

Issue Brief for Congress

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Executive Branch Reorganization and Management Initiatives

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Executive Branch Reorganization and Management Initiatives

SUMMARY

When President George W. Bush came into office in January 2001, he arrived from a campaign in which he had emphasized efficiency in government, particularly through the use of information technology, but had not revealed any plans for reorganizing the executive branch.

The departing Clinton Administration had conducted, during most of its eight-year tenure, an active effort at “reinventing government,” spearheaded by a National Performance Review (NPR). Announced shortly after the 1993 inauguration, the NPR sought to find ways to make the federal government more efficient, economical, and effective. The result was a series of reports proposing various organizational and operational reforms.

Several major NPR recommendations were awaiting implementation when the November 1994 congressional elections resulted in Republican majority party control of both houses of the 104th Congress. Republican congressional leaders had unveiled a Contract With America reform plan in late September 1994. Its core principles regarded the federal government as being too big, spending too much, being unresponsive to the citizenry, and perpetrating burdensome regulations. At the conclusion of the 104th Congress, both the President and Republican congressional leaders could claim some victories in downsizing government, but no department was eliminated, and only a few small agencies were abolished.

Administration and congressional reinvention efforts resulted in mostly modest changes during the 105th Congress, major exceptions being the overhaul of the structure and operations of the Internal Revenue Service and the consolidation of the foreign policy agencies. During the 106th Congress, executive reorganization and reinvention were neither major nor high-priority items.

Following his 2001 inauguration, President Bush announced plans to address a number of management problems in the federal government. Then, in the aftermath of the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, the organization of the federal government for maintaining homeland security and combating terrorism became an important consideration for both the President and Congress. Establishment of the Office of Homeland Security in October 2001 as a coordinating entity was an important first step, followed by the creation of a Department of Homeland Security during the final weeks of the 107th Congress (H.R. 5005).

This issue brief views reorganization and management as involving the alteration of the program administrative structure and operations of the executive branch for reasons of efficiency, economy, and direction. The underlying issue is who reorganizes or sets management policy—Congress or the President—and by what authority and, also, for what purpose?

MOST RECENT DEVELOPMENTS

President George W. Bush signed the Homeland Security Act of 2002 into law (P.L. 107-296) on November 25. The legislation (H.R. 5005) established the Department of Homeland Security and the Homeland Security Council, relocated the Bureau of Alcohol, Tobacco, and Firearms from the Department of the Treasury to the Department of Justice, and, among other policy changes, authorized commercial airline pilots to carry firearms in the cockpit. Senate debate on the legislation to establish a Department of Homeland Security had stalled at the end of September over personnel flexibilities sought by the President and the continuation of civil service protections and collective bargaining rights in the substitute proposal (S.Amdt. 4471) offered by Senator Joseph Lieberman. After the November elections—which gave the President’s party majority control of both houses of the 108th Congress—a new department proposal (H.R. 5710) was introduced in the House with bipartisan support and was approved on November 13. Still working with the original House-passed bill (H.R. 5005), the Senate rejected the Lieberman substitute, approved a substitute amending the bill with the language of the second House-passed bill (H.R. 5710), and adopted the House bill (H.R. 5005), as amended, on November 19. The House accepted the Senate-modified version of its initial department bill on November 22, clearing the measure for the President’s signature. President Bush largely obtained what he wanted in the legislation mandating the new department.

BACKGROUND AND ANALYSIS

For well over a century, the structure and program responsibilities of the federal executive branch, including all of the departments and agencies, were determined by Congress. In the aftermath of World War I, however, with the rise of the new public administration profession and growing sentiment for attaining efficiency and economy in government, came efforts to strengthen the President’s management ability. In 1932, the Chief Executive was statutorily authorized to issue executive orders proposing reorganization within the executive branch for purposes of reducing expenditures and increasing efficiency in government. A reorganization order became effective after 60 days unless either House of Congress adopted a resolution of disapproval. When President Herbert Hoover submitted 11 different reorganization orders, all were disapproved by the House of Representatives on the grounds that his newly elected successor, Franklin D. Roosevelt, might have different reorganization ideas.

President Roosevelt did submit a number of reorganization orders pursuant to a revised and extended version of the 1932 statute, which expired automatically in 1935. Some major actions taken in these orders included creating procurement and disbursement divisions in the Treasury Department, establishing an enlarged National Park Service in the Interior Department, and making the Farm Credit Administration an independent agency.

Congress subsequently mandated a similar arrangement in a 1939 statute. Once again, the objective was to achieve efficiency and economy in administration. A presidential reorganization plan, submitted to Congress, became effective after 60 days unless both houses of Congress adopted a concurrent resolution of disapproval. In his initial

reorganization plan, President Franklin D. Roosevelt created the Executive Office of the President.

Such reorganization authority, renewed periodically a dozen times between 1945 and 1984, with slight variation, remained available to the President for nearly half a century. At different junctures, qualifications were placed upon its exercise. For example, reorganization plans could not abolish or create an entire department, or deal with more than one logically consistent subject matter. Also, the President was prohibited from submitting more than one plan within a 30-day period and was required to include a clear statement on the projected economic savings expected to result from a reorganization.

Modification of the President's reorganization plan authority was made necessary in 1983 when the Supreme Court, in the *Chadha* case (462 U.S. 919), effectively invalidated continued congressional reliance upon a concurrent resolution to disapprove a proposed plan. Under the Reorganization Act Amendments of 1984, which were signed by President Ronald Reagan on November 8, several significant changes were made in the reorganization plan law. Any time during the period of 60 calendar days of continuous session of Congress following the submission of a reorganization plan, the President might make amendments or modifications to it. Within 90 calendar days of continuous session of Congress following the submission of a reorganization plan, both houses must adopt a joint resolution (which, unlike a concurrent resolution, becomes law with the President's signature — a central issue in the *Chadha* case) for a plan to be approved. This amendment, however, continued the President's reorganization plan authority only to the end of 1984, when it automatically expired (see 5 U.S.C. 901-912 (1988)). Neither President Reagan nor President George H. W. Bush requested its reauthorization. President William Clinton did not seek its renewal, although his National Performance Review (see below) recommended this course of action in September 1993. Likewise, President George W. Bush has not sought such authority. The National Strategy for Homeland Security, released by President Bush on July 16, recommended the restoration of reorganization plan authority to allow reconfiguring portions of the executive branch to better combat terrorism and maintain homeland security.

Currently, in the absence of reorganization plan authority, the President may propose executive branch reorganizations to be realized through the normal legislative process. The Departments of Energy, Education, Veterans Affairs, and, most recently, Homeland Security were established in this manner. This approach, however, does not incorporate action-forcing deadlines or a required final congressional vote on proposed reorganization plans that are thought to expedite the consideration of reorganizations. The President might attempt a minor reorganization, such as establishing a small, temporary entity within the Executive Office of the President, by issuing a directive, such as an executive order. Attempting more ambitious reorganizations through a presidential directive may, if not ultimately found to be illegal, incur congressional displeasure and subsequent legislative and fiscal reaction. As a result of the absence of reorganization plan authority, more recent reform efforts to improve the efficiency and economy of government operations have emphasized management improvements of both a governmentwide and specific program variety, including applications of information technology that some have characterized as electronic government.

Reinventing Government

An ambitious effort at realizing executive branch reorganization and management reform was launched by President Clinton at the outset of his administration when, on March 3, 1993, he initiated a National Performance Review (NPR) to be conducted under the leadership of Vice President Albert Gore, Jr. Six months later, on September 7, the initial NPR report was delivered to the President. Various accompanying supplemental reports on both specific agencies and functional areas of government were subsequently published during 1994. The bulk of the report's almost 380 major recommendations (broken into over 1,230 action items) were directed to management reforms; several proposals addressed executive reorganization, including one for congressional restoration of presidential reorganization plan authority.

During the 12 months after the NPR report was issued, its recommendations were implemented by 22 presidential directives, several enacted bills, and various agency actions. Anniversary reports, marking progress in implementing NPR recommendations, were issued in September of 1994, 1995, and 1996. The last of these indicated that 43% of the NPR's initial 833 agency action items were completed and 42% were in progress, and that 38% of its initial 430 management systems action items were completed and 49% were in progress. Of an additional 187 agency recommendations, 19% were completed and 62% were in progress. As of January 1996, the executive workforce had been reduced by nearly 240,000. In addition, almost 2,000 obsolete field offices had been closed and approximately 200 programs and agencies—such as the Tea-Tasters Board, Bureau of Mines, and wool and mohair subsidies—had been eliminated. As of September 1996, said the report, “savings of about \$97.4 billion have been ensured through legislative or administrative action.” According to the report, of the original \$108 billion in savings projected in 1993, about \$73.4 billion had been realized.

The Clinton Administration renewed its reinventing government effort in mid-January 1995 with Phase 2 of the NPR, which was detailed in the President's FY1996 budget. Shortly thereafter, in late February, the President announced new regulatory reform proposals, including page-by-page review of federal regulations to determine those that were obsolete, replaceable by private sector alternatives, or better administered by state and local government. He also proposed to abolish the Interstate Commerce Commission (ICC) and reconstitute the Federal Aviation Administration's air traffic control services as a wholly owned government corporation. The elimination of the ICC was subsequently realized in December 1995. Certain functions of the Commission were transferred to the Surface Transportation Board, newly established within the Department of Transportation by the termination statute (109 Stat. 803).

With the convening of the 105th Congress, the reinvention effort entered yet another new phase, emphasizing improved service delivery; use of partnerships and community-based strategies to solve problems, not big government; and techniques for improving performance in a time of diminishing resources, including the use of performance-based organizations (PBOs). As a reflection of this third revamping, the NPR, known heretofore as the National Performance Review, became the National Partnership for Reinventing Government in January 1998.

Support for the performance of selected governmental functions through PBOs was reiterated in the President's FY1998 budget. The PBO innovation involved rechartering certain federal executive agencies to permit them to negotiate alternative approaches to procurement and personnel rules and to increase their accountability for financial and program results. The anticipated increased efficiency would allow the agencies to downsize their workforce or use their cost savings to improve services. Legislation to convert the Patent and Trademark Office (PTO) of the Department of Commerce into a PBO was proposed by the Clinton Administration in 1995, but it received little attention during the 104th Congress; similar legislation remained on the Senate legislative calendar when the 105th Congress adjourned. When the agency was restructured by the American Inventors Protection Act of 1999 (113 Stat. 1537-564), the reconstituted PTO insisted it was a PBO, but that characterization was doubtful in the view of many analysts.

Overhauling the structure and operations of the Internal Revenue Service (IRS) was a major accomplishment of the 105th Congress. Although some competition developed between the White House and congressional leaders to seize the IRS reform initiative, the Clinton Administration subsequently abandoned its opposition to a congressional plan for a wide-ranging overhaul of the IRS. President Clinton signed the reform bill into law (112 Stat. 685) on July 22, 1998.

In early 1997, the Clinton Administration revisited the long-discussed and contentious matter of the reconfiguration and consolidation of the foreign policy agencies. Prolonged and heated debate over such a reorganization during the 104th Congress had resulted in a presidential veto. In mid-April, the President approved a broad reorganization proposal calling for the folding of two independent agencies—the Arms Control and Disarmament Agency and the United States Information Agency—into the Department of State. In addition, the U.S. Agency for International Development remained a separate entity, but its director would report to the Secretary of State rather than to the President, as current law prescribed. The plan eventually was included in the provisions of the State Department authorization bill, but conferees on the legislation later deadlocked on a House provision barring aid for family planning groups that use their own money to finance overseas abortions. The Clinton Administration revived the conference discussions early in 1998. Subsequently, the reorganization proposal, without the objectionable abortion restriction rider, was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, signed into law by President Clinton on October 21 (112 Stat. 2681-761).

In the aftermath of the May 25, 1999, release of the final report of the House Select (Cox) Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, discussing security lapses that had apparently allowed the Chinese to acquire U.S. nuclear weapons and related technology, a special investigative panel of the President's Foreign Intelligence Advisory Board (PFIAB) released a June 15 report concerning these and other Department of Energy (DOE) managerial failures and called for "radical" restructuring of DOE. Although Secretary of Energy Bill Richardson opposed creating an independent nuclear security agency, he later accepted the idea of a semiautonomous agency within DOE to manage the national labs. Conferees on the National Defense Authorization Act for FY2000 provided for the establishment of a new National Nuclear Security Administration (NNSA) as a semiautonomous entity within the department and a related under secretary position. Although Secretary Richardson expressed

reservations about the NNSA, both chambers approved the conference committee report in September 1999.

Signing the legislation into law on October 5 (113 Stat. 512), President Clinton, in a surprise move, indicated his displeasure with provisions creating the NNSA, and announced that he would withhold appointing the new under secretary for information security until Congress addressed certain “deficiencies” in the organizational arrangements. Secretary Richardson was directed by the President to perform the duties of the new under secretary and to assign department officers and employees to a concurrent office within the NNSA as deemed necessary. The President’s action stunned many legislators closely associated with the NNSA structuring. After seeking to assure Members of Congress that the administration was in agreement with the spirit of the legislation, but felt that the NNSA provisions constituted “a serious problem,” Richardson developed and, on January 7, transmitted the NNSA implementation plan. The new agency began operations on March 1. President Clinton later nominated General John A. Gordon, who was serving as the deputy director of the Central Intelligence Agency, to be the DOE’s new under secretary for nuclear security and the director of the NNSA. He was subsequently confirmed by the Senate on June 14, 2000, as the head of NNSA.

Testifying at a May 4, 2000, hearing conducted by a subcommittee of the Senate Committee on Governmental Affairs, Donald F. Kettl, a University of Wisconsin professor who had conducted extensive research on the NPR reforms, gave the effort an overall grade of “B,” saying there was “room for improvement.” Brookings Institution scholar Paul C. Light added that the NPR program had created “unnecessary politicization of government reform.” Two other analysts were also critical of the NPR effort. A few months later, in September, a GAO report (GAO/GGD-00-145) concluded that the NPR reinvention effort had been largely successful, with more than 90% of key Clinton Administration recommendations having been fully or partly implemented. The report was based upon a review of 72 NPR recommendations by 10 federal agencies, which found that 33 of them were fully implemented and another 30 were partly implemented.

A New Administration

During his campaign for the presidency, Texas Governor George W. Bush emphasized efficiency in government, particularly through the use of information technology, but revealed no plans for reorganizing the executive branch. The terrorist attacks of September 11, 2001, however, prompted various structural modifications. A major objective of restructuring was to realize governmental arrangements resulting in more efficient, economical, and effective homeland security. Reinstatement of the President’s reorganization plan authority was proposed to allow the Chief Executive to create the structure he deemed appropriate, and legislation creating a Department of Homeland Security was introduced (S. 1534) and later expanded (S. 2452 and H.R. 4660). On February 14, 2002, the leadership of the House and Senate intelligence committees announced a bipartisan investigation of the operations and activities of the intelligence community pertaining to the September 11 attacks. This joint investigation resulted in a report, which, among other recommendations, called for the appointment of a Cabinet-level national intelligence chief, who would rank above the Director of Central Intelligence. Press revelations that perpetrators of the terrorist attacks had been cleared by the Immigration and Naturalization

Service (INS) to stay in the United States prompted renewed calls for the overhaul of the INS, including its division into separate administrative and enforcement entities. On March 21, leaders of the House Committee on the Judiciary reached agreement on a bipartisan proposal to split the existing INS and provide each component its own budget. In a surprise move, the White House, on April 24, gave qualified support to the proposal. The endorsement came on the eve of the bill (H.R. 3231) being considered on the House floor for final action. Introduced on November 6, 2001, by Representative James F. Sensenbrenner, Jr., the measure garnered 46 cosponsors. Revised in a April 10 markup, the legislation was ordered to be reported from committee on a 32-2 vote. A report on the bill (H.Rept. 107-413) was filed on April 19, and the measure was adopted by the House on a 405-9 vote on April 25. (See CRS Report RL30257 and CRS Report RS20279.)

Another long-standing reorganization matter concerns border security administration. For many years prior to the September 11 terrorist attacks, proposals have been made from time to time to consolidate various aspects of border security within a single entity or minimum number of federal agencies. (See CRS Report 97-974.) Such proposals have attracted greater interest since the attacks as part of counterterrorism efforts to more efficiently and effectively secure the nation's northern and southern borders. In late December, Office of Homeland Security staff reportedly produced a tempest within the Bush Administration when they unveiled a broad proposal to create an agency that would consolidate border security management. Opponents represented a wide range of agencies, including five Cabinet departments.

This proposal, however, was used by presidential assistants to formulate the Department of Homeland Security plan unveiled by President Bush on June 6. His surprise announcement was viewed not only as an attempt to regain the initiative in the nation's efforts at combating terrorism, but also to move beyond the coordination efforts of the Office of Homeland Security to a strong administrative structure for managing consolidated programs concerned with border security and effective response to domestic terrorism incidents. On June 18, the President transmitted to the House of Representatives proposed legislation to establish a Department of Homeland Security. This legislation was subsequently introduced by request (H.R. 5005) on June 24. According to a legislative strategy announced by Speaker Dennis Hastert and Minority Leader Richard Gephardt, standing committees of jurisdiction began reviewing the proposal and, as the second week of July drew to a close, provided recommendations for modifying the legislation. A few panels urged maintaining some agencies—for example, the Coast Guard, the Federal Emergency Management Agency, and the Secret Service—in their current status and not transferring them to the new department. On July 15, the House Select Committee on Homeland Security began its consideration of the bill. That same day, the Brookings Institution released the first comprehensive critique of the President's proposal, suggesting, among other considerations, that it “merges too many different activities into a single department,” should leave science and technology research and development responsibilities for later deliberation, and begs a rethinking of congressional committee arrangements. The following day, the President released the National Strategy for Homeland Security, which offered a definition of homeland security of potential usefulness for determining the program composition of the new department. On July 19, the House select committee marked up and order reported (H.Rept. 107-609) the House version of the Department of Homeland Security legislation. Meeting during July 24-25, the Senate Committee on Governmental Affairs authorized Chairman Joseph Lieberman to withdraw the version of his Department of

National Homeland Security bill (S. 2452) that had been amended and ordered favorably reported on May 22, modified his offered amendment in the nature of a substitute to the text of the bill, and approved the amendment as modified. Floor action on the measure, however, was postponed until the Senate returned in early September from an August recess. During July 25-26, the House of Representatives began floor debate and amendment of its counterpart department bill (H.R. 5005) and then approved the legislation, as amended, on a 295-132 vote.

Senate consideration of the House-passed bill began on September 3, 2002, when Senator Lieberman submitted an amendment (No. 4471) containing the language of his modified department bill as a substitute for the text of the House-passed legislation. Initial amendments to the Lieberman substitute, adopted on September 5, prohibited the Secretary of Homeland Security from contracting with any corporate expatriate and improved flight and cabin security on passenger aircraft. On September 17, after extended debate, a third amendment was adopted, striking Title II of the Lieberman substitute, which would have established a National Office for Combating Terrorism, and Title III, which would have mandated a National Strategy for Combating Terrorism.

Amendments approved the following day created an Office of National Capital Region Coordination within the new department; clarified the transfer of certain agricultural inspection functions of the Department of Agriculture; enhanced the management and promotion of electronic government services and processes by establishing an Office of Electronic Government within the Office of Management and Budget, along with a broad framework of measures that require using Internet-based information technology to enhance citizen access to government information and services; identified certain sites as key resources for protection by the Directorate of Critical Infrastructure Protection; amended various laws administered by the Secretary of Veterans Affairs to take into account the assumption by the Secretary of Homeland Security of jurisdiction of the Coast Guard; and improved the protection of Department of Defense storage depots for lethal chemical agents and munitions through strengthened temporary flight restrictions. An amendment approved on September 19 strengthened criminal laws and provided greater flexibilities to prevent and protect against cyber attacks.

Amendments adopted on September 24 mandated the National Commission on Terrorist Attacks Upon the United States to conduct a comprehensive investigation of the events of September 11, and established an Office for State and Local Government Coordination within the office of the Secretary for Homeland Security. An amendment (S.Amdt. 4644) offered by Senator Robert Byrd defining "homeland security" and otherwise establishing an incremental arrangement for determining the composition of the new department was defeated on a 28-70 vote.

The following day, Senator Phil Gramm submitted an amendment (S.Amdt. 4738) structuring the department and creating management arrangements very similar to the President's original proposal, but otherwise containing many other portions identical to those of the Lieberman substitute. Another amendment (S.Amdt. 4740), offered by Senator Ben Nelson, sought to modify certain personnel provisions to effect a compromise between the flexibilities in human resources management sought by the President and the continued civil service protections and collective bargaining rights contained in the Lieberman substitute. By this time, the President, in his September 21 radio address to the nation and in September

23 remarks at an Army National Guard aviation support facility in Trenton, NJ, was demanding Senate approval of his position on human resources management. He indicated that he could accept the Gramm-Miller proposal, adding that “anything less than that is a bill I cannot accept.”

On September 26, attempts to invoke cloture on the Lieberman substitute failed for the third and fourth times, as did an October 1 attempt to invoke cloture on the Gramm amendment, leaving the outcome on legislating a Department of Homeland Security in doubt. Further discussion of the matter was discontinued in the Senate, both houses subsequently adjourning on November 8 for the fall elections.

When the House and the Senate reconvened on November 12, it was clear from the recent election returns that the President’s political party would have majority control of both houses of the 108th Congress. Furthermore, Representative Arme, the House Majority Leader and chairman of the Select Committee on Homeland Security, introduced, with bipartisan support, a new bill (H.R. 5710) to establish a Department of Homeland Security, which was supported by the Bush Administration. The bill was brought up for floor consideration the following day under a closed rule (no amendments), and was approved on a 299-121 vote.

On November 13, the Senate resumed consideration of the initial House-passed bill (H.R. 5005) establishing a Department of Homeland Security. Pending on the floor was the Lieberman substitute (S.Amdt. 4471), which was subsequently tabled on a 50-47 vote. Senator Fred Thompson offered the text of the second House-passed bill (H.R. 5710) creating a Department of Homeland Security as an amendment (S.Amdt. 4901) for later consideration as a substitute to the language of the initial House-passed department bill. The following day, Senator Lieberman offered an amendment (S.Amdt. 4911) to make certain provisions of the Thompson substitute noneffective. On November 15, the Senate, on a 65-29 vote, ended further debate on the Thompson substitute (S.Amdt. 4901). Four days later, the Thompson substitute was adopted on a 73-26 vote, and the Senate then passed the House bill (H.R. 5005), as amended, on a 90-9 vote and returned the measure to the House. The House agreed to the Senate-amended version of the bill on November 22, clearing the measure for the President’s signature. President Bush signed the legislation into law on November 25 (P.L. 107-296).

The primary issue for Congress and the President was determining the program composition and administrative organization of the new department. In the course of mandating the Department of Homeland Security, this overarching consideration broke down into a series of lesser, more finite issues, not the least of which were threshold questions concerning the value of the new entity. President Bush contended that his proposal did not constitute an expansion of the federal government, but merely consolidated existing programs within a more efficient and effective management structure. However, neither the President’s proposal nor the principal congressional bills made use of a definition of the concept of homeland security to guide the component composition of the new department. Moreover, whole agencies were proposed for transfer to the department with very little effort to sort out non-homeland security functions and programs for more appropriate administration elsewhere other than the new department. Of course, attempts to sort out the homeland security programs of transferred agencies from non-homeland security programs might have resulted in increased cost for additional administrative overhead. Some

contended that the creation of any new department would result in budget expansion. In a July 9, 2002 cost estimate, the Congressional Budget Office proffered that the initial House-passed bill (H.R. 5005) establishing a new Department of Homeland Security “would cost about \$3 billion over the 2003-2007 period,” which would be “in addition to projected net spending for ongoing activities of the transferred agencies—about \$20 billion in 2002, growing to \$31 billion by 2007.”

There were, as well, those who doubted that merely rearranging programs within a new department would truly improve the nation’s defenses against terrorism. Others maintained that, no matter how well management and operating arrangements were fine-tuned, the effectiveness of the department and its leadership could not be legislatively guaranteed. And still others wondered aloud who will be willing to serve, for very long, in the leadership of such a department. Additional issues concerning the scope of the President’s proposal, the transfer of non-homeland security functions, and certain operating arrangements of the new department are discussed below.

Some initially criticized the President’s proposal as an inadequate response to what they viewed as intelligence failures, suggesting that, in the context of considering the components of the new homeland security department, the Federal Bureau of Investigation (FBI) and the federal intelligence community, particularly the Central Intelligence Agency (CIA), should not escape scrutiny. Two FBI units—the National Domestic Preparedness Office (15 employees) and the National Infrastructure Protection Center (795 employees)—would have been transferred to the new department under the President’s plan, and ultimately were in the bill that was signed into law. The criticism, however, suggested that those developing the President’s plan had not given adequate consideration to the prospect of transferring or restructuring FBI and CIA counterterrorism responsibilities. Others questioned why the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, and the Nuclear Regulatory Commission were not included. GAO, among others, noted that, because the concept of “homeland security” had not been defined, “certain organizational, management, and budgetary decisions cannot currently be made consistently across agencies.” As the House and the Senate were giving final approval to legislation establishing the department, questions about its scope arose anew when the chairman of a counterterrorism study commission recommended the creation of a national counterterrorism center to improve cooperation among intelligence agencies and it was reported that senior Bush Administration officials were seriously discussing the creation of a domestic intelligence agency.

During the course of legislatively establishing a Department of Homeland Security, some noted that the transfer of whole agencies to the new department would result in it being responsible for the administration of programs having nothing to do with homeland security and which, consequently, might not receive adequate resources for their execution. These included the marine safety responsibilities of the Coast Guard, the drug and child pornography interdiction efforts of the Customs Service, the counterfeiting detection and investigation program of the Secret Service and the research and non-native plant and pest eradication efforts of the Animal and Plant Health Inspection Service. OHS Director Tom Ridge, in his June 20, 2002 testimony before the Senate Committee on Governmental Affairs, acknowledged that the new department would have a number of programs not directly related to countering terrorism, but did not indicate any particular concern about this development. Sorting out these programs for continued administration by their parent

departments was an option for Congress, but little effort was actually made in this regard for various reasons, not the least of which was the possibility that it might result in increased cost for additional administrative overhead. The desire to get the department quickly established, and to do so before the adjournment of the 107th Congress, were also key factors.

In creating the new department, Congress had the responsibility for determining the appropriate administrative structure for the secretary to manage, with efficiency, economy, and effectiveness, an organization of some 170,000 employees (many of whom would be working in field facilities), composed of diverse units, with shared responsibility and partnership with state and local governments, as well as the private sector. A key consideration was the secretary's span of control over the operations of primary divisions and internal agencies (e.g., the Coast Guard and Secret Service), together with such broad departmental functions as human and information resources management, budget setting, and financial management. Initial versions of both the House and Senate bills appeared to support strong vertical management structures, and both were seemingly weak in detailing horizontal working arrangements among headquarter's divisions and internal agencies and among field staff. Under the bill initially adopted by the House, the Secretary of Homeland Security might have had as many as 15 senior officials of the department reporting directly to him or her (or more if the assistant secretaries actually had this relationship); under the Senate bill recrafted in committee, 17 senior officials seemingly would have been reporting directly to the secretary.

Ultimately, the statute mandating the Department of Homeland Security placed most of the entities and functions transferred to the new department within four primary directorates for border and transportation security, emergency preparedness and response, science and technology, and information analysis and infrastructure protection. The Coast Guard and the Secret Service were excepted from this arrangement and enjoy independent status within the department. The heads of these six components, along with upwards of 12 assistant secretaries and approximately 14 other senior officials, appear to report directly to the secretary. In general, the statutory administrative framework established for the department appears to support strong vertical management structures while being somewhat weak in detailing horizontal working arrangements among headquarter's divisions and internal agencies.

During the 20th century, Congress enacted a variety of general management laws prescribing how federal departments and agencies shall manage assets and resources, prepare budgets, engage in the purchase of goods and services, and conduct regulatory activities and their evaluation. Some of these laws are generally inclusive in their application—they automatically apply to all departments and agencies unless otherwise excepted. Others are explicit, requiring amendment in order for their provisions to be applicable to specific departments and agencies. As legislation establishing a Department of Homeland Security progressed in the House and the Senate, questions about the applicability of some of these laws were raised and were only sporadically addressed. For example, the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary devoted a hearing to administrative law, adjudicatory, and privacy issues posed by the House bill. Another case involved the Government Performance and Results Act (GPRA). At one point, the Senate bill, while not exempting the new department from GPRA requirements, provided some GPRA-like results-based management obligations—a strategic plan, a performance plan, and a performance report—for the department. Ultimately, the statute

mandating a Department of Homeland Security reflects special arrangements in such areas as human resources management and procurement, but uncertainties regarding the applicability of other general management laws are likely to arise.

Worth mentioning is the innovation of establishing a Privacy Officer within the new department. This idea gained attention when OMB Controller Mark W. Everson, in his July 9 testimony before the House Subcommittee on Commercial and Administrative Law, commented: “Although the general counsel of an agency often handles privacy issues, we recognize the special importance of these issues in the homeland security context and are examining options for establishing a specialized privacy officer within the new Department.” The Department of Justice has had such an official since December 1998. The initial House-approved bill included a Privacy Officer, an addition to the legislation made by the Select Committee on Homeland Security, and the committee-modified Senate bill also provided for a Privacy Officer, as did the final version of the legislation.

Although the President’s proposal would have resulted in the transfer of almost 170,000 employees to the new department, the initial version of the Senate legislation (S. 2452) would have involved the transfer of about 119,500 personnel. The President’s proposal contained a provision not included in the initial version of the Senate bill authorizing the Secretary of Homeland Security, in regulations prescribed jointly with the director of the Office of Personnel Management, to establish and, from time to time, adjust a human resources management system for some or all of the organizational units of the department, “which shall be flexible, contemporary, and grounded in public employment principles of merit and fitness.” In testimony before the Senate Committee on Governmental Affairs on June 20, OHS Director Ridge indicated that the President would request for the department “significant flexibility in hiring processes, compensation systems and practices, and performance management to recruit, retain, and develop a motivated, high-performance and accountable workforce.”

The provision raised various issues concerning staffing requirements, such as adequate numbers of personnel and planning for the replacement of retiring staff; hiring, particularly direct hiring which would not necessarily be merit-based and free of political influence and lacked preference for veterans; and pay, particularly pay parity or equity for employees who are performing similar jobs. Civil service protections and collective bargaining rights for department workers were among the most contentious issues surrounding the establishment of the Department of Homeland Security. Ultimately, the statute mandating the new department largely supported the President’s position on these matters.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

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CHRONOLOGY

- 11/25/02** — President George W. Bush signed the Homeland Security Act, establishing the Department of Homeland Security, into law (P.L. 107-296).
- 06/06/02** — President George W. Bush called for the creation of a Department of Homeland Security by Congress and provided a plan for the structure and programs of the new entity.
- 08/25/01** — President George W. Bush, in his radio address to the nation, announced the release of *The President’s Management Agenda*, a report identifying 14

management problems in the federal government and offering specific solutions to address them.

- 07/18/01** — OMB Director Mitchell E. Daniels, Jr., on behalf of President Bush, apprised executive department and agency heads of administration efforts to develop an electronic government action plan using an interagency task force to be headed by OMB Associate Director for Information Technology and E-Government Mark Forman.
- 01/01/98** — The National Performance Review became the National Partnership for Reinventing Government.
- 01/11/97** — At a Blair House meeting of the new Cabinet, Vice President Gore presented a brief set of papers, which he dubbed “reinvention marching orders,” emphasizing three themes: improved service delivery; use of partnerships and community-based strategies to solve problems, not big government; and techniques for improving performance in a time of diminishing resources, including the use of performance-based organizations. The issuance of the Blair House papers marked the beginning of a new stage of the NPR.
- 09/09/96** — The National Performance Review marked its third-year anniversary, reporting that 43% of its initial 833 agency action items were completed and 42% were in progress, and 49% of its initial 430 management systems action items were completed and 49% were in progress; of an additional 187 recommendations, 19% were completed and 62% were in progress; “savings of about \$97.4 billion have been ensured through legislative or administrative action” and an “additional \$5.2 billion in savings is contained in legislation pending before Congress;” and, as of January 1996, an executive workforce reduction of nearly 240,000 employees had been realized.
- 09/11/95** — The National Performance Review marked its second year anniversary, reporting that 32% of its initial agency action items were completed and 61% were in progress, and 27% of its initial 417 management systems action items were completed and 63% were in progress; more than 180 additional recommendations had been made; and “about \$57.7 billion of [approximately \$108 billion] projected savings have been achieved” and an “additional \$4.3 billion in savings are currently pending before Congress.”
- 01/12/95** — Vice President Gore, OMB Director Alice Rivlin, and other officials formally launch Phase 2 of the National Performance Review.
- 09/27/94** — Republican leaders of the House of Representatives unveiled a “Contract With America” reform plan with core principles that regard the federal government as being too big, spending too much, unresponsive to the citizenry, and the perpetrator of burdensome regulations.
- 09/14/94** — The National Performance Review marked its one-year anniversary, reporting that over 90% of its recommendations “are under way,” implementation occurring through 22 presidential directives, several enacted bills, and a

variety of agency actions, with the result that “\$46.9 billion of NPR’s \$108 billion in proposed savings are already enacted” and another “\$16 billion in savings is pending before Congress.”

- 09/07/93** — The National Performance Review provided its first report to President Clinton, offering some 380 major recommendations for government reform. The bulk of these proposals concerned management improvement, but several were directed at agency reorganization, consolidation, and field structure overhaul.
- 03/03/93** — President Clinton announced he was initiating a National Performance Review, to be headed by Vice President Gore, to evaluate the efficiency, economy, and effectiveness of every federal program and service, and make recommendations for “reinventing government,” including proposals for executive branch reorganization.

LEGISLATION

P.L. 107-296 (H.R. 5005) (Armed Forces) (by request)

Homeland Security Act of 2002. Establishes a Department of Homeland Security. Introduced June 24, 2002, and referred to the Select Committee on Homeland Security, and, in addition, to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence, International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means. Recommendations of the standing committees provided to the select committee, which began consideration of the bill on July 15; marked up and ordered reported (H.Rept. 107-609), as amended, by the select committee on July 19; House floor debate and amendment begun July 25; House floor debate and amendment completed and bill, as amended, adopted on a 295-132 vote on July 26. Senate floor debate begun September 3; amended with language substituted in lieu of original text on a 73-26 vote and adopted, as amended, on a 90-9 vote November 19 and returned to the House. House agreed to Senate-amended bill November 22, clearing the legislation for the President’s signature. Signed into law November 25 as P.L. 107-296.

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