all have acting officials serving in them. For example, the Deputy Secretary is currently filled by the Under Secretary for Management on an acting basis. In addition, the Chief Information Officer position was filled as of April 2008.

Component of Office	Total	Filled	Vacant	Percent Vacant	Vacant Positions That Are Critical[a]
Operating Components:					
Customs and Border Protection	106	84	22	21%	5
Citizen and Immigration Services	51	44	7	14%	1
Federal Emergency Management Agency	77	58	19	25%	1
Federal Law Enforcement Training Center	9	8	1	11%	0
Immigration and Customs Enforcement	68	54	14	21%	4
Transportation Security Administration	151	142	9	6%	2
U.S. Coast Guard	15	13	2	13%	2
U.S. Secret Service	50	49	1	2%	0
Total Non-Headquarters	**527**	**452**	**75**	14%	**15**
DHS TOTAL	**775**	**636**	**139**	**18%**	**34**

Note:
a) These positions were deemed critical in DHS' Critical Position Database, discussed in Chapter 5.
Source: DHS Executive Resources Database and Critical Position Database.

DHS is working to fill executive vacancies; in the past year, it has filled more than 150 executive positions. Keeping executive positions filled has been a challenge given the addition of new positions and a high executive turnover rate. The status of filling the current 139 vacancies is shown in the Exhibit 21.

Exhibit 21: Status of Current Executive Vacancies

Appointment Type	No Action	Pending Recruitment	Active Recruitment Process	Assessing Applicants	Candidate Selected	Total
SES Career	2	21	15	40	22	100
SES Non-Career	1	4				5
PA	2					2
PAS	1					1
SES Not designated	7	18			6	31
Total	13	43	15	40	28	139

Source: DHS Executive Resources as of March 20, 2008.

DHS received 40 new SES positions in December 2007; of this number 38 positions are vacant with sixteen pending recruitment, seven in the active recruitment process, nine undergoing assessment and six candidates being selected.

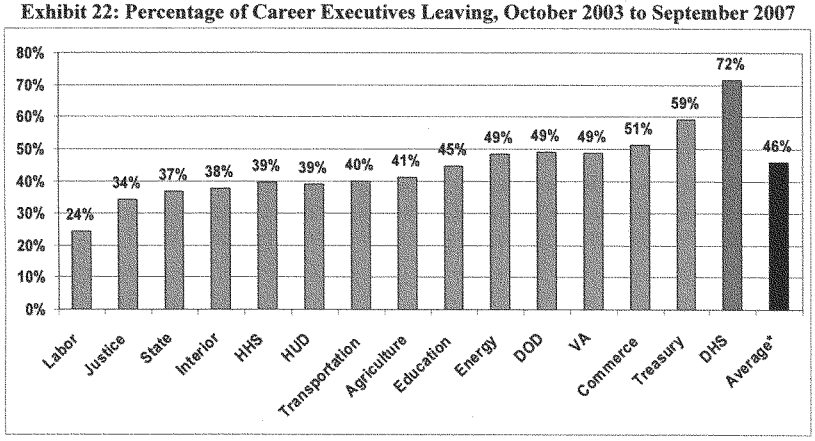
DHS Career Executives and Turnover

Another gap in DHS career executives results from the relatively short time that executives have served in their positions, partially attributable to a high turnover rate. Both non-career and career executives ranks have suffered excessive turnover. In 2007, scholar Paul Light noted that "Homeland Security has experienced extraordinary personnel turnover. In its first four years, the

department has gone through two secretaries…three deputy secretaries, eight under secretaries, three FEMA administrators, four TSA administrators, a dozen assistant secretaries, hundreds of senior executives…"[48]

Although non-career executives generally serve in their positions for shorter periods of time than career executives do, large numbers of DHS career executives also have left, mostly due to retirement.[49] Officials noted that many executives came to the department toward the end of their career and that the lack of clarity of the headquarters mission has caused others to find positions in other departments. Overall, 72 percent of DHS career executives left the department from October 1, 2003 to September 30, 2007, the highest rate of any Cabinet department. These data are shown in Exhibit 22.

Exhibit 22: Percentage of Career Executives Leaving, October 2003 to September 2007

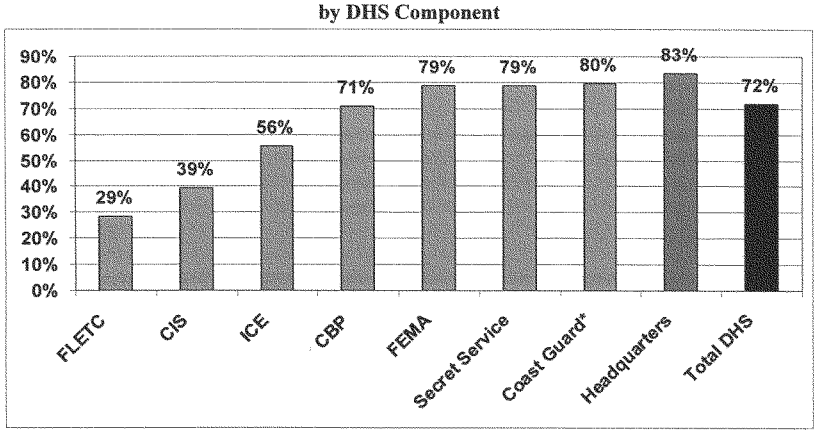


* The average is for all 15 departments.
Source: Academy analysis of FedScope data.

Since the beginning of FY 2004, the turnover rate has been high for most DHS offices and components, but especially at headquarters and in the U.S. Coast Guard, U.S. Secret Service, FEMA and CBP. Exhibit 23 depicts the turnover rate for DHS headquarters and components.

[48] The Homeland Security Hash. Paul C. Light. Wilson Quarterly. Spring 2007
[49] Turnover is defined as the number of separations divided by the average number of executives employed. Separations are executives who transferred out of the department to another department, quit, retired, were part of a reduction-in-force, terminated, removed, died or separated for other reasons.

Exhibit 23: Percentage of Career Executives Leaving, October 2003 to September 2007, by DHS Component

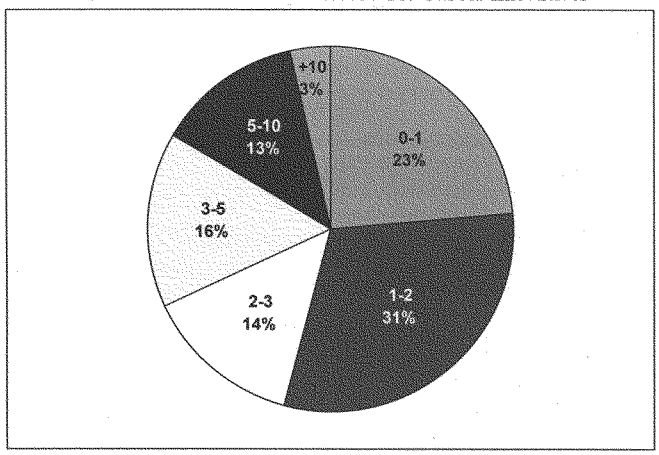


* U.S. Coast Guard data only include civilian executives, not uniformed service.
Source: FedScope (data do not identify TSA executives).

As a result of this turnover rate and because of the creation of many new executive positions, more than half of DHS career executives have been in their positions less than 2 years and two-thirds less than 3 years.[50] Exhibit 24 depicts this distribution.

[50] Time-in-position was calculated from the date of appointment to the current position for an executive until March 20, 2008.

Exhibit 24: Years in Position for DHS Career Executives



Source: Academy analysis based on DHS personnel data as of November 2007. The analysis does not include TSA executives; TSA executive appointment data were not available.

Ethnic and Gender Profile of DHS Executives

The relatively low number of minority and female executives is the last area of concern pertaining to DHS' senior executive leaderships; the department has relatively fewer minority executives and female executives than most other federal departments. This is especially true for non-career executives, of whom 12 percent are female and 12 percent belong to a minority group.[51] Further, 7 percent of career and non-career executives in headquarters offices are minority.

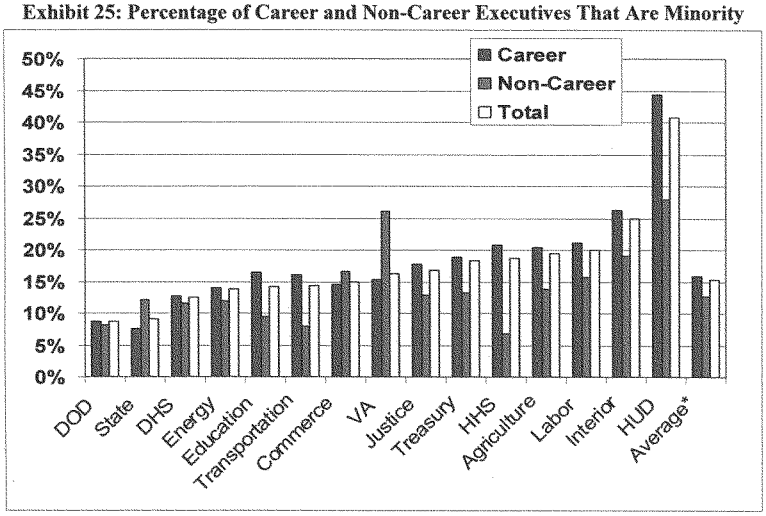
A diverse and inclusive workforce is a competitive advantage for achieving results. GAO's model of effective strategic human capital management includes "empowerment and inclusiveness" as one of eight critical success factors. In its report describing that model, GAO noted:

> Organizations that promote and achieve a diverse workplace can attract and retain high-quality employees and increase customer loyalty. For public organizations, this also translates into effective delivery of essential services to communities with diverse needs.[52]

[51] These comparisons do not include TSA as data on executives are not available in FedScope.
[52] U.S. Government Accountability Office, *A Model of Strategic Human Capital Management*, GAO-02-373SP, March 2002.

DHS has a lower percentage of minorities in executive positions than all other departments, except DoD and State. Exhibit 25 shows the percentage of career, non-career and total executives that are minority for the 15 departments.

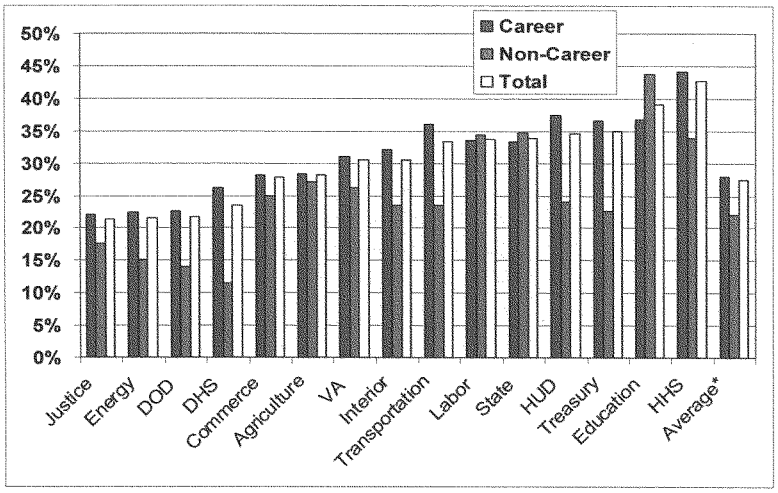
Exhibit 25: Percentage of Career and Non-Career Executives That Are Minority



* Average is for all 15 departments.
Source: FedScope as of September 30, 2007. DHS data do not include TSA because its executives are not separately identified in FedScope.

DHS has a lower percentage of female executives than all but three departments: Justice, Energy and DoD. Exhibit 26 shows the percentage of female career, non-career and total executives in federal departments.

Exhibit 26: Percentage of Career and Non-Career Executives That Are Female



* Average is for all 15 departments.
Source: FedScope as of September 30, 2007. DHS data do not include TSA because its executives are not separately identified in FedScope.

A March 2008 report by the majority staff of the House Committee on Homeland Security noted the lack of diversity of DHS executives.[53] In releasing the report, the Committee Chairman stated that "the makeup of the department's senior leadership must be reflective of the face of America." The report concluded:

> To realize its potential, become the agency Congress intended, and fulfill the expectations of the American people, DHS must actively seek to bring to bear divergent perspectives on every aspect of its operations. Failure to develop a culture that incorporates, recognizes, and promotes diversity as an organizational strength is not only counterproductive to the organizational goals but a disservice to the American taxpayer.

DHS has recognized that it must improve its executive diversity profile, and it has taken several steps to that end. The department recently designated its management council as DHS' de facto diversity council to provide high level direction, priorities and support toward enhancing diversity. One of the council's first actions will be to approve a departmentwide diversity strategy and implement a diversity action plan for FY 2008-2010.

[53] House Committee on Homeland Security Majority Staff, *The Department Of Homeland Security: Minority and Gender Diversity in the Workforce and Career Senior Executive Service*, March 2008.

FINDINGS

Task 1: Assess the appropriateness of the overall number of executives for DHS given its size and broad mission objectives.

The Panel did not conduct a position management review of DHS' organizational structure, but compared its executive structure to other Federal agencies to judge it appropriateness. Several important conclusions can be drawn based on this review:

- DHS' initial allocation of total senior executive slots was well below the number it ultimately would need to accomplish its mission. Additional executives were needed to deal with increases in staffing, the establishment of new organizations and new or expanded responsibilities that were not part of the department's original charter. As a result, the agencies which examine and approve agency requests for additional SES slots—OMB and OPM—have raised DHS' allocation of SES slots from 323 positions in March 2003 to 536 positions in December 2007.[54] The Panel believes these increases are warranted.
- Given changes in the border and immigration missions, there appears to be a shortage of senior executives in ICE, CBP and CIS field locations. Given its unfilled SES positions, DHS could consider using some open slots to fill executive positions in the border and immigration components or requesting additional slots from OPM.
- The DHS organizational structure has not stabilized. With two major reorganizations in 5 years, the department continues to struggle with headquarters' role in managing the components as a unified whole to better protect homeland security. As DHS refines its organizational and operating structure, the Panel believes it will have the opportunity to examine executive resources needs across the entire organization and components. As part of this process, the department will be able to structure positions and optimize supervisor and employee ratios at all levels.

Task 2: Assess the department's allocation of career and non-career executives.

The Panel finds that the overall allocation of non-career and career executives is reasonable. It is important that offices and components have top leadership that includes both types of appointees; as DHS has proposed, some shifts from non-career to career appointments are warranted. Non-career and career appointees have important and interlocking, if somewhat different, roles and responsibilities to carry out. An effective relationship between them can create a positive synergy for the department. The Panel believes that DoD's mix of career and non-career civilian executives and career military leaders enhances its leadership continuity. This career/non-career mix could provide a model for DHS'

The number of FEMA non-career appointments raises questions compared with other DHS components and on a position-type basis. DHS officials have identified numerous non-career

[54] In addition to the SES positions authorized by OPM, DHS has 150 SES positions in TSA and 54 ST and SL positions that DHS considers a part of its executive resources. The TSA, SL and ST positions have not been increased over this period.

positions that should be filled with career executives, including all Regional Administrators. FEMA officials agree that these positions should be filled with career appointments, but not Assistant Administrator positions, which they view as having significant policy roles.

Task 3: Compare DHS with similarly structured agencies' career and non-career executives.

Overall, DHS' executive profile is similar to that of other federal departments. Recognizing the limitations of overall average comparisons, the department has relatively fewer executives per employee than most others, yet more executives to oversee each billion dollars of the budget than most others. About 14 percent of DHS' executives are non-career, slightly less than the average percentage for all departments.

Task 4: Identify gaps in the department's career senior leadership structure, including risks associated with changing leadership during a Presidential transition.

Given the departure of non-career executives during the Presidential transition, DHS must rely more on its career executives. To be fully prepared, it needs to address the following gaps in its career executive leadership structure:

- There are numerous vacancies that need to be filled.
- Due to high turnover, DHS career executives have less experience relative to most other departments' executives. More than half have less than 2 years of experience.
- DHS must improve its diversity profile.

Filling critical positions with experienced executives poses a challenge to DHS during routine times. The challenge can become even more daunting during a Presidential transition when most non-career executives leave.

CHAPTER 4
DHS TRAINING FOR TRANSITION READINESS

Training and developing DHS executives are critical for ensuring that the department has sufficient executive capacity during the Presidential transition and beyond. Incoming executives must quickly gain an understanding of DHS and their respective roles related to homeland security, especially in the event of a major homeland security incident. Current DHS career executives, a number of whom may assume acting positions upon the departure of non-career executives, will need additional or refresher training on homeland security responsibilities. In addition, they may benefit from participating in crisis scenario tabletop exercises and training designed to build positive relationships with the new Administration's transition team and appointees. And, both non-career and career executives will need opportunities for interaction that will build trust among them.

DHS began addressing its transition leadership and training challenges in 2007, under the leadership of the former Deputy Secretary, former Chief Human Capital Officer, and acting Deputy Secretary. Accepting the recommendation of the Homeland Security Advisory Council,[55] it has taken major steps to design and implement a departmentwide leadership development program as a major pillar of the DHS University System. Individual leadership development programs, such as the SES Candidate Development Program and the DHS Fellows Program, further address the department's homeland security responsibilities and related executive roles.

Under the framework of its Preparedness Center, DHS provides courses related to specific aspects of homeland security and crisis management. As a key component of its transition planning and preparation, it is developing training focused on the knowledge and skills that new and current executives need to plan for and manage major incidents that threaten homeland security during the transition. The Council for Excellence in Government has been engaged to assist with transition training efforts.

This chapter addresses the fifth and sixth tasks posed by Congress and DHS for this study:

5. Assess the adequacy of career SES and other career development training programs as they impact transition readiness.
6. Compare DHS' transition training programs with those of similarly structured Cabinet-level agencies.

The Panel's findings are at the end of the chapter and recommendations are in Chapter 6.

[55] Homeland Security Advisory Council. Report Of The Culture Task Force, January 2007

DHS TRAINING AND DEVELOPMENT INITIATIVES

Two components of DHS' training and development programs are key to preparing DHS leaders to handle their transition responsibilities:

1. executive leadership development
2. homeland security and crisis management, including transition-specific training and cross-government collaboration

Executive Leadership Development

The department's overall learning and development strategy is carried out through a DHS University System established in 2007. Announcing the system, Secretary Chertoff noted its importance in streamlining and integrating DHS training and development programs and building a performance culture. The system is led by the DHS Chief Learning Officer located within the Office of the Chief Human Capital Officer.

DHS' executive development program, the Leadership Institute, is used to develop department employees at all levels and prepare DHS leaders by providing essential training at career milestones. The Leadership Institute includes the following programs:

- The **SES Candidate Development Program** develops executive level leadership competencies and core qualifications as part of an intensive 18-month course. The first program began in January 2007; a second one will begin in July 2008. Each program involves up to 30 managers and executives departmentwide. DHS plans to expand the program to help meet the continuing need for new executives. In addition, it was recently agreed that CBP and TSA would have their own SES development programs for specific mission-critical training due to their increased need for SES candidates. Their programs are reviewed and approved by the Chief Learning Officer to ensure conformity with department and OPM standards.
- The **Executive Leadership Program,** provided in cooperation with FEMA and the Naval Post-Graduate School, is designed for select DHS Senior Executives. The program enhances executives' capacity to identify and resolve homeland security issues, as well as build networks among the Nation's homeland security officials.
- The **DHS Fellows Program**, provided in cooperation with the Council for Excellence in Government, is designed to develop leadership skills via individual and team coaching, practical and experiential learning and job rotation. It is a 9GS--month program intended for GS-15, 14 and exceptional GS-13 employees. Succession and transition issues are covered.
- The **Strategic Studies Program,** offered in partnership with the National Defense University and U.S. Coast Guard, aims to improve strategic planning and analytical skills through a 4-month program for senior leaders.
- **Multi-Tier Leadership Development Courses** enable candidates to choose from a variety of DHS courses to enhance leadership skills and build new leadership

competencies. Several directorate and component leadership courses are included among the choices.

- The **Training, Education and Development Plan for DHS Chiefs of Staff** was launched in February 2008. Participants include the Chiefs and Deputy Chiefs of Staff across DHS, consisting of both career and non-career employees at the GS-15 and SES levels. A major component is "Preparedness/Contingency Tasks and Responsibilities," which provides baseline training on such topics as the Incident Command System, Continuity of Operations, National Incident Management System, Multi-Agency Coordination System, National Infrastructure Protection Plan and National Response Framework.

Rotational assignments are a developmental initiative announced in November 2007. A DHS directive established a rotational assignments program for SES and TSES managers and supervisors, as well as participants in the SES candidate development, management development and career development programs. Rotational assignments are viewed as a vehicle for fostering greater information sharing and team building and for obtaining depth and breadth of experience. The Under Secretary for Management is responsible for the program's overall direction, development and implementation, with operational assistance from the Chief Human Capital Officer. All employees in SES candidate development and selective management or career development programs must complete a rotational assignment prior to completing the program. Other SES members, supervisors and managers may participate in rotational assignments on an individual basis. To date, several DHS component offices have implemented rotational assignments, including the Office of the Under Secretary for Management, the Science and Technology Directorate, TSA, CIS, and ICE.

Training Related to Homeland Security and Crisis Management

The DHS University System houses the Preparedness Center, which provides training that specifically addresses homeland security and crisis management. The center's goal is to establish a culture of preparedness throughout the department by offering programs that build knowledge and understanding of protection and response capabilities in a multi-threat/all-hazards environment. A number of DHS-recognized interagency and national preparedness training programs have been identified:

- The **Online DHS 101 Program** informs new employees of DHS' organizational structure and provides information on component and directorate initiatives and programs.
- The **National Planning and Execution System Course** is a pilot training program that offers operational-level training related to planning for domestic incident scenarios. It is being developed in conjunction with the Office of Operations Coordination, Center for Domestic Preparedness and National Security Education Consortium.
- The **"All Medical Hazards" Program** consists of online training courses that offer information on medical challenges associated with homeland security, such as the avian/pandemic influenza.

- The **Terrorism/Counterterrorism (T/CT) Course** is a 40-hour program that is offered in cooperation with several directorates and offices from across the department. It is designed to establish baseline knowledge of terrorism and counterterrorism while gaining insights from experts in law enforcement, intelligence and policy, as well as authorities from academia and foreign embassies.
- The **National Incident Management System (NIMS), Incident Command System (ICS) and National Response Framework (NRF) database of approved training,** provided in partnership with the Emergency Management Institute and U.S. Coast Guard, offers departmentwide emergency management training which aims to develop NIMS, ICS and NRF knowledge and skills.

Transition Specific Training

Existing leadership and preparedness training programs address some homeland security needs related to the transition process, but they do not primarily focus on the skills that new and current executives need to plan for and manage major incidents that threaten homeland security during the transition. Consequently, DHS has undertaken several initiatives to meet that need. The following activities are provided specifically for DHS executives:

- The **DHS Leadership Conference,** held February 19–21, 2008, provided attendees with opportunities to interact, discuss and participate in presentations and demonstrations aimed at increasing the understanding of ways that the department fulfills its mission. Senior leaders, primarily career executives, received examples of front-line collaboration between department components and other agencies to bring greater effectiveness to homeland security programs. This conference was the first of several planned for 2008.
- A **DHS Transition Readiness Conference** for senior career leadership is planned for May 2008.[56] The purpose of this 3-day conference is to broaden the perspectives of senior career leaders about the department's multiple missions: prevent, protect, respond and recover. The conference, to be held at the Federal Law Enforcement Training Center, also is designed to help participants gain an understanding of how DHS components operate on a daily basis and encourage relationship building that would be critical during a crisis. A FEMA-run incident management exercise will be given to career leaders who are expected to receive foundational understanding of Homeland Security Presidential Directives, NRF, the National Homeland Security Strategy and the department's legal underpinnings. Specific attendees are being identified, and participation will be required.
- The **Training for New Executives** program, under development, is expected to provide a concentrated, 1- to 2-week training course for executives hired during the transition. It will include a half-day or day-long briefing by leaders from each component so that attendees can learn about DHS programs and functions and develop relationships. This training will be provided to new career executives throughout the transition, and will continue after the inauguration to include new non-career appointees.

[56] The conference was held the week of May 12, 2008.

Cross–Government Collaboration

DHS recognizes the importance of intra- and interagency relationships which support the homeland security mission. To facilitate the transfer of operational knowledge and the accompanying operational relationships and networks, DHS has entered into an interagency collaboration initiative led by the Council for Excellence in Government (CEG) to design and develop the training needed to transfer operational knowledge and identify and map relationships, protocols and interfaces among homeland security operational stakeholders. Ultimately, this training will deliver a knowledge transfer strategy that addresses DHS' relationship to the broader homeland security community. This includes DHS roles, responsibilities and operational procedures, as well as those of federal, state, local, and tribal entities with which the department shares responsibility.

Given that objective, CEG is expected to deliver an inventory and visual map of the operational protocol and the responsibilities of DHS, related federal agencies and state and local governments; and course curricula, training materials and workshop protocols for transition officials. The material will be designed to "ensure that the critical roles, responsibilities and protocols for emergency response will be understood, executed and coordinated seamlessly by DHS officials, other federal officials with homeland security responsibilities, state and local government officials, and private sector leaders."[57] This will be accomplished, in part, through discussions about DHS' future, tabletop exercises on incident scenarios and on-site training to learn what each entity's work entails. DHS participants will include career executives, transition officials and incoming appointees. Officials from other agencies, levels of government and the private sector will participate, as well. DHS staff and contractors will be the primary instructors.

In concert with FEMA and other DHS components, CEG will utilize the NRF and deliver multiple tabletop exercises during the time of the Presidential election campaign, inauguration and subsequent appointments of Senate-confirmed positions. DHS officials note that these exercises will enable inter-agency participants to practice their roles and build camaraderie with other key decision makers in a variety of emergency scenarios. DHS states that this effort will strengthen participants' knowledge of national security protocols and help to ensure that the nation is collectively prepared should a crisis arise.

CEG's work is guided by a bi-partisan panel of experienced practitioners and experts, led by Admiral James Loy, former DHS Deputy Secretary, and New York City Police Commissioner Ray Kelly. Appendix F lists the panel members. The project began February 15, 2008, and the training is to begin in mid-Summer 2008.

In addition, FEMA has scheduled several scenario exercises planned for the new Administration during the first half of 2009. For example, it plans three principal-level exercises for DHS executives in January, April and June 2009.

[57] Council for Excellence in Government summary of engagement.

CRITERIA TO EVALUATE TRAINING EFFORT

This Panel's assessment of DHS executive leadership development is based on the Academy's studies of executive development programs, such as those at the National Aeronautics and Space Administration and FBI,[58] the assistance provided to the World Bank in its self evaluation of executive development, and its 2003 study, "The 21st Century Federal Manager," which included a specific report on developing a leadership team.[59] These studies identify the following key dimensions of a successful leadership development program, and they are reflected in the department's leadership development program and courses offered through the Leadership Institute:

- Program leadership and governance roles are established. Specifically,
  - The program's mission, vision and guiding principles are communicated.
  - The program's offerings are competency based.
  - The program covers the continuum of leadership positions.
  - The program includes developmental experiences in other program areas and agencies.
- Leadership development is linked to succession planning.
- A Learning Management System (LMS) is used to communicate, deliver and manage training opportunities based on automated and web-based tools.

The Panel's assessment of DHS transition training related to homeland security and crisis management was guided by the work of Dr. Michael Watkins, a professor of organizational behavior formerly at the Harvard Business School,[60] who has identified essential elements[61] of an organization's crisis response capacity. Dr. Watkins' work suggests that this training should include the identification of preset triggers to move the leader and the organization from peacetime activities to activities that are appropriate and responsive to a heightened threat level, such as command post operations, communication channels and resource availability.

OTHER AGENCIES' TRANSITION TRAINING

Top level executives were interviewed at the Departments of Agriculture, Defense, State and Treasury, the General Services Administration, the Office of the Director of National Intelligence, FBI, OMB and OPM. Appendix C has the complete list of interviewees. At the time of these interviews (January 2008), most departments had not yet begun to actively plan for the Presidential transition or slated special transition training for executive preparedness related

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[58] National Academy of Public Administration, *NASA: Human Capital Flexibilities for the 21st Century Workforce*, February 2005; National Academy of Public Administration, *Improving the Governance, Efficiency and Effectiveness of Training at the Federal Bureau of Investigation*, November 2007 (Internal Use Only).

[59] National Academy of Public Administration, *Developing the Leadership Team: An Agency Guide*, December 2003.

[60] Dr. Michael Watkins is now with IMD, an international business school in Lausanne, Switzerland.

[61] Watkins, Michael, *Your Crisis Response Plan: The Ten Effective Elements*, September 30, 2002; 2008 President and Fellows of Harvard Weekly Newsletter.

to homeland security. The interviewees were confident that the transition would be well managed and responsive to homeland security incidents because of their mature career executive leadership corps and extensive experience with transitions. Further, their executives and others with homeland security responsibilities have been and will continue to be involved with DHS crisis response and management training, such as FEMA training[62] and the upcoming CEG workshops.

FINDINGS

Task 5: Assess the adequacy of career SES and other career development training programs as they impact transition readiness.

With respect to executive leadership development, the Panel finds that the program substantially reflects the key dimensions of a successful leadership development program. Specifically:

- Program leadership and governance roles are established through the Secretary's strong support of the program and the University System's Executive Steering Committee's guidance and recommendations for program management and development; and the Chief Learning Officer, who is responsible for ongoing development and implementation.
- The program's mission, vision and guiding principles are communicated through the department's publication, "Establishing a Department of Homeland Security University System," which the Deputy Secretary approved in September 2007.
- The program's offerings are based on established leadership competencies.
- Key elements of the DHS leadership continuum are leadership development for non-supervisors, supervisory training, the DHS Fellow's Program for managers, SES Candidate Development Program and Executive Leadership Program.
- The recently established rotational assignment program adds a vital dimension to programming by providing other developmental and stretch opportunities outside the classroom.
- The DHS succession planning effort, described in Chapter 5, illustrates the department's initial efforts to develop a succession planning database to support executive development and deployment.
- DHS recently established its Learning Management System (LMS–DHScovery) to communicate, deliver and manage training opportunities based on automated and web based tools. It is envisioned that DHScovery eventually will link approximately nine major LMSs that support employee learning and professional development activities across the department.

[62] FEMA's Emergency Management Institute provides extensive training to government officials at all levels regarding emergency management. Training relates to the National Incident Management System, Disaster Operations and Recovery and the Multiagency Coordination system.

The Panel believes that the department's transition training and development efforts are consistent with executive development programs in most federal agencies. Its efforts also respond to a key recommendation of the Culture Task Force of the Homeland Security Advisory Council: to implement homeland security management and leadership models.

The Panel believes that DHS has a balanced set of transition-specific training programs underway. If implemented timely, they should help executives prepare to meet their homeland security responsibilities during the transition period. Training is planned for both new non-career and career executives, as well as for other governmental and private sector leaders. It is particularly noteworthy that the training focuses on the essential elements identified by Dr. Watkins:

- Understanding the various crisis management functions of DHS and its partners.
- Participating in crisis response scenarios.
- Gaining an understanding of the multitude of Homeland Security Presidential Directives, NRF and the National Homeland Security Strategy.
- Building trust between DHS career executives and new appointees and DHS and its partners.

This finding is based on the comments of DHS and non-DHS senior officials interviewed for this study; they emphasized the importance of this kind of training for new executives as they come on board and for current executives on an as-needed basis. Officials at the IBM Center for the Business of Government, OMB and DHS' National Protection and Programs Directorate and Office of Operational Coordination expressed especially strong views about the need for this kind of preparation. Several suggested that tabletop exercises related to various incident scenarios be an essential part of such training.

This transition-specific training, including CEG's workshops, was in the formative stage during the data gathering and analysis portions for this study. Consequently, detailed training plans or curricula were not available to review. However, the project team did receive the detailed Training, Education and Development Plan for DHS Chiefs of Staff created through a cooperative effort with the Secretary's Chief of Staff, numerous component Chiefs and Deputy Chiefs of Staff, and Chief Learning Officer. A review of this material indicates that DHS has the capacity to develop relevant training for executives related to their homeland security and crisis management responsibilities.

Although this positive beginning is commendable, substantial additional work is needed to ensure that the transition training efforts are fully developed, implemented and evaluated on a timely basis in order to reduce risks associated with the turnover of key executives during the transition. Specifically, a comprehensive implementation plan and evaluation plan are needed. DHS' transition training programs appear to be well conceived, and ahead of the transition training activities in other departments, but the department is racing the clock to have its programs in place in the coming months.

A comprehensive implementation training plan would specify the objectives, scheduling timeframes, participants and required resources for each training initiative, as well as the officials who are accountable for each training effort and the overall effort. The plan also could address unanswered questions concerning the relationship of CEG's cross-government collaboration workshops to other transition-related programs; the extent of participation in the workshops by other officials from other federal agencies, levels of government and the private sector; the relationship of ongoing FEMA scenario training to these programs; and the role that the Homeland Security Institute[63] might play in developing these new training initiatives.

In addition, DHS does not have an evaluation plan for its transition training. An evaluation of training, using the Kirkpatrick Evaluation Model[64] as a reference, could provide DHS with essential data regarding training effectiveness at the time training begins. At this point, the first two levels of evaluation are specifically relevant:

1. Assess reactions at the end of class with respect to whether objectives were met, performance of the trainer, training materials, content and coverage, as well as such administrative issues as length of training and the facility logistics. These data provide the basis for making immediate modifications to the training.
2. Establish a knowledge baseline on entering training and measure the level of learning following completion of the training through the use of pre- and post tests. The framework developed by Dr. Watkins and noted earlier in the chapter can be adopted to develop pre- and post-tests for DHS operational leadership knowledge and readiness.

The two advanced elements of the Kirkpatrick framework—change in on-the-job behavior and organizational or program results—would be appropriate for more long-term evaluation plans.

Further, the implementation plan could focus on ensuring that DHS training familiarizes new leaders with the emergency operations center and the communication channels and responses; includes a series of checklists that can be regularly updated to ensure that backup resources are readily available; and provides for debriefing participants in the various simulation exercises. A disciplined performance review of and feedback to new leaders during the scenarios would provide them with the opportunity to learn and improve their operational capability and leadership response.

The Panel believes that if DHS' transition training initiatives are implemented as planned, they should provide a balanced set of training initiatives for preparing new and current DHS executive

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[63] The Homeland Security Institute (HSI) is a Federally Funded Research and Development Center established pursuant to the Homeland Security Act of 2002 that provides analysis and advice in homeland security policy development, decision-making, analysis of alternative approaches, and evaluation of new ideas on issues of significance.

[64] The four levels of Kirkpatrick's evaluation model essentially measure:

- Reaction of student. What they thought and felt about the training
- Learning. The resulting increase in knowledge or capability
- Behavior. Extent of behavior and capability improvement and implementation/application
- Results. The effects on the business or environment resulting from the trainee's performance

and their state, local, and private sector partners to deal with homeland security responsibilities during the transition.

The Panel finds that a "capstone" scenario exercise conducted within the first 6 months of the new administration could be of substantial value in evaluating and improving the capabilities of all homeland security partners to respond to and manage critical homeland security incidents. It would provide a real-time evaluation of the effectiveness of transition planning, training and overall operational readiness. White House direction of this event would ensure that it would be a priority activity and that sufficient resources would be provided for it. It should be nationwide in scope, involve all federal partners, state and local governments and the private sector, and include multiple scenario elements. This finding appears consistent with the two top-tier exercises that DHS conducts as part of its homeland security exercise program: the "Top Officials 4" exercise that took place October 15-17, 2007 and for which a national after-action conference was planned for April 10, 2008, and "National Level Exercise 2-08" scheduled for May 1-8, 2008.[65]

Task 6: Compare DHS' transition training programs with those of similarly structured Cabinet-level agencies.

When comparing DHS' transition training programs with other similarly structured Cabinet-level agencies, the Panel finds that DHS is well along in its transition training when compared with other agencies, especially given that it is a young agency with a critical national mission and going through its first Presidential transition. To be sure, DHS has needed to begin its transition planning earlier than its more organizationally mature counterparts. Yet it also has undertaken important initiatives in many areas to ensure that its executives are prepared to meet their homeland security responsibilities during the transition. The Panel believes that other departments with homeland security responsibilities would benefit from the plans and preparations that DHS has made for transition training related to homeland security. There needs to be collaboration and sharing among entities with respect to training executives on preventing and responding to national incidents during this period.

[65]FEMA, National Exercise Division Homeland Security Exercise and Evaluation Program, Quarterly Newsletter, Spring 2008, p. 8.

CHAPTER 5
TRANSITION PLANS FOR DHS

One of the most important elements of a Presidential transition to ensure the "operational continuity of homeland security"[66] are the plans developed by DHS and their successful execution. The department has taken major steps to begin to address the transition, the centerpiece of which is a strategy called "The Homeland Security Transition Concept of Operations," also known as the "Five Prong Plan."

This chapter considers the plan's individual elements, issues that impact Presidential transition planning, and the transition efforts of individual DHS components. Also included is an analysis of the Secretary's Operations Coordination and Planning Initiative, which would create a permanent Operations Coordination group in headquarters to coordinate efforts across DHS' seven components, especially during a major crisis. This review also examines the gaps in DHS transition planning and addresses the seventh task posed by Congress and DHS.

7. Review DHS planning for the transition and propose changes to address any gaps.

The Panel's findings are at the end of the chapter and recommendations are in Chapter 6.

DHS' FIVE PRONG PLAN

The Five Prong Plan takes a wide-ranging approach to the elements necessary for a successful transition, including:

1. Orders of Succession: an updated Order of Succession for the Secretary and all headquarters offices and operating components
2. Succession Planning: a new succession planning program that lists critical positions with a succession risk and the identification of acting interim career officials for all non-career positions
3. Knowledge Transfer and Interagency Relationship Mapping: an interagency collaboration effort, led by CEG, which is designed to ensure that relationships, protocols and interfaces among homeland security operational stakeholders are clear and that the development of leadership training and other activities promote knowledge and relationships and facilitate the transition
4. Best Practices Study: the identification by the Homeland Security Advisory Council of transition best practices used by state and local governments and the private sector
5. Transition Guidance: the development of a transition guidance handbook

[66] Homeland Security Advisory Council. Report Of The Administration Transition Task Force. January 2008.

Orders of Succession

On August 13, 2007, President Bush issued Executive Order 13442 which provided the succession of officials who would assume the Secretary of Homeland Security's position "...in case of death, resignation or inability to perform the functions of the Office." A revision was needed due to the extensive departmental reorganization that took place in 2005 and 2007. The order lists the 17 positions that would succeed the Secretary, flowing from the Deputy Secretary to various Under Secretaries and Assistant Secretaries, the General Counsel, component heads, Chief Financial Officer, and finally to FEMA's Regional Administrators. All officials on the list are non-career, except FEMA's Regional Administrator in San Francisco, number sixteen in the order of succession.

Two months later, the Secretary of Homeland Security signed Delegation and Succession Order 0106 which specified orders of succession for the head of each operating components and the 17 headquarters offices. The number of successors for each office ranges from ten at FEMA and CBP to three at the Office of Counternarcotics Enforcement, which DHS considered appropriate given the relative sizes of those offices. The first successor is a career executive for 18 of the 24 components and offices. The exceptions are FEMA, CIS, the National Protection and Programs Directorate, Office of Policy, General Counsel's Office and Office of Public Affairs. The orders of succession is shown in Appendices D and E.

The orders of succession usually are for the top official in each organization, but there is no order of succession for the Deputy Secretary although this individual is critical to the operation of the department. As several officials noted, the Deputy Secretary is the key operational link to DHS offices and components and holds daily briefings and weekly meetings with their heads. As of October 27, 2007, the position was filled on an acting basis by the Under Secretary for Management. This position can only be filled in this manner for 210 days (until May 23, 2008), or until a nomination is submitted,[67] due to Vacancies Act requirements.[68]

Succession Planning

Executive succession planning is the second prong of DHS' transition plan; it is designed to ensure a pipeline of successors for critical positions in the department and to identify senior career civil servants who would assume the responsibilities of non-career appointees during the transition.

To ensure a pipeline of successors for critical positions, a critical position succession planning template was developed to guide components and offices through the process of identifying critical positions with a high succession risk and potential steps to mitigate the risk. In a June 2007 memorandum, the Chief Human Capital Officer asked components and offices to fill out the template for "critical senior positions—those responsible for a major program, having

[67] Paul Schneider, Under Secretary for Management and Acting Deputy Secretary, was nominated for the position of Deputy Secretary on February 26, 2008. Elaine Duke, Deputy Under Secretary for Management, was in turn nominated to fill the position of Under Secretary for Management on April 3, 2008.
[68] Title 5 U.S.C. 3345-3349d.

significant budget responsibility or requiring unique competencies."[69] For each critical position, components and offices:

- Defined the degree of criticality (high, medium or low) of the position to DHS' mission, based on how large the effect of a 1- to 3-month absence would be.
- Identified the competencies necessary to fill the position successfully.
- Identified developmental assignments and training that likely would be found in a potential successor's development plan.
- Determined how many internal candidates are ready now to fill the position, how many would be ready within 1 to 2 years, and how many would be ready within 3 to 5 years.
- Identified potential sources of external candidates for the position.
- Assessed the outlook for recruiting external candidates in the future based on recent experience, current economic climate, the existence of key competencies in other agencies or industries, and the salary comparability of the position with similar positions in other agencies and industries.
- Assigned a succession risk rating (high, moderate, or low) to the position.

A total of 479 positions were identified as critical—340 executives (SES and Executive Schedule) and 139 managers (GS-15s and 14s). Exhibit 27 compares the number of executive positions in each component considered critical with the total number of executives in that component.

Exhibit 27: Percentage of Executives Considered Critical by DHS Components

Component	Critical Executives	Total Executives	Percent Critical
Headquarters:			
Domestic Nuclear Detection Office[a]	7	7	100%
General Counsel	5	20	25%
Gulf Coast Reconstruction	0	3	0%
Health Affairs	1	11	9%
Inspector General	3	13	23%
Intelligence and Analysis	8	25	32%
Management	25	50	50%
National Protection and Programs	17	28	61%
Office of the Secretary	11	25	44%
Operations Coordination	5	6	83%
Policy	6	24	25%

[69] These general criteria were outlined in the June 2007 memo. In a summary of the critical position succession planning database, included in a March 2008 Chief Human Capital Officers' Council document entitled "Collection of Human Capital Practices," DHS noted the criteria for critical is: "Position involves leadership of a program area that is of significant importance to the department's ability to accomplish its mission" and " Position is responsible for major operational areas and a short-term vacancy would adversely affect the ability of the department to accomplish its mission."

Component	Critical Executives	Total Executives	Percent Critical
Science and Technology	13	36	36%
Total Headquarters	**101**	**248**	**41%**
Operating Components:			
U.S. Coast Guard	14	15	93%
Customs and Border Protection	52	106	49%
Citizenship and Immigration Services	6	51	12%
Federal Emergency Management Agency	28	77	36%
Federal Law Enforcement Training Center	8	9	89%
Immigration and Customs Enforcement	37	68	54%
U.S. Secret Service	10	50	20%
Transportation Security Administration	83	151	55%
Total Non-Headquarters	**238**	**527**	**45%**
TOTAL	**339**	**775**	**44%**

Note:
a) Domestic Nuclear Detection Office identified also identified an FBI detailee as critical.
Source: DHS critical position database.

As shown in Exhibit 27, the percentage of executives considered critical ranged from 0 and 9 percent at the Gulf Coast Reconstruction Office and Office of Health Affairs to 100 percent at the Domestic Nuclear Detection Office. DHS' large components ranged from 12 percent at CIS to 93 percent at the U.S. Coast Guard. Although some offices could have a significantly greater percentage of critical executives, some variance likely is due to different criteria being applied by different offices and components. Since the initial request for information, DHS has further defined that the criteria for critical are (1) that the "Position involves leadership of a program area that is of significant importance to the Department's ability to accomplish its mission," and (2) that the "Position is responsible for major operational areas and a short-term vacancy would adversely affect the ability of the Department to accomplish its mission."[70]

This critical position database is designed to assist the components' efforts to ensure that critical positions are filled throughout the transition period. Many DHS executives interviewed said the database was useful and it had assisted them in succession planning. However, components have not developed action plans based on the information collected. Exhibit 28 provides examples of the types of information included in the database and the further analysis needed to address the information.

[70] This criteria was included in a March 2008 Chief Human Capital Officers' Council document entitled "Collection of Human Capital Practices."

Exhibit 28: Examples of Analysis Needed of Critical Position Database Information

Database Field	Information Requested	Analysis Needed
Difficulty of Finding Qualified successor	Consider the unique competencies needed to be successful in the position, as well as the ability to attract qualified candidates.	• What recruiting sources and strategy are needed? • Should recruiting bonuses be considered? • Are reemployed annuitants a source to be considered?
Appointment Status	Select "Political" or Career. If political, indicate if position could be converted to career.	• What criteria should be used to consider whether appointment should be career or non-career?
Readiness of Internal Candidates	Assess internal agency employees and identify the number of candidates in each category (i.e., ready now, ready within 1-2 years, or ready within 3-5 years).	• Do candidates need to go through an SES Candidate Development Program? • What assignments are needed to ensure candidate is ready to assume position?

The database also identifies recruitment challenges to filling several positions. For example, FEMA notes that the Regional Administrator position is "...difficult to fill due to salary comparability and extensive knowledge requirements." DHS and FEMA need to assess whether recruiting incentives or other salary flexibilities would be helpful in filling these positions. Converting them to career appointments, as discussed in Chapter 3, would allow the use of these flexibilities because recruitment, relocation and retention incentives cannot be paid to non-career employees.

In addition to the database, DHS has challenges related to filling critical executive positions vacated by non-careers, filling positions vacated by career executives who move to take "acting" positions and filling current executive vacancies. Several tools are available to help meet these challenges, as described below.

Knowledge Transfer and Inter-Agency Relationship Mapping

As discussed in Chapter 4, the third prong of DHS' transition initiative is being done in conjunction with CEG, which is developing a knowledge transfer strategy that addresses the relationships among DHS and federal agencies and state and local governments with homeland security responsibilities. The strategy will entail a mapping of homeland security responsibilities, as well as related training, workshops and operational exercises. CEG plans to have the mapping completed by April 15, 2008, the training curriculum and implementation strategy by June 1, 2008 and actual training workshops initiated by July 1, 2008. The initiative has been behind schedule and meeting the target dates will be a challenge.

Best Practices Study

The Homeland Security Advisory Council (HSAC), a group composed of leaders from state and local government, first responder communities, the private sector and academia, provides advice and recommendations to the Secretary on homeland security matters. The HSAC formed the Administration Transition Task Force to identify best practices for public and private sector

leadership transitions. The intent was to produce politically neutral recommendations that incorporated the expertise and experiences of organizations that had undergone transitions. The task force had 32 members and consulted with 13 subject matter experts.

The task force's January 2008 report had 39 recommendations distributed among seven topic areas: threat awareness, leadership, congressional oversight/action, policy, operations, succession and training. It assigned responsibility for each action to the outgoing Administration, incoming Administration or Congress.[71] Several recommendations are directly related to the information and recommendations in this study, specifically those concerning leadership, succession planning and training. For example, the task force called for the new Secretary of Homeland Security to be in place on Inauguration Day, that new DHS appointees be identified early, that all non-career positions be backed up by career executives, and that briefing materials and tabletop exercises for new appointees be organized as early as possible. Appendix G has all of the task force recommendations.

Transition Guidance

Originally described as a "handbook" in the five-prong plan, transition guidance has evolved into "handbooks, memos and other communications" to provide guidance on the preparation of briefing materials for DHS, major programs and operational areas and other matters relevant at the time of a change in Administration. In addition, this initiative will result in guidance on security, records, property, contracts, finance, personnel benefits and IT access, as well as scheduled group and individual check-out briefings.

The following target dates have been identified:

- February 14, 2008: Identify component senior transition officer and deputies.
- March 31, 2008: Identify Under Secretary for Management core team for transition.
- April 30, 2008: Prepare guidance on development of briefing materials.
- May 30, 2008: Distribute guidance on development of briefing materials.
- May 30–December 31, 2008: Prepare briefing materials.
- November 30, 2008: Schedule out-briefs.
- Ongoing: Distribute guidance on administrative matters relevant to White House transition.

In addition to preparing briefing materials, it is critical that DHS reinforce them with training and operational exercises, as discussed in Chapter 4. The Deputy Under Secretary for Management has responsibility for this section of the transition plan. To date, headquarters offices and

[71] The recommendations do not total to 39 because responsibility for five recommendations was assigned jointly to Congress and either the outgoing or incoming administration.

components have been asked to identify a senior career executive to serve as their senior transition officer and an official to serve as deputy.[72] This initiative is on schedule.

OPERATIONS COORDINATION AND PLANNING INITIATIVE

The Secretary of Homeland Security has taken steps to create a permanent operations coordination and planning group to coordinate efforts across DHS components, especially during a major crisis. The effort called for full operation of the coordination capabilities and refined procedures for emergency management by June 1, 2008. The original interim deadlines and milestones included the following:

- December 12, 2007: presentation of a problem statement, vision statement and list of milestones for the time period between December 12 and the inauguration
- April 1, 2008: staff recruited, cleared, and ready to work
- April 1, 2008–June 1, 2008: operations tested and other necessary steps taken to becoming fully operational
- Within 48 hours of the President's congratulatory call to the winner of the 2008 election: President-elect briefed on the heightened threat level and ways to best prepare for an emergency incident

This coordination team, staffed with career GS-14s and 15s, will develop options for the Secretary should an event occur that requires coordination across components. To ensure that deadlines were met, the work was begun by a temporary operations coordination group composed of one representative from each component.

Various DHS component heads believed that this initiative would benefit the transition. However, there is concern about the group's specific role. One official noted that the problem statement and vision were being vigorously debated; some components believed the group could gain operational control over operations. There also was concern that the group could duplicate other coordinating mechanisms and might not be consistent with the NRF. This debate has delayed the problem and vision statement, which were to be completed by December 2007.

DHS officials noted that a letter was sent to DHS components in April 2008, outlining the overall strategy of the operations coordination and planning group. It was envisioned that the group's 19 component detailees would be on-board that month, undergo an orientation and training program for 6 weeks and have initial operating capability by June 1. The second phase of the plan calls for additional component support to build toward an overall final operating capability prior to the end of Summer 2008.

[72] This directive was aimed only at the headquarters offices that appear on the department's organization chart; Chief Officers within USM are not being asked to designate senior or Deputy transition officers.

GAPS IN DHS TRANSITION PLANNING

Although DHS has begun to actively plan for the transition, numerous gaps remain. Specifically, the department and the administration have not begun to address the activities outlined in the "sense of the Senate" resolutions contained in the Intelligence Reform and Terrorism Prevention Act of 2004.

The Intelligence Reform and Terrorism Prevention Act of 2004

Responding to the 9/11 Commission recommendations, the Intelligence Reform and Terrorism Prevention Act of 2004 amended the Presidential Transition Act. It included several sense of the Senate provisions[73] to facilitate the early identification of national security officials by the next Administration, to conduct timely background investigations of those individuals, and to quickly consider the nominations. Specifically, the Act stated that:

- The President-elect should submit the nominations of candidates for high-level national security positions, through the level of Under Secretary of Cabinet departments, to the Senate by the date of the inauguration.
- The Senate should consider these nominations and vote to confirm or reject them within 30 days of their submission.
- The President-elect should submit to the FBI or other appropriate agencies the names of candidates for high-level national security positions through the level of Under Secretary of Cabinet departments as soon as possible following the general election.
- The responsible agency or agencies shall undertake and complete as expeditiously as possible the background investigations necessary to provide appropriate security clearances to candidates for high level national security position prior to the inauguration.
- Each major party candidate for President may submit, prior to the date of the general election, requests for security clearances for prospective transition team members who will need access to classified information to carry out their responsibilities as members of the President-elect's transition team.
- Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day following the general election.

Early Identification of Key Appointees of the Next Administration

Given the critical nature of homeland security, the next Administration must give high priority to identifying key appointees for PAS and PA positions as soon as possible. As outlined in the Intelligence Reform and Terrorism Prevention Act, the Senate called for the nomination of

[73] A "sense of the Senate" resolution is not legally binding because it is not presented to the President for his signature. Even if a provision is incorporated into a bill that becomes law, it merely expresses the opinion of Congress or the relevant chamber. It has no formal effect on public policy and is not considered law.

candidates for high-level national security positions at the level of Under Secretary and above by Inauguration Day. At DHS, these positions would include the following:

- Deputy Secretary
- Administrator of FEMA
- Under Secretary for Management
- Under Secretary for Science and Technology
- Under Secretary National Protection and Programs Directorate
- Under Secretary for Intelligence and Analysis

Other key headquarters and field component positions should be identified by Inauguration Day and considered by Congress as quickly as possible. Specifically, operations leadership continuity is critical for the seven large operating components and the Operations Coordination Office. Since the 2005 Second Stage Review reorganization, nearly all operational responsibilities rest with the operating components, two of which are led by executives who will not depart during the transition (the U.S. Secret Service and U.S. Coast Guard). The Operations Coordination Office is responsible for working with component leadership and other federal agencies to ensure that actions are well-coordinated and executed in a timely fashion, without disrupting field operations or interfering with component chains-of-command.[74]

Although the Academy Panel is not positioned to specifically identify the most critical DHS positions, the heads of these organizations are important and their appointment should be given priority status. Exhibit 29 profiles the key responsibilities of these components, the non-career/career executive profile and the plans for leadership continuity.

Exhibit 29: Key Operating Components Leadership Profile

Agency	Responsibilities	Executive Profile	Career Leadership Continuity Plans for the Agency Head
TSA	Protects the Nation's transportation systems to ensure freedom of movement for people and commerce.	• PAS Assistant Secretary • 2 non-career executives • 148 career and term executives	Career Deputy will assume responsibilities (number 2 on order of succession)
CBP	Responsible for protecting our Nation's borders in order to prevent terrorists and terrorist weapons from entering the United States, while facilitating the flow of legitimate trade and travel.	• PAS Commissioner • 4 non-career executives • 101 career and term executives	Career Deputy will assume responsibilities (number 2 on order of succession)

[74] Statement of Secretary Michael Chertoff. U.S. Department of Homeland Security. Before the Senate Committee On Commerce, Science and Transportation, July 19, 2005

Agency	Responsibilities	Executive Profile	Career Leadership Continuity Plans for the Agency Head
CIS	Responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.	• PAS Assistant Secretary • 5 non-career executives • 45 career executives	Career Associate Director for Domestic Operations will assume responsibilities (number 3 on order of succession)
ICE	Responsible for securing the United States by enforcing immigration and customs laws, protecting Federal buildings and other key assets and providing law enforcement support in times of national emergency.	• PAS Assistant Secretary • 2 non-career executives • 65 career and term executives	Career Deputy Assistant Secretary will assume responsibilities (number 2 on order of succession)
U.S. Secret Service	Protects the President and other high-level officials and investigates counterfeiting and other financial crimes.	• PA Director (has career status) • 49 career executives	Director has traditionally stayed during transition
FEMA	Prepares the Nation for hazards, manages federal response and recovery efforts following any national incident, and administers the National Flood Insurance Program.	• PAS Administrator • 3 additional PAS executives • 1 PA executive • 15 non-career executives • 57 career and term executives	Career Associate Deputy Administrator will assume responsibilities (number 4 on order of succession)
U.S. Coast Guard	Protects the public, the environment, and U.S. economic interests—in the Nation's ports and waterways, along the coast, on international waters, or in any maritime region as required to support national security.	• Commandant is career military • Other military executives • 14 career executives.	U.S. Coast Guard Commandant appointed to 4 year term in May 2006 and will stay into the next Administration.

Source: DHS Executive Resources and other DHS information.

Other headquarters offices have some operational responsibilities where leadership continuity is critical. Exhibit 30 provides information on them.

Exhibit 30: Key Headquarters Offices Leadership Profile

Office	Responsibility	Executive Profile	Leadership Continuity Plans for the Office Head
Directorate for National Protection and Programs	Works to advance the department's risk-reduction mission. Reducing risk requires an integrated approach that encompasses both physical and virtual threats and their associated human elements.	• PAS Under Secretary • 1 PA executive • 4 non-career executives • 22 career and term executives	Director of U.S. Visit program is career executive (7th in order of succession)
Directorate for Science and Technology	Is the primary research and development arm of the department. It provides federal, state and local officials with the technology and capabilities to protect the homeland.	• PAS Under Secretary • 1 non-career executive • 34 career and term executive	Deputy Under Secretary is next in succession. It is designated a career executive and is vacant.
Office of Health Affairs	Coordinates all DHS medical activities to ensure appropriate preparation for and response to incidents having medical significance.	• PAS Under Secretary • 10 career and term executives	Career Principal Deputy is next in succession
Office of Intelligence and Analysis	Is responsible for using information and intelligence from multiple sources to identify and assess current and future threats to the United States.	• PAS Under Secretary • 1 non-career executive • 23 career and term executives	Career Deputy Under Secretary is next in succession
Domestic Nuclear Detection Office	Works to enhance the nuclear detection efforts of federal, state, territorial, tribal, and local governments, and the private sector and to ensure a coordinated response to such threats.	• PA Director • 6 career executives	Career Deputy Director is next in succession
Operations Coordination	Is responsible for monitoring the security of the United States on a daily basis and coordinating activities within the department and with governors, homeland security advisors, law enforcement partners, and critical infrastructure operators in all 50 States and more than 50 major urban areas nationwide.	• Director is a limited term executive • 5 career executives	Director's term expires in June 2009. Limited appointments are not renewable. The position could be filled by another term appointment of a different person, or by a career or non career appointment of the incumbent or different person

Office	Responsibility	Executive Profile	Leadership Continuity Plans for the Office Head
Office of Management	Is responsible for department budgets and appropriations, expenditure of funds, accounting and finance, procurement; human resources, information technology systems, facilities and equipment, and the identification and tracking of performance measurements.	• PAS Under Secretary • PAS CFO • 2 PA • 1 non-career executive • 45 career and term executives	Career Deputy Under Secretary is next in succession
Office of Policy	The primary policy formulation and coordination component for DHS. It provides a centralized, coordinated focus to the development of Departmentwide, long-range planning to protect the United States.	• PAS Assistant Secretary • 4 non-career executives • 19 career and term executives	No career employees are in the succession order. The fourth and fifth officials on the succession order are term officials

Source: DHS Executive Resources and other DHS information.

Of course, the Secretary and Deputy Secretary are the two most critical executives. Virtually all of the individuals interviewed recommended that the new Secretary be in place on Inauguration Day. Various studies have made the same recommendation. For example, HSAC's Transition Task Force recommended in January 2008 that the incoming President-elect should "nominate and seek congressional approval of the new Secretary of Homeland Security as is done with the Secretary of State and Secretary of Defense on the first day of the new administration." The Academy Panel supports this recommendation.

A key criterion for identifying critical positions is the position's importance for an effective response to a crisis event. The President-elect and new Secretary of Homeland Security should be guided by this list and criteria as they make key appointments and work with the Senate to facilitate prompt Senate confirmation as required.

Transition Team Members and Security Background Checks

Another sense of the Senate provision called for the Presidential nominees to submit names of proposed transition team members prior to the election. As outlined in the Presidential Transition Act, transition teams are to assist the President-elect in "promot(ing) the orderly transfer of the executive power," so as to "assure continuity in the faithful execution of the laws and in the conduct of the affairs of the federal government."[75] The names of transition team candidates are to be submitted to the FBI or other appropriate agencies as early as possible in order to conduct timely background investigations so that the elected President's transition team can begin work immediately after the election.

The report of HSAC's Administration Transition Task Force contained recommendations consistent with the legislation and critical to helping to improve transition executive continuity. These included:

[75] Pub. L. No. 88-277, § 2, 78 Stat. 153 (codified at 3 U.S.C. § 102 note (1976)).

- Working with the Presidential nominees, their senior staff and the Senate, prior to the election, to establish an expedited process for handling appointments.
- Encouraging all Presidential nominees to identify members and organize homeland security advisory groups in preparation for the administration transition.
- Nominating and seeking congressional approval of the new Secretary of Homeland Security, as done with the Secretary of State and Secretary of Defense, on the first day of the new administration.

Conducting background investigations and adjudicating security clearances are a time consuming part of bringing transition team members or new executives on board. New appointees must have security clearances to be able to perform the full scope of their jobs. The Justice Department, FBI, OPM and DHS all are part of the clearance process. The Intelligence Reform and Terrorism Prevention Act specifically calls for early identification of key national security officials so that background investigations can be completed and decisions about security clearances made to permit transition team members to begin to perform their duties immediately after the election, and to facilitate prompt executive appointments following inauguration. Some transition team members could be nominees for key executive positions at DHS.

Historically, the FBI has been responsible for conducting background investigations for PAS and PA nominees, while DHS conducts background investigations for its own executives. It is not clear who would conduct the background investigations of officials who might serve on transition teams. DHS security officials noted that it is important that their components provide information on background investigation and security clearance needs so they can ensure adequate resources are devoted to these investigations. Typically, the security clearance process varies from 9 to 18 weeks if everything goes smoothly, but key executive appointments frequently require quicker response.

Developing a Plan to Address Succession Planning Challenges

The lack of a comprehensive plan to address succession planning challenges is an additional critical gap. The associated challenges include ensuring that qualified executives are responsible for the duties and responsibilities of all non-career positions vacated, and filling current executive vacancies. Tools are available to help meet these challenges, such as encouraging some non-careerists to temporarily remain in their positions and employing experts on a temporary basis through appointment authorities.

Identifying Career Executives To Fill Position or To Serve in "Acting" Roles

DHS has not identified specific career executives who could permanently or temporarily fill non-career positions vacated during the transition. The department's transition initiatives provide a foundation for ensuring that non-career positions are filled, but they are not sufficient. For example, the orders of succession only identify the career official who would assume the duties of the Secretary and the 24 office and component heads. The succession planning database has more comprehensive information, but it does not include all non-career positions. Not only are

plans needed to identify who would fill all non-career positions temporarily, but others are needed to address vacancies created by career executives who temporarily fill the non-career positions. Such plans also need to include an assessment of career officials' knowledge and skills and the likelihood of leaving the department for retirement or other reasons.

Filling Current Executive Vacancies

DHS must focus on filling current executive vacancies. The combination of vacant positions, coupled with the movement of career executives into positions vacated by non-career officials, create numerous voids. In addition, career executives may leave DHS during the transition due to retirement or other reasons. The department should estimate the extent of this movement and plan ways to swiftly fill the resulting leadership voids, such as the appointment of SES Candidate Development Program graduates, recruitment and relocation incentives and temporary appointments.

Some Non-Career Executives Could Stay During Transition

The incoming Administration has several policy options related to the current Administration's non-career appointees. First, it may exercise its right to remove across-the-board all of the current Administration's appointees. Second, it may selectively retain some non-career appointees. Third, it may invite them to stay until further decisions are made. This last option could encompass keeping current appointees in place until their successors are on board or until the new Administration believes its own team is sufficient.

During the transition period, the incoming Administration will have the opportunity to identify non-career appointees it would like to retain. DHS has several non-career executives who are filling key leadership positions and have substantial experience related to homeland security. These could be good candidates to serve at the outset of the next Administration.

Use Temporary Appointments

Another option for quickly filling positions is to use various temporary appointment authorities to hire experts or former employees. Although this approach would not provide the same continuity as a career appointment would, it could be used to make more timely appointments extending through the transition period. DHS is making extensive use of SES term appointments to fill positions where a critical need exists. It has 39 SES term appointments of which at least thirty-three extend into the next Administration. Several serve in important positions, including Director of the Operations Coordination Office. Additional term appointments could assist with leadership continuity during the transition.

Other authorities could be useful in attracting executives for a temporary period. They are the reemployment of federal annuitants, the use of Intergovernmental Personnel Act (IPA) assignments and additional use of SES limited emergency appointments.

- Reemployed Annuitants and waiver of salary reduction. Agencies may hire individuals who have retired from the federal government and, with OPM's approval, waive the

reduction in the retiree's salary required by law. Normally, retired employees must have their salary reduced by the amount of any annuity. However, agencies may apply to OPM for a waiver of this reduction for such reasons as an emergency hiring need, severe recruiting difficulty or need to retain a particular individual uniquely qualified for a specific project. TSA has authority to waive the reduction of salary for a rehired annuitant without seeking OPM approval.

- IPA assignments. Agencies can bring in temporary assignees from federal, state and local governments, colleges and universities, and other not-for-profit organizations under the Intergovernmental Personnel Act Mobility Program. Assignees either are temporarily appointed to the federal agency or serve while on detail. Cost-sharing arrangements for mobility assignments are negotiated between the participating organizations. The federal agency may agree to pay all, some or none of the costs associated with the assignment. Such costs may include basic pay, supplemental pay, benefits and travel and relocation expenses.
- SES Limited Emergency appointments. A Limited Emergency appointment to an SES General position may be for up to 18 months and should be linked to "unanticipated" needs.

A Transition Plan and Director

In addition to its Five-Prong Plan, DHS has asked its components to identify a senior career executive to serve as the senior transition officer for his or her component, and designate a career official to serve as a deputy to the transition officer, including the identification of DHS Fellows and National Defense University graduates as deputies to the senior transition officers.

Other steps also need to be taken, such as identifying critical non-career positions that must be quickly filled by the next Administration, planning for background checks of transition team members prior to the election, and ensuring that there is a back-up for non-career executives until new executives are appointed. DHS needs to develop an overall transition plan that includes all of the needed transition initiatives with objectives, goals and timelines. It should encompass activities identified in this chapter, including all aspects of filling the leadership void by ensuring that career appointees temporarily fill non-career executive positions and laying out the plans to quickly fill the next Administration's key executive positions. The operational coordination initiative and all aspects of transition training discussed in Chapter 4 should be a part of the plan. Although DHS is identifying component transition officers and deputies, an overall full-time Transition Director who reports to the Under Secretary for Management has yet to be named. DHS officials said they plan to announce a full-time Transition Director by June 1, 2008.

FINDINGS

DHS' transition plans are positive and should help to reduce risks associated with the large number of key executives departing with the Presidential transition.

First, it is important to develop a list that identifies critical PAS executive positions that should be filled as quickly as possible by the new President and Secretary of Homeland Security. A key criterion should be the position's importance for an effective response to a crisis event. Several component heads and other positions could fit these criteria. The President-elect and new Secretary should be guided by this list and criteria as they make key appointments and work with the Senate, as provided in the Intelligence Reform and Terrorism Prevention Act, to facilitate prompt Senate confirmation where required. Most important are the two most critical executives: the Secretary and Deputy Secretary. Virtually all of the individuals interviewed and several other studies have recommended that the new Secretary be in place on Inauguration Day. In addition, a succession order for the Deputy Secretary is needed.

Second, the need for security clearances is a key obstacle to quickly appointing new non-career officials. It is vital that the Presidential candidates identify transition teams prior to the election. This will allow ample time for the appointees to complete background information forms and financial disclosure documents so that the processing of clearances and review of financial information can be accomplished prior to the election. The executive branch must facilitate the process so that transition team members are ready to fully perform their duties.

Third, a comprehensive strategy is needed to ensure that the most critical non-career positions are filled. DHS' transition initiatives provide a foundation for such a plan but they are not sufficient. The orders of succession only identify the career official who would assume the duties of the Secretary and the 24 office and component heads. The succession planning database has more comprehensive information, but does not include all non-career positions. Not only are plans needed to identify who will fill non-career positions, but also who will fill positions vacated by the career officials who serve on an acting basis. Such plans also must include an assessment of career officials' knowledge and skills and the likelihood of leaving the department for retirement or other reasons. As part of this process, the 139 vacant executive positions need to be filled as soon as possible. The combination of vacant positions, coupled with the movement of career executives into positions vacated by non-career officials, will create numerous voids that must be addressed.

Fourth, various personnel authorities—including the waiver of salary reduction for reemployed annuitants, IPA assignments and SES limited emergency appointments—would aid in temporarily filling key non-career executive positions and other executive posts. With respect to hiring retirees during the transition period, waiving the required salary reduction may be important to ensure that needed well-qualified federal annuitants are available.

Fifth, DHS has developed several transition initiatives, some of which have been completed with others in progress. It is important that DHS complete all ongoing transition initiatives. Formation of the operational coordination group is particularly important. There have been disagreements about the scope and responsibility of this proposed group and outstanding issues need to be resolved. Another initiative, the succession planning database, is designed to ensure a pipeline of successors for critical positions in the department. An action plan based on this information is an important next step for DHS' succession planning system.

Finally, DHS lacks an overall transition plan that includes all of the initiatives with objectives, goals and timelines. Such a plan should encompass all activities identified in this chapter, including all aspects of filling the leadership void, from ensuring that career appointees temporarily fill non-career executive positions to laying out the plans to quickly fill the next Administration's key executive positions. The operational coordination initiative and all aspects of transition training should be included. To develop and implement a plan, an overall Transition Director is needed to ensure that all aspects are carried out within the appropriate timeframes.

CHAPTER 6
RECOMMENDATIONS FOR A COMPREHENSIVE TRANSITION PROGRAM

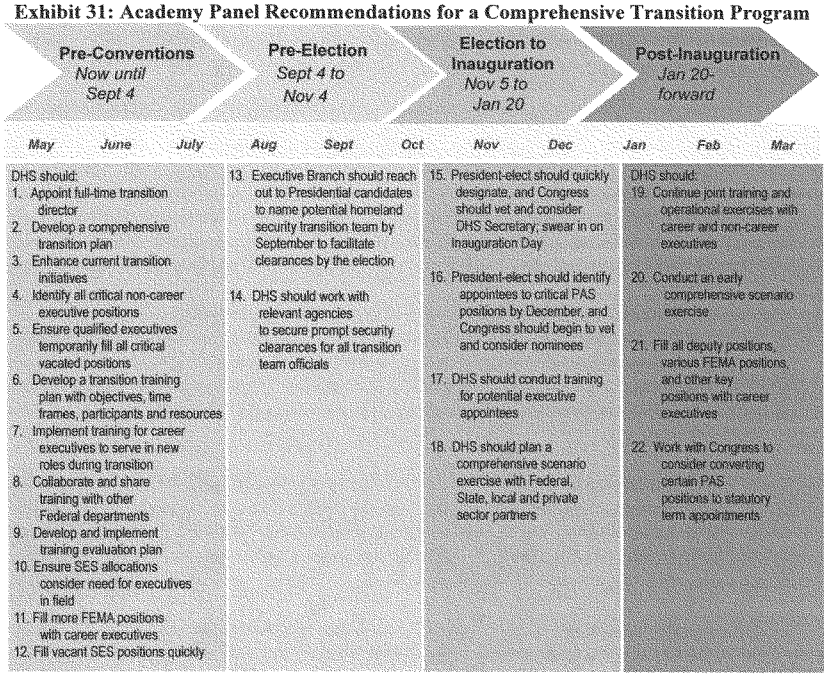
Managing Presidential transition challenges and dealing with leadership gaps are critical tasks that DHS must confront. Against this backdrop is continued uncertainty and lack of clarity regarding headquarters' role which could become even more pronounced as many executives leave during the transition period. Ensuring a clear understanding and appreciation for the leadership role of DHS headquarters may be the single most important long-term task that the department has to effectively respond to or prevent a major disaster or terrorist incident.

In addition to leadership continuity, the Panel shares concerns expressed by the 9/11 Commission and others about the fractured nature of congressional oversight of DHS; the current approach imposes an inefficient and distracting use of resources for both Congress and the department. The Panel urges congressional leaders to take additional steps to consolidate oversight in the key authorizing and appropriations committees using the model that followed the creation of DoD in 1947.

Within this context, DHS has initiated plans for meeting the Presidential transition challenges and mitigating the risks associated with the departure of many key non-career executives. Chapter 3 provided information on DHS' executive profile. Chapter 4 discussed and analyzed DHS' transition training programs. And, Chapter 5 discussed DHS' current plans and identified areas—indeed, gaps—where additional plans and actions are needed.

This chapter provides the Panel's recommendations aimed at addressing DHS' executive profile and planning for the Presidential transition. These recommendations are organized according to a timeline covering the four major phases of the transition period—pre-conventions, pre-election, election to inauguration and post-inauguration—as depicted in Exhibit 31.

Exhibit 31: Academy Panel Recommendations for a Comprehensive Transition Program



PRE-CONVENTIONS

To help address leadership continuity during the transition, the Panel recommends that DHS:

1. Appoint a full-time Transition Director reporting to the Under Secretary (or Deputy) for Management and responsible and accountable for the complete and timely implementation of the transition plan.
2. Develop a comprehensive transition plan that sets forth objectives, goals and milestones for each initiative and transition training, and ensures overall coordination of transition activities.
3. Enhance and continue to refresh existing DHS transition initiatives, specifically:
    a. Develop an order of succession for the Deputy Secretary.
    b. Complete implementation and address component disagreements with the Operational Coordination Initiative.
    c. Analyze and complete the critical position database and develop action plans to ensure information in the critical position database is used.

4. Identify specific key high-level non-career executive positions for which leadership continuity is critical, consistent with the Intelligence Reform and Terrorism Prevention Act. The act called for early identification of individuals for the Deputy and Under Secretary positions by the incoming administration. At DHS, this would comprise the Deputy Secretary, Under Secretary for the National Protection and Programs Directorate, Under Secretary for Intelligence and Analysis, Under Secretary for Management, and Under Secretary for Science and Technology—all positions located in DHS' headquarters. It would also include the Administrator of FEMA. However, as discussed in Chapter 5, the Academy Panel believes that other positions also may be critical, including the heads of the major operational agencies.

5. Develop an overall plan to ensure that qualified executives are responsible for the duties and responsibilities of all non-career executive positions as they are vacated during the transition period, and to fill current executive vacancies on a timely basis. The focus should be on critical non-career positions. Among the options to achieve this.

    a. Identify specific qualified career executives who will serve in non-career positions on an "acting" basis. This would include ensuring that back-ups exist for career positions vacated by those careerists filling in non-career posts. It is particularly important that key non-career positions are filled in FEMA, the National Protection and Programs Directorate, Office of the General Counsel, Policy Office, Office of Public Affairs, Office of Legislative Affairs and Office of Management, given the large number of non-career executives there who will leave during the transition.
    b. Make new career appointments, as appropriate, to all headquarters deputy positions.*
    c. Identify key non-career and career executives, particularly those with considerable homeland security experience and expertise, who would be willing to serve temporarily into the next Administration, subject to the consent of that Administration.
    d. Consider other ways to temporarily fill vacant non-career leadership positions, including appointments of reemployed annuitants, IPA appointments and such other means as SES limited term and emergency appointments. This includes seeking delegated authority from OPM to waive the reduction in salary for reemployed annuitants for executives during the transition.
    e. Maximize the use of existing authorities and human resources flexibilities to expedite the career hiring process for applicable current and additional executive vacancies.*

To enhance the transition training program, the Panel recommends that DHS:

6. Develop a comprehensive transition training plan that specifies the objectives, time frames, and participants, required resources for various individual training programs under development and officials accountable for each training effort.

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* DHS should continue action on this recommendation during the entire transition period and into the next Administration.

7. Implement on-schedule transition training for career executives who may serve in "acting" roles and new career executives; ensure that training and joint exercises begin no later than Summer 2008.*
8. Offer other departments with homeland security responsibilities information and guidance with respect to plans and preparations it has made for transition training. There must be collaboration and sharing on training career and non-career executives to prevent and respond to national incidents during the transition. There also could be opportunities for collaboration with regard to executive staffing needs through the use of details and joint duty assignments.
9. Develop an evaluation plan for transition training; obtain participant reactions to and suggestions for the training; measure what participants have learned through pre- and post-tests.*

To address DHS executive profile issues, the Panel recommends that DHS:

10. Ensure that the allocation of SES positions adequately considers field executives needed, especially given the increased responsibility in the border protection and immigration missions at ICE, CBP and CIS. Consider using some of its current SES allocations—139 positions are vacant—to help meet this need. In addition, any additional requests for SES positions should include an appropriate number of field positions.*
11. Fill more FEMA executive positions with career executives to foster increased leadership continuity and expertise, especially the Regional administrator position. For some PAS and PA positions, this will require working with the Administration and Congress to revise the legislative requirements for these positions.*
12. Ensure that vacant SES positions are filled as quickly as possible, especially those most critical to crisis prevention and management as identified in the updated critical position database. In addition, new DHS executive appointments need to enhance executive diversity.*

PRE-ELECTION

The Panel recommends that:

13. Consistent with expressed congressional concern, the executive branch reach out to the Presidential candidates to urge them to submit (no later than September 2008) for background investigation the names of potential transition team members for homeland security. This should help to ensure that the transition team can begin its duties immediately following election day, access classified information, become familiar with key national security documents, including the National Response Framework, and develop a partnership with DHS career executives.

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* DHS should continue action on this recommendation during the entire transition period and into the next Administration.

14. DHS work with relevant agencies to ensure background investigations are conducted and security clearances are granted to homeland security transition team officials.*

ELECTION TO INAUGURATION

The Panel recommends that:

15. The President-elect and Congress promptly identify, vet and consider the Secretary of Homeland Security-designate to ensure that he or she is sworn in on Inauguration Day.
16. The President-elect identify the nominees to PAS positions using information developed in response to recommendation 4. This should be completed no later than December 2008 to ensure that the Senate votes on key executives as expeditiously as possible; every day that a critical position is vacant, there is a "gap" in the nation's homeland security coverage.
17. DHS ensure that transition training occurs for potential executive appointees which includes:*
    a. activities to build trust between career executives and new appointees
    b. joint exercises related to homeland security crisis management with existing non-career and career executives
    c. orientation to the department, administrative matters and ethical requirements
18. As directed by the White House, DHS plan and implement a comprehensive scenario exercise with agency partners, state and local governments and the private sector to be conducted early in the new Administration.

POST-INAUGURATION

The Panel recommends that the next DHS leadership:

19. Continue joint training and exercises related to homeland security crisis management with career executives and new appointees/nominees to strengthen their operational knowledge and build a culture of trust between career executives and new appointees.
20. As noted in recommendation 18, conduct a comprehensive scenario exercise early in the new Administration. This capstone activity will provide a real-time evaluation of the effectiveness of transition planning, training and overall operational readiness.
21. Promote leadership continuity and develop a strong working bond between political and career executives; work with the executive branch and Congress to continue filling several non-career positions with career appointees, including:
    a. all deputy or similar "second-in-charge"

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* DHS should continue action on this recommendation during the entire transition period and into the next Administration.

b. various FEMA positions, including all Regional Administrators
c. other executives identified by DHS, including the Chief Financial Officer, Chief Human Capital Officer, and Director of the Interagency Programs Division in Science and Technology.

22. In consultation with Congress, consider converting certain PAS positions, such as the Assistant Secretary of ICE and the FEMA Administrator, to statutory term appointments.

APPENDIX A

PANEL AND STAFF

PANEL

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A. James Barnes[*]—Professor and former Dean, School of Public and Environmental Affairs, Adjunct Professor of Law, Indiana University. Former positions with U.S. Environmental Protection Agency: Deputy Administrator; General Counsel; Special Assistant to Administrator/Chief of Staff; General Counsel, U.S. Department of Agriculture; Partner, Beveridge & Diamond; Campaign Manager, Governor William G. Milliken (Michigan); Assistant to Deputy Attorney General and Special Assistant/Trial Attorney, U.S. Department of Justice.

G. Edward DeSeve[*]—Professor, Fels Institute of Government, University of Pennsylvania. Former Professor and Director, Management Finance and Leadership Program, School of Public Affairs, University of Maryland College Park; Managing Partner, Governmentum Partners. Former Partner and National Industry Director, Federal Government, KPMG; Deputy Director for Management, and Controller, U.S. Office of Management and Budget; Chief Financial Officer, U.S. Department of Housing and Urban Development; Special Assistant to the Governor, Commonwealth of Pennsylvania; President, Public Financial Management; Managing Director, Merrill Lynch Capital Markets. Former positions with the City of Philadelphia, Pennsylvania: Analyst and Deputy Director, Community Renewal Program; Assistant to the Director of Finance; Deputy Director of Finance for Budget; Director of Finance.

Doris Hausser[*]—Former positions with U.S. Office of Personnel Management: Senior Policy Advisor to the Director; Assistant Director for Performance and Compensation Systems Design, Workforce Compensation and Performance Service; Strategic Initiatives Coordinator, Office of the Director; Chief, Performance Management and Incentive Awards Division, Human Resources Systems Service; Program Management Officer, Training and Investigations Group.

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APPENDIX A

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FREQUENTLY USED WEBSITES

U.S. Office of Personnel Management
www.opm.gov/index.asp

U.S. Department of Homeland Security
http://www.dhs.gov/index.shtm

OTHER RESOURCES

Fedscope: Federal Human Resources Data. Office of Personnel Management.
http://www.fedscope.opm.gov/.

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APPENDIX C

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APPENDIX C

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APPENDIX C

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Bill Collins, Personnel Management Specialist
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Homeland Security Advisory Council
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Glenda Hood, Advisor/Member; Chair, Administration Transition Task Force.
Herb D. Kelleher, Co-Chair, Private Sector Senior Advisory Committee
Michael Miron, Director, State and Local Officials Senior Advisory Committee
Candace Stoltz, Director, Private Sector Senior Advisory Committee
William H. Webster, Chair

APPENDIX D

SECRETARY ORDER OF SUCCESSION

Secretary Order of Succession
As listed in Executive Order 13442 of August 13, 2007

Order	Position Title	Appointment Type
1	Deputy Secretary for Homeland Security	PAS
2	Under Secretary for National Protection and Programs	PAS
3	Under Secretary for Management (as of January 31, 2008 vacant; currently acting as Deputy Secretary)	PAS
4	Assistant Secretary of Homeland Security (Policy)	PAS
5	Under Secretary for Science and Technology	PAS
6	General Counsel	PAS
7	Assistant Secretary of Homeland Security (Transportation Security Administration)	PAS
8	Administrator of the Federal Emergency Management Agency	PAS
9	Commissioner of U.S. Customs and Border Protection	PAS
10	Assistant Secretary of Homeland Security (U.S. Immigration and Customs Enforcement)	PAS
11	Director of U.S. Citizenship and Immigration Services	PAS
12	Chief Financial Officer	PAS
13	Regional Administrator, Region V, Federal Emergency Management Agency	Non-Career
14	Regional Administrator, Region VI, Federal Emergency Management Agency	Non-Career
15	Regional Administrator, Region VII, Federal Emergency Management Agency (vacant as of January 31, 2008)	Non-Career
16	Regional Administrator, Region IX, Federal Emergency Management Agency	Career
17	Regional Administrator, Region I, Federal Emergency Management Agency	Non-Career

Notes
- PAS = Presidential Appointee with Senate Confirmation
- Non-Career: Non-Career SES appointment through the White House
- Career: Career SES with competitive appointment

APPENDIX E

DHS SUCCESSION ORDER AND ORDER FOR DELEGATION FOR DHS OFFICES AND COMPONENTS

Component/Position	Career Status (see notes at end of document
U.S. Coast Guard	
Commandant	S
Vice Commandant*	C
Chief of Staff	C
Commander, Pacific Area	C
Commander, Atlantic Area	C
Federal Emergency Management Agency	
Administrator	S
Deputy Administrator and Chief Operating Officer*	S
Deputy Administrator, National Preparedness	S
Associate Deputy Administrator	C
Director, Office of Policy & Planning Analysis	N
Region V Administrator	N
Region VI Administrator	N
Region VII Administrator	N
Region IX Administrator	C
Region I Administrator	N
U.S. Secret Service	
Director	C
Deputy Director	C
Assistant Director, Administration	C
Assistant Director, Protective Operations	C
Assistant Director, Investigations	C
Assistant Director, Protective Research	C
Assistant Director, Human Resources and Training	C
Assistant Director, Inspection	C
Assistant Director, Government and Public Affairs	C
U.S. Immigration and Customs Enforcement	
Assistant Secretary	S
Deputy Assistant Secretary, Operations*	C
Director, Office of Investigations	C
Director, Office of Detention & Removal Operations	C
Director, Office of the Principal Legal Advisor	N
Deputy Assistant Secretary, Management	C
U.S. Citizenship and Immigration Services	
Director	S
Deputy Director*	N
Associate Director, Domestic Operations	C
Associate Director, National Security & Records Verification	C

APPENDIX E

Component/Position	Career Status (see notes at end of document
Chief Financial Officer	C
Director, New York District	C
U.S. Customs and Border Protection	
Commissioner	S
Deputy Commissioner*	C
Chief, Border Patrol	C
Assistant Commissioner, Field Operations	C
Director, Field Operations, New York	C
Sector Chief, El Paso	C
Director, Field Operations, Houston	C
Sector Chief, Tucson	C
Sector Chief, San Diego	C
Director, Field Operations, Miami	C
Transportation Security Administration	
Assistant Secretary / Administrator	S
Deputy Administrator*	C
Assistant Administrator, Office of Transportation and Sector Management	L
Assistant Administrator, Office of Security Operations	C
Assistant Administrator, Office of Law Enforcement/ Federal Air Marshal Service	C
Federal Security Director, Los Angeles International Airport	C
Federal Security Director, Orlando International Airport	C
Management	
Under Secretary	S
Deputy Under Secretary*	C
Chief Financial Officer	S
Chief Information Officer	P
Chief Human Capital Officer	P
Chief Procurement Officer	C
Chief Administrative Officer	C
Science and Technology	
Under Secretary	S
Deputy Under Secretary*	C
Director, Office of Transition	C
Director, Interagency Programs	L
Director, Office of Innovation	C
Division Head, Office of Explosives	C
Division Head, Office of Borders & Maritime Security	C

APPENDIX E

Component/Position	Career Status (see notes at end of document
National Protection and Programs Directorate	
Under Secretary	S
Deputy Under Secretary*	P
Assistant Secretary, Infrastructure Protection	P
Assistant Secretary, Cybersecurity & Communications	N
Assistant Secretary, Intergovernmental Affairs	N
Deputy Assistant Secretary, Infrastructure Protection	N
Director, U.S. Visitor & Immigrant Status Indicator Technology (US-VISIT)	C
Office of Policy	
Assistant Secretary	S
Deputy Assistant Secretary*	N
Assistant Secretary, Policy Development	N
Assistant Secretary, International Relations	L
Director, Screening Coordination Office	L
Office of Intelligence and Analysis	
Under Secretary, Chief Intelligence Officer	S
Deputy Under Secretary*	C
Deputy Under Secretary, Operations	N
Assistant Deputy Under Secretary, Intelligence	C
Assistant Deputy Under Secretary, Mission Integration	C
Assistant Deputy Under Secretary, External Communications	C
Office of Operations Coordination	
Director	L
Deputy Director	C
Director, National Operations Center	C
Chief of Staff	C
Director, Incident Management & Interagency Planning	C
Office of Health Affairs	
Assistant Secretary, Chief Medical Officer	S
Principal Deputy Assistant Secretary, Deputy Chief Medical Officer*	C
Chief of Staff	C
Associate Chief Medical Officer, Medical Readiness	T
Associate Chief Medical Officer, Component Services	C
Associate Chief Medical Officer, Weapons of Mass Destruction & Biodefense	C
Federal Law Enforcement Training Center	
Director	C
Deputy Director	C
Assistant Director, Training	C
Assistant Director, Field Training	C
Assistant Director, Training Innovation & Management	C

APPENDIX E

Component/Position	Career Status (see notes at end of document
Assistant Director, Administration	C
Assistant Director, Chief Financial Officer	C
Assistant Director, Chief Information Officer	C
Senior Associate Director, Washington Operations	C
Domestic Nuclear Detection Office	
Director	P
Deputy Director	C
Assistant Director, Mission Management	C
Assistant Director, National Technical Nuclear Forensics Center	C
Assistant Director, Transformational & Applied Research	C
Assistant Director, Product Acquisition	C
Office of the General Counsel	
General Counsel	S
Principal Deputy General Counsel*	N
Deputy General Counsel	C
Associate General Counsel, General Law	N
Chief Counsel, TSA	C
Director of Field Legal Operations, Principal Legal Advisor, ICE	C
Office of Legislative Affairs	
Assistant Secretary	N
Deputy Assistant Secretary, Operations	C
Deputy Assistant Secretary, Senate Liaison	N
Deputy Assistant Secretary, House Liaison	N
Director, Intelligence & Analysis/Operations	N
Director, National Protection & Programs Directorate	C
Office of Public Affairs	
Assistant Secretary	N
Deputy Assistant Secretary	N
Director, Strategic Communications	N
Director, Internal Communications	C
Office of Inspector General	
Inspector General	S
Deputy Inspector General*	C
Counsel to the Inspector General	C
Assistant Inspector General, Audits	C
Assistant Inspector General, Investigations	C
Assistant Inspector General, Inspections	C
Citizenship and Immigration Services Ombudsman	
Ombudsman	N
Executive Officer	C
Chief, Programs, Policy, Strategy & Research	C
Chief, Intake Evaluations & Problem Resolution	C

APPENDIX E

Component/Position	Career Status (see notes at end of document
Chief Privacy Officer	
Chief Privacy Officer	N
Deputy Chief Privacy Officer, Privacy	C
Deputy Chief FOIA Officer, Freedom of Information Act	C
Civil Rights and Civil Liberties	
Civil Rights and Civil Liberties Officer	P
Deputy Officer, Equal Employment Opportunity Programs	C
Deputy Officer, Programs and Compliance	C
Executive Officer	C
Office of Counternarcotics Enforcement	
Director	S
Chief of Staff*	C
Principal Asst Director	C

Notes

- S = Presidential Appointee with Senate Confirmation
- P = Presidential Appointee
- N = Non-Career SES or Schedule C
- C = Career
- L = Limited term appointee
- T = Scientific Professional
- * = First Assistant, pursuant to the Federal Vacancy Reform Act

DHS plans to update this Order of Succession in the summer of 2008.

Source: DHS Office of the Chief Human Capital Officer

APPENDIX F

COUNCIL FOR EXCELLENCE IN GOVERNMENT PANEL OF EXPERTS

- Admiral James Loy, *Co-Chair,* Former Deputy Secretary, U.S. Department of Homeland Security.
- Ray Kelly, *Co-Chair*, Commissioner, New York City Police Commissioner.
- Prudence Bushnell, former Ambassador and Assistant Secretary of State for African Affairs and CEO of Sage Associates.
- Michael Byrne, former Senior Director, White House Office of Homeland Security and Senior Vice President for Emergency Management and Homeland Security, ICE International.
- Darrell Darnell, Director, District of Colombia Homeland Security and Emergency Management Agency.
- Glenda E. Hood, former Secretary of State, State of Florida and President, Glenda Hood and Associates.
- Major General Timothy K. Lowenberg, Adjutant General, Washington State, U.S. Air Force.
- John McLaughlin, former Acting Director and Deputy Director, Central Intelligence Agency.
- Henry Renteria, Director, California Governor's Office of Emergency Services.
- Michael Wallace, President, Constellation Generation Group.

APPENDIX G

RECOMMENDATIONS OF THE HOMELAND SECURITY ADVISORY COUNCIL ADMINISTRATION TRANSITION TASK FORCE

RECOMMENDATIONS

The recommendations are divided into seven broad categories. The ATTF recognizes that several of its recommendations could be aligned into multiple categories. The seven categories include: Threat Awareness, Leadership, Congressional Oversight/Action, Policy, Operations, Succession and Training. There is no rank order of recommendations within each category. We (ATTF) believe all constitute national imperatives and must be expeditiously implemented.

THREAT AWARENESS

Outgoing DHS Leadership should:

- Work with media partners to educate and inform the public that a period of heightened threat is likely before, during and shortly after the Presidential election and transition period.
- Clarify the meaning of "heightened threat" during the transition period by notifying all homeland security partners of historical patterns.
    - Provide timely and reliable dissemination of any credible threat reports to all Presidential and Vice Presidential nominees
    - Encourage issuance of one joint statement on heightened threat level from all Presidential nominees
- Enlist non-partisan/bi-partisan/neutral third parties and use public service announcements to assist in informing the public of increased threat levels and the rationale behind them.
- Develop contingency plans around the now common themes of Prevent, Prepare, Respond, and Recover.

LEADERSHIP

Outgoing DHS Leadership should:

- Provide the Presidential nominees with identified best practices and lessons learned domestically and internationally from analysis of incidents during leadership transitions.
    - Engage past White House Office of Homeland Security and DHS officials and transition teams at all levels of government (Federal, State, local) and the private sector.

- Engage the expertise of other Federal departments' transition efforts with particular emphasis on the efforts of National Security organizations (e.g., Defense, State and Justice Departments).

- Work with the presidential nominees, their senior staff, and the Senate, prior to the election, to establish an expedited process for handling appointments and confirmation to critical assignments (this goes far beyond the top three or four senior positions in the Department). Encourage, with incentives (i.e., bonuses), current appointees to overlap the new administration term until the transition process is complete and new appointees are in place.
    - Draft lists of potential candidates for appointed positions in early summer.
    - Identify ways to accelerate the processing and Senate confirmation of Presidential appointments.
    - Ensure an increase in OPM investigative and adjudicative manpower to quickly clear senior and second-tier appointees (i.e., down to a minimum of Deputy Assistant Secretary positions).
    - Perform updates rather than completely re-do the clearance history for people already holding clearances (at least for all but very top positions).
    - Develop a framework for engaging all Presidential nominees to ensure consistency on how they should interact with DHS and vice versa.
    - Ensure Departmentwide reciprocity for suitability that would allow for quicker movement between components.

- Encourage all Presidential nominees to identify members and organize Homeland Security advisory groups in preparation for the administration transition.
    - Offer time and expertise from DHS HSAC membership to all interested Presidential nominees and the President-Elect.
- Encourage, and where possible, obtain the commitment of current political appointees to remain until at least the end of the current administration. (Note: this recommendation is also under Congressional Oversight/Action)

- Hold personal meetings for outgoing leadership (Secretary, Deputy Secretary, etc.) with incoming leadership.

- Build and maintain a comprehensive list of DHS alumni of both political and senior career personnel for reference purposes.
    - Provide each incoming appointee, at the time he or she is nominated, with a complete list of recent predecessors/equivalents and their contacts (i.e. email, telephone, postal address, etc.).

- Implement further recommendation number one of the HSAC's Culture Task Force Report -- "DHS Headquarters Must Further Define and Crystallize Its Role."

- Prepare an outreach strategy to Federal, State, local, tribal and private sector leaders to accelerate the new senior leadership teams' ability to implement phone calls, meetings, etc. as soon as they officially assume their positions.

- Generate cost-benefit reports on the more controversial line items in the budget so that decisions can be made either to protect or remove prior to and through the transition process.

Incoming DHS Leadership should:

- Nominate and seek Congressional approval of the new Secretary of Homeland Security as is done with the Secretary of State and Secretary of Defense on the first day of the new Administration. (Note: this recommendation is also under Congressional Oversight/Action)
- Meet with Federal, State, local, tribal, private sector, and media partners to discuss transition details.
- Ensure the current career Deputy Under Secretary for Management remains in this position during the next administration. (Note: the ATTF commends the Department for quickly appointing a senior career individual to this position.)

CONGRESSIONAL OVERSIGHT/ACTION

- Act with the same sense of urgency in considering and expeditiously approving the new Administration's Secretary of Homeland Security as is done with the Secretary of State and Secretary of Defense. (Note: this recommendation is also under Leadership)
- Form a select bipartisan group from existing Senate oversight committees to expedite confirmation for all incoming DHS nominees for national security positions with the deadline being the start of the August 2009 recess. (Note: we [ATTF] are NOT asking Congress to form another Committee.)
- Continue to update the Transition Act of 1963 as amended to reflect post-9/11 realities.
- Implement 9/11 Commission recommendation to reduce the number of Congressional oversight committees and subcommittees from its current unwieldy eighty-seven.
- Pass a Fiscal Year 2009 budget for the Department of Homeland Security much sooner than the Fiscal Year 2008 budget was passed to avoid negative impacts on operations and training that can result from continuing resolutions. Congress should also review the Department's FY 2008 budget to ensure sufficient resources are available and allocated for transition activities. This must include pre-election and post-election transition crisis management exercises. Budget shortfalls should be supplemented where necessary.
    - Fund crisis exercises at adequate levels prior to the transition period.
    - Establish critical line items for the budget.
- Continue work to reduce (with outgoing DHS leadership) the number of Presidential-appointed senior positions at DHS. (Note: this recommendation is also under Succession)
- Provide early briefings and interactions with DHS Presidential nominees and appointees detailing Congressional expectations with respect to homeland security responsibilities.
- Interact with Presidential nominees in a bipartisan manner because homeland security is a non-partisan undertaking.
- Encourage incoming appointees to serve as consultants to DHS during their confirmation process.

- Encourage incoming DHS leadership to continue employing current appointees until they are replaced. (Note: this recommendation is also under Leadership)
- Discourage any reorganization of the Department prior to or during the transition period. (Note: this recommendation is also listed under Operations)
- Consider current political appointees with highly specialized and needed skills for appropriate career positions. (Note: this recommendation is also under Succession)

POLICY

Outgoing DHS Leadership should:

- Continue to encourage all homeland security partners to support and participate in transition efforts.
- Continue to enhance and build consensus among all partners (Federal, State, local, tribal, private sector, Congress, etc.) around policy issues that are a priority to the outgoing administration.
- Prioritize critical policies with measurable benchmarks that need to be addressed prior to the change in administration.
    - Provide the incoming administration detailed "End of Appointment"/Departure reports, including lessons-learned, organizational, operational and program successes/failures, and objective/non-partisan recommendations to move forward.
    - Engage and provide a process and templates by which Federal, State, local, tribal and the private sector authorities may submit to incoming DHS officials their list of priorities and compilation of 'decisions made' and 'decisions needed.'
- Continue to support the active involvement of the Council for Excellence in Government and the National Academy of Public Administration to make recommendations at all levels of government and the private sector for transition efforts.

OPERATIONS

Outgoing DHS Leadership should:

- Continue to vigorously support the establishment of State fusion centers with both funding and personnel. Listen to their specific information requirements necessary to empower State and local collaboration during the possible heightened threat period at the time of transition and throughout the new administration.
- Offer operational briefings to Presidential nominees and their staff. Develop executive summaries of important issues for the nominees to consider.
- Develop a clear and concise communications strategy for transition planning and increase coordination through media representatives.

- Discourage any reorganization of the Department prior to or during the transition period. (Note: this recommendation is also listed in Congressional Oversight/Action)
- Take advantage of the period from January through November 2008 as an important time to establish and standardize processes and procedures in consultation with State, local, tribal and private sector authorities. Refrain from trying to implement hasty requirements the last few months of the Administration.

SUCCESSION

Outgoing DHS Leadership should:

- Continue to ensure all key positions currently filled by appointees have back up senior level career personnel for operational continuity and a more fluid transition process. This should also be coordinated with the Department's succession planning efforts to make certain that all key leadership positions are currently filled.
- Support and implement a cadre of individuals fully focused on transition with the leadership designation of Deputy Chief of Staff for Transition (DCST). Provide the DCST with a task force composed of representatives from each component and staff office.
- Generate a priority list of briefing materials and ensure they are in a consistent format, clearly and concisely written, well organized, and professionally presented.
    - Identify a departmental topic specialist for each functional area and major program and any associated working group assigned to it.
    - Make certain that incoming senior managers have quick references – issue papers – for each topic to prevent information overload.
    - List all of the existing cross functional working groups and the initiatives or programs on which they are working.
    - Allow personnel to do their jobs, as opposed to being consumed with briefings, through use of secure automated or web-based tools.
- Compile a list of all Presidential and Homeland Security Directives and strategies and show how each align or not with the others.
- Continue to reduce the number of senior political appointees so that there is a more even mix of career and Presidential appointed senior positions to maintain continuity and historical knowledge. (Note: this recommendation is also under Congressional Oversight/Action)
- Consider current political appointees with highly specialized and needed skills for appropriate career positions. (Note: this recommendation is also under Congressional Oversight/Action)
- *(ATTF) Note: The National Academy of Public Administration is providing key recommendations in this area.*

APPENDIX G

TRAINING

Outgoing DHS Leadership should:

- Organize tabletop exercises (based upon DHS's top ten scenarios) for new administration officials as early as possible and assure adequate funding, preparation, and delivery of same.
- *(ATTF) Note: The Council for Excellence in Government is providing key recommendations in this area.*

BACKGROUND
KEEPING THE NATION SAFE THROUGH THE PRESIDENTIAL TRANSITION
SEPTEMBER 18, 2008

Homeland Security and the Presidential Transition

A. Background

The federal government faces significant challenges as it prepares for the first presidential transition since the attacks of September 11, 2001. History suggests that there may be a heightened risk of a terrorist attack around the time of the presidential transition. In the second month of the Clinton Administration, February 1993, the World Trade Center was bombed; the U.S.S. Cole was bombed in October 2000, shortly before the 2000 elections; and the attacks of September 11, 2001, happened eight months into the Bush Administration. Terrorists more recently have targeted transition periods in other countries as well. Three days before the March 2004 general elections in Spain, bombs exploded on four trains in Madrid. In June 2007, two days after Gordon Brown became Prime Minister of the United Kingdom, two car bombs were discovered and diffused safely in London, and the next day a car filled with propane canisters was driven into the glass doors of the Glasgow Airport and set on fire.[1]

Due to the heightened risk, smooth functioning of the security functions of the federal government is critical. Career employees will need to guide federal agencies through the transition. The new Administration will need to bring new appointees on board and prepare them to lead more quickly than in past transitions.

The challenges of the transition will be especially acute for the Department of Homeland Security. Formed in 2003, DHS has not yet experienced a presidential transition.[2] Moreover, the creation and transformation of DHS, now the third-largest cabinet agency, has been on the Government Accountability Office's high-risk list since its formation in 2003.[3] DHS faces human capital challenges, discussed in more detail below, which will make the presidential transition particularly difficult.

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[1] *See, e.g., id.* at p. 2.

[2] Several other federal national security offices or agencies have been established since the last presidential transition, including the Office of the Director of National Intelligence, the Homeland Security Council, and the National Counter Terrorism Center. *See, e.g.,* John Rollins, Congressional Research Service, *2008-2009 Presidential Transition: National Security Considerations and Options* (April 21, 2008), Order Code RL34456, at pp. 15-16 (hereafter CRS Report), at p. 7. This hearing will focus primarily on DHS and its responsibilities.

[3] *See, e.g.*, Government Accountability Office, *High-Risk Series: An Update* (January 2007), GAO-07-310, at pp. 45-46.

To their credit, senior DHS officials have focused considerable time and attention on planning for the transition.[4] DHS has declared a period of heightened alert and has issued operational guidance on addressing the risk.[5] Implementing a recommendation included in the NAPA Report, DHS has named a Department-wide transition director reporting to the Under Secretary for Management, Coast Guard Admiral John Acton. Additionally, each DHS component has identified a senior career executive to serve as its senior transition officer.[6]

B. Identifying and Preparing Career DHS Employees to Lead During the Transition Period

Most or all of the Bush Administration's appointees will leave office at or before the start of the new Administration.[7] Because of this, senior career officials must be identified and prepared to lead the Department during the transition period.

DHS has designated the career employees who temporarily will fill the most critical non-career positions vacated at the start of the new Administration. All except for six of DHS's 24 components and offices have a career deputy who will lead the component during the transition.[8] Beyond this basic planning, DHS has significant human capital challenges, discussed in detail in the NAPA Report, which may hinder career executives' ability to lead the Department through the transition. A few notable issues, with all statistics from March 2008, are:

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[4] Deputy Secretary Paul Schneider and Under Secretary for Management Elaine Duke emphasized transition planning during their confirmation process, and DHS officials have briefed Subcommittee/Committee staff several times on transition planning. *See also* CRS Report at pp. 15-16.

[5] *See, e.g.*, Pierre Thomas, "U.S. Headed for 'Heightened Alert' Stage: Major Events on the Horizon Prompt a Surge in Anti-Terror Efforts," *ABC News* (July 28, 2008), *available online at* http://abcnews.go.com/TheLaw/story?id=5420514.

[6] *See* NAPA Report at pp. 77, 82.

[7] The incoming Administration may ask officials to stay on a case-by-case basis, either until new leaders are confirmed or indefinitely. The Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, 121 STAT. 548, § 2405(d), expresses "the sense of the Congress that the person serving as Under Secretary of Homeland Security for Management on the date on which a Presidential election is held should be encouraged by the newly-elected President to remain in office in a new Administration until such time as a successor is confirmed by Congress." The current Under Secretary, Elaine Duke, who was a long-time career civil servant before her appointment, has expressed that she would remain in the position if asked by the new Administration. *See* Pre-Hearing Questionnaire for the Nomination of Elaine Duke to be Under Secretary for Management of DHS, at p. 1, available upon request. Additionally, DHS may be able to create temporary appointments to allow incoming and outgoing officials to overlap for a period of time. *See* CRS Report at p. 29, n. 102, 103.

[8] *See* NAPA Report at pp. 64, 75-76.

- Eighteen percent of executive positions were vacant (p. 24).[9]
- Headquarters components generally had higher vacancy rates. The National Protection and Programs Directorate (NPPD) and the Office of General Counsel (OGC) had 50 percent and 40 percent executive vacancy rates, respectively, and several other headquarters components had vacancy rates above 20 percent (p. 44).
- The Federal Emergency Management Agency (FEMA) had the highest executive vacancy rate of the operating components at 25 percent (p. 45).
- DHS had the highest rate of career executive turnover of any cabinet department. From October 1, 2003, to September 30, 2007, 72 percent of DHS career executives left the Department, compared to a 46 percent average across all cabinet departments (p. 46).
- More than half of DHS career executives had been in their positions for less than two years (pp. 47-48).

Although the number of Administration appointees at DHS has been controversial,[10] currently the number of appointees is not unusual.[11] As of March 2008, about 13 percent of filled executive positions were non-career appointees, slightly below the overall average for cabinet departments.[12] Many Senior Executive Service (SES) vacancies can be filled either by an administration non-career appointee or by a civil servant through the competitive hiring process, and only 10 percent of SES positions at DHS are filled with non-career appointees.[13] It is worth noting, however, that DHS has fewer total career and appointed executives relative to the size of the agency than most other federal agencies, so there nonetheless will be comparatively few career senior leaders to guide the Department through the transition.[14]

Moreover, there are DHS components in which the proportion of executives who are non-career appointees is significantly higher than the departmental average. Of the operating components, FEMA has by far the largest percentage – 34 percent of FEMA executives are non-career appointees.[15] In general, headquarters components have a higher percentage of appointed executives. Unsurprisingly, most of the executives in the Office of the Secretary are appointees.

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[9] "Executive positions" refers to Senate-confirmed and non-confirmed presidential appointees, Senior Executive Service (SES) and Transportation Senior Executive Service (TSES) positions, and Senior Level (SL) and Scientific/Technical (ST). In this memorandum, "SES" is used to refer to both SES and TSES positions unless otherwise noted.

[10] *See, e.g.*, Shane Harris, "Homeland Security could face transition problem," *National Journal* (June 1, 2007), *available online at* http://www.govexec.com/dailyfed/0607/060107nj1.htm; NAPA Report at p. 34.

[11] *See* NAPA Report at pp. 38-39, 51-52.

[12] *See id.* at pp. 23-24, 35, 38.

[13] *See id.* at p. 24.

[14] *See id.* at pp. 29-34.

[15] *See id.* at p. 37.

Perhaps more surprisingly, one third or more of the executives in the NPPD and the OGC are appointed.[16]

The combination of non-career appointees leaving the Department at the end of this Administration, existing high executive vacancy rates, and a relatively low overall number of executives will create a tremendous strain on the Department. In particular, the combined effect of the high executive vacancy rates and high percentage of non-career appointees at FEMA, NPPD, and OGC may leave little senior leadership in these components through the transition.

DHS's transition planning includes filling SES vacancies with career rather than appointed executives as the transition nears. For example, civil servants have been promoted as career deputies in Customs and Border Protection and the Transportation Security Administration. In addition, DHS has filled three Regional Administrator positions at FEMA with career employees.[17] Because these are career positions, these employees will remain in their positions in the new Administration.[18]

DHS has created a "tiger team" to prepare training and exercises for the transition.[19] DHS has held two conferences this year primarily for career executives to help prepare them.[20] The Department is developing a transition training plan for career executives who will fill critical positions now filled by non-career executives during the transition.[21] Additionally, senior career employees will participate in tabletop disaster exercises before the end of the Administration. Training geared toward preparing the new Administration's appointees to lead is discussed below.

C. Preparing for the New Administration

1. The transition team

There are only eleven weeks between the election and the President's inauguration. During that time, the President-elect's team must learn all it can about the workings of federal programs, pending decisions, security threats, and other issues. It also must work on selecting

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[16] *See id.* at p. 37.

[17] *See id.* at p. 35; CRS report at pp. 13-14; Siobhan Gorman, "Homeland Security Handoff-Career Employees Move Into Portions Once Held By Political Appointees," *Wall Street Journal*, January 11, 2008.

[18] Subject to personnel statutes generally applicable to career SES employees, including those governing reassignment. *See* 5 U.S.C. § 3395.

[19] *See* DHS Congressional Briefing, "Overview of DHS Presidential Transition," August 7, 2008, at p. 2, available upon request (hereafter, "DHS Briefing").

[20] *See* NAPA Report at p. 56.

[21] *See* DHS Briefing at p. 5; *see also* NAPA Report at p. 56 (describing a 1-2 week training program being developed for career executives for the transition).

people to fill more than 7,000 federal government positions that are appointed by the President.[22] Because of the size of the task, planning for the transition starts well before the election.

Delays in obtaining security clearances for transition team members who will need access to classified information may hinder transition team members' ability to fully understand DHS programs and security risks. The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), implementing a recommendation of the 9/11 Commission, allows the major party candidates for President to submit requests for security clearances before the election for prospective transition team members who will need access to classified information. Eligibility for a security clearance is to be determined, to the fullest extent practicable, by the day after the election.[23]

Under the Presidential Transition Act of 1963, as amended, the General Services Administration (GSA) funds and supports the President-elect's transition team activities.[24] GSA secures the transition team's office space, furniture, and equipment, and it also provides support and funding for staffing, training, and other transition team activities.[25]

Frequently members of the transition team will become appointees in the new Administration, so transition team members will train and plan to undertake the duties and decisions that the new Administration will need to make. Additionally, the transition team will interview, vet, and select people for positions in the new Administration. These activities, discussed in more detail below, continue after the inauguration

2. *Getting new appointees in place*

In the past, the Senate has held hearings for cabinet members before the President's inauguration, and at least some members of the cabinet have been sworn in on the day of the inauguration.[26] Numerous organizations or experts recommend that the Secretary of Homeland

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[22] *See* CRS Report at p. 13; *Policy and Supporting Postings*, House Committee on Government Reform, 108thCongress, 2nd Session (November 22, 2004) (published in the first year of each new Administration and popularly known as "The Plum Book," this report lists non-career appointed positions throughout the federal government), *available online at* http://www.gpoaccess.gov/plumbook.

[23] *See* IRTPA Section 7601(c), Public Law108-458, 50 U.S.C. § 435b note; 9/11 Commission Report at p. 422, *available online at* http://govinfo.library.unt.edu/911/report/911Report.pdf.

[24] *See* 3 U.S.C. § 102 note; CRS Report at p. 25.

[25] *See* CRS Report at p. 25; *See* Statement of Gail T. Lovelace, Chief Human Capital Officer, General Services Administration before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (September 10, 2008), at pp. 2-3.

[26] *See, e.g.,* "Senate confirms Powell, Rumsfeld, O'Neill for Bush Cabinet, *CNN* (January 20, 2001), *available online at* http://edition.cnn.com/2001/ALLPOLITICS/stories/01/20/senate.vote.

Security be sworn in the day of the inauguration as well.[27] The 9/11 Commission recommended accelerating the nomination and confirmation process for people with national and homeland security responsibilities generally, noting that many of President George W. Bush's critical subcabinet appointees were not confirmed until the summer of 2001 or later.[28] Indeed, no previous Administration has had more than 25 appointees Senate confirmed by the first of April of its first year in office, and no Administration has had more than 60 percent of approximately 400 cabinet and subcabinet personnel confirmed by August of its first year.[29]

In order to accelerate this process, the 9/11 Commission recommended that the President-elect submit the nominations of the entire national security team through the under secretary level no later than inauguration day.[30] Similarly, the NAPA Report recommends that the President-elect identify critical Senate-confirmed nominees by December 2008 and that the Senate consider the nominees before the inauguration.[31] Two members of the 9/11 Commission recently recommended that the President-elect choose his entire national security cabinet by the election, which would mean the candidates should be vetting possible nominees now.[32]

To facilitate expedited security clearances for nominees, IRTPA states that the President-elect should submit the names of candidates for high-level national security positions through the under secretary level as soon as possible after the general election. IRTPA directs the security investigations to be completed as expeditiously as possible so that clearances can be provided by the inauguration.[33]

IRTPA contains a sense of the Senate that the Senate should complete its consideration and confirm or reject national security nominees received by the date of the inauguration within 30 days.[34] This will require that some nomination hearings take place when the Senate reconvenes in January before the inauguration.

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[27] *See, e.g.,* NAPA Report at pp. 74-75, 78; Homeland Security Advisory Council, *Report of the Administration Transition Task Force* (January, 2008), *available online at* http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf, at p. 5 (hereafter "HSAC Report").

[28] *See* 9/11 Commission Report at p. 422.

[29] *See* Statement of Clay Johnson, Deputy Director for Management, Office of Management and Budget before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (September 10, 2008), at Attachment C, p. 4.

[30] *See* 9/11 Commission Report at p. 422.

[31] *See* NAPA Report at p. 82; HSAC Report at pp. 3-5 (recommending expedited nomination and consideration of appointees); CRS Report at pp. 34-35.

[32] *See* Jamie Gorelick and Slade Gorton, "Between Presidents, a Dangerous Gap," *New York Times* (July 16, 2008), *available online at* http://www.nytimes.com/2008/07/16/opinion/16gorelick.html

[33] *See* IRTPA Section 7601(a)(3), 3 U.S.C. § 102 note.

[34] *See* IRTPA Section 7601(b)(2), 3 U.S.C. § 102 note; *see also* CRS Report at pp. 34-35.

3. Briefing and training

National security briefings for the major party candidates for President and senior staff likely will begin before the election.[35] Additionally, IRPTA requires that the President-elect be provided a "detailed classified, compartmented summary by the relevant outgoing executive branch officials of specific operational threats to national security" as soon as possible after the general election.[36]

The outgoing Administration will assist the transition team and members of the new Administration by preparing preparing briefing books and other materials with policy, operational, and administrative information.[37] DHS has created a "tiger team" to focus on briefing materials. The briefing book is being prepared, and DHS plans to include information on each of the components; DHS programs and initiatives; human capital, budgeting, contracting, information technology, and other management issues; the Department's legal authorities and requirements; emergency management and the National Response Framework; key stakeholders and contacts; and numerous other topics.[38]

With respect to training, DHS expect that incoming appointees as well as career employees will participate in FEMA tabletop disaster exercises that have been scheduled in 2009.[39] The NAPA Report recommends that such training include a comprehensive disaster scenario exercise conducted jointly with other agencies, state and local partners, and private sector participants.[40] Additionally, DHS has contracted with the Council for Excellence in Government to:

- Provide tailored pre-exercise training modules for career employees and incoming appointees who participate in the FEMA exercises.[41]
- Deliver Response Awareness Workshops for incoming appointees and career executives.
- Develop training on the roles and responsibilities of DHS, other departments, and state, local, and tribal entities in homeland security. This project will include tabletop exercises and on-site training to better understand what each entity's work entails.[42]

Significant work remains on finalizing and implementing these programs.

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[35] *See* CRS Report at p. 20.

[36] *See* IRTPA Section 7601(a)(1), 3 U.S.C. § 102 note.

[37] *See, e.g.*, CRS Report at p. 4.

[38] *See* DHS Briefing at p. 2 and materials provided on compact disc to Committee staff, available upon request (FOUO); *see also* NAPA Report p. 68.

[39] *See* NAPA Report at p. 57; DHS Briefing at p. 6.

[40] *See* NAPA Report at p. 85.

[41] *See* NAPA Report at p. 57; DHS Briefing at p. 6.

[42] *See* NAPA Report at p. 57; *see also* DHS Briefing at p. 6 (describing this as a contract to "visually map and validate the National Response Framework tasks").

Key Resources

National Academy of Public Administration, *Addressing the 2009 Presidential Transition at the Department of Homeland Security* (June 2008), *available online at* http://www.napawash.org/pc_management_studies/DHS/DHSExecutiveStaffingReport2008.pdf

John Rollins, Congressional Research Service, *2008-2009 Presidential Transition: National Security Considerations and Options* (April 21, 2008), Order Code RL34456.

9/11 Commission Report (July 22, 2004), *available online at* http://govinfo.library.unt.edu/911/report/911Report.pdf.

Homeland Security Advisory Council, *Report of the Administration Transition Task Force* (January, 2008), *available online at* http://www.dhs.gov/xlibrary/assets/hsac_ATTF_Report.pdf

Legislation

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458

The Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53

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