

DEPARTMENT OF HOMELAND SECURITY FINANCIAL ACCOUNTABILITY ACT

NOVEMBER 12, 2003.—Ordered to be printed

Mr. COX, from the Select Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 2886]

[Including cost estimate of the Congressional Budget Office]

The Select Committee on Homeland Security, to whom was referred the bill (H.R. 2886) to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Department of Homeland Security Financial Accountability Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Influential financial management leadership is of vital importance to the mission success of the Department of Homeland Security. For this reason, the Chief Financial Officer of the Department must be a key figure in the Department’s management.

(2) To provide a sound financial leadership structure, the provisions of law enacted by the Chief Financial Officers Act of 1990 (Public Law 101–576) provide that the Chief Financial Officer of each of the Federal executive departments is to be a Presidential appointee who reports directly to the Secretary of that department on financial management matters. Because the Department of Homeland Security was only recently created, the provisions enacted by that Act must be amended to include the Department within these provisions.

(3) The Department of Homeland Security was created by consolidation of 22 separate Federal agencies, each with its own accounting and financial management system. None of these systems was developed with a view to executing the mission of the Department of Homeland Security to prevent terrorist attacks within the United States, reduce the nation’s vulnerability to terrorism, and minimize the damage and assist in the recovery from terrorist attacks. For these reasons, a strong Chief Financial Officer is needed within the Department both to consolidate financial management operations, and to insure that management control systems are comprehensively designed to achieve the mission and execute the strategy of the Department.

(4) The provisions of law enacted by the Chief Financial Officers Act of 1990 require agency Chief Financial Officers to improve the financial information available to agency managers and the Congress. Those provisions also specify that agency financial management systems must provide for the systematic measurement of performance. In the case of the Department of Homeland Security, therefore, it is vitally important that management control systems be designed with a clear view of the national homeland security strategy, including the priorities of the Department in addressing those risks of terrorism deemed most significant based upon a comprehensive assessment of potential threats, vulnerabilities, criticality, and consequences. For this reason, Federal law should be amended to clearly state the responsibilities of the Chief Financial Officer of the Department of Homeland Security to provide management control information, for the benefit of managers within the Department and to help inform the Congress, that permits an assessment of the Department’s performance in executing the national homeland security strategy.

SEC. 3. CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

“(G) The Department of Homeland Security.”

(b) APPOINTMENT OR DESIGNATION OF CFO.—The President shall appoint or designate a Chief Financial Officer of the Department of Homeland Security under the amendment made by subsection (a) by not later than 180 days after the date of the enactment of this Act.

(c) CONTINUED SERVICE OF CURRENT OFFICIAL.—An individual serving as Chief Financial Officer of the Department of Homeland Security immediately before the enactment of this Act, or another person who is appointed to replace such an individual in an acting capacity after the enactment of this Act, may continue to serve in that position until the date of the confirmation or designation, as applicable (under section 901(a)(1)(B) of title 31, United States Code), of a successor under the amendment made by subsection (a).

(d) CONFORMING AMENDMENTS.—

(1) HOMELAND SECURITY ACT OF 2002.—The Homeland Security Act of 2002 (Public Law 107–296) is amended—

(A) in section 103 (6 U.S.C. 113)—

(i) in subsection (d) by striking paragraph (4), and redesignating paragraph (5) as paragraph (4);

(ii) by redesignating subsection (e) as subsection (f); and

(iii) by inserting after subsection (d) the following:

“(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.”; and

(B) in section 702 (6 U.S.C. 342) by striking “shall report” and all that follows through the period and inserting “shall perform functions as specified in chapter 9 of title 31, United States Code, and, with respect to all such functions and other responsibilities that may be assigned to the Chief Financial Officer from time to time, shall also report to the Under Secretary for Management.”.

(2) FEMA.—Section 901(b)(2) of title 31, United States Code, is amended by striking subparagraph (B), and by redesignating subparagraphs (C) through (H) in order as subparagraphs (B) through (G).

SEC. 4. FUNCTIONS OF CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) PERFORMANCE AND ACCOUNTABILITY REPORTS.—Section 3516 of title 31, United States Code, is amended by adding at the end the following:

“(f) The Secretary of Homeland Security—

“(1) shall for each fiscal year submit a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security;

“(2) shall include in each performance and accountability report an audit opinion of the Department’s internal controls over its financial reporting; and

“(3) shall design and implement Department-wide management controls that—

“(A) reflect the national homeland security strategy developed under section 102(e) of the Homeland Security Act of 2002; and

“(B) permit assessment, by the Congress and by managers within the Department, of the Department’s performance in executing such strategy.”.

(b) IMPLEMENTATION OF AUDIT OPINION REQUIREMENT.—The Secretary of Homeland Security shall include audit opinions in performance and accountability reports under section 3516(f) of title 31, United States Code, as amended by subsection (a), only for fiscal years after fiscal year 2004.

(c) ASSERTION OF INTERNAL CONTROLS.—The Secretary of Homeland Security shall include in the performance and accountability report for fiscal year 2004 submitted by the Secretary under section 3516(f) of title 31, United States Code, an assertion of the internal controls that apply to financial reporting by the Department of Homeland Security.

(d) AUDIT OPINIONS OF INTERNAL CONTROLS OVER FINANCIAL REPORTING BY CHIEF FINANCIAL OFFICER AGENCIES.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Chief Financial Officers Council and the President’s Council on Integrity and Efficiency established by Executive Order 12805 of May 11, 1992, shall jointly conduct a study of the potential costs and benefits of requiring the agencies listed in section 901(b) of title 31, United States Code, to obtain audit opinions of their internal controls over their financial reporting.

(2) REPORT.—Upon completion of the study under paragraph (1), the Chief Financial Officers Council and the President’s Council on Integrity and Efficiency shall promptly submit a report on the results of the study to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Comptroller General of the United States.

(3) GENERAL ACCOUNTING OFFICE ANALYSIS.—Not later than 90 days after receiving the report under paragraph (2), the Comptroller General shall perform an analysis of the information provided in the report and report the findings of the analysis to the committees referred to in paragraph (2).

SEC. 5. NATIONAL HOMELAND SECURITY STRATEGY.

Section 102 of the Homeland Security Act of 2002 (6 U.S.C. 112) is amended by redesignating subsections (e) through (g) in order as subsections (f) through (h), and by inserting after subsection (d) the following:

“(e) NATIONAL HOMELAND SECURITY STRATEGY.—

“(1) IN GENERAL.—The Secretary shall develop, and update each year, a comprehensive national homeland security strategy of the United States (hereinafter in this subsection referred to as the ‘national strategy’).

“(2) ELEMENTS.—The national strategy shall be based on the following:

“(A) A comprehensive assessment, pursuant to paragraphs (1) through (3) of section 201(d), of the risks to the United States from terrorism, which shall be based on—

“(i) the threat posed by terrorism, including an assessment of intentions and capabilities of terrorist actors;

“(ii) vulnerabilities in potential targets of acts of terrorism, whether owned or operated by the Federal Government, State or local governments, or nongovernmental entities;

“(iii) the criticality or severity of potential effects of acts of terrorism; and
 “(iv) the likely effects of existing countermeasures to such acts of terrorism.

“(B) A prioritization of the risks identified in the assessment under subparagraph (A), from highest level of risk to lowest level of risk, that takes into account all of the factors described in clauses (i) through (iv) of subparagraph (A).

“(C) The homeland security capabilities of the United States necessary to deter, prevent, mitigate, and respond to acts of terrorism and to implement the national strategy.

“(D) The adequacy of the capabilities of the United States to carry out the national strategy, including an assessment of such capabilities as they pertain to the Federal Government, State and local governments, and non-governmental entities.

“(E) The proposed short-term and long-term actions and capabilities of the United States necessary to promote homeland security.

“(F) The priorities, based on subparagraphs (A) through (E), that guide the resource allocations included in the President’s annual budget request for the homeland security requirements of the Federal Government.

“(G) Such other information as may be necessary for the development of a comprehensive national strategy.

“(3) REPORTS.—The Secretary shall submit to the Congress a classified report and an unclassified report on the national strategy, on the date on which the President submits to the Congress the budget request for each fiscal year. Both versions of the report shall cover each element of the national strategy outlined in paragraph (2).”.

SEC. 6. ESTABLISHMENT OF OFFICE OF PROGRAM ANALYSIS AND EVALUATION.

Section 702 of the Homeland Security Act of 2002 (6 U.S.C. 342) is amended by—

(1) inserting “(a) IN GENERAL.—” before the first sentence; and

(2) adding at the end the following:

“(b) PROGRAM ANALYSIS AND EVALUATION FUNCTION.—

“(1) ESTABLISHMENT OF OFFICE OF PROGRAM ANALYSIS AND EVALUATION.—Not later than 90 days after the date of enactment of this subsection, the Secretary shall establish an Office of Program Analysis and Evaluation within the Department (in this section referred to as the ‘Office’).

“(2) RESPONSIBILITIES.—The Office shall perform the following functions:

“(A) Analyze and evaluate plans, programs, and budgets of the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the national homeland security strategy developed under section 102(e).

“(B) Develop and perform analyses and evaluations of alternative plans, programs, personnel levels, and budget submissions for the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the national homeland security strategy developed under section 102(e).

“(C) Establish policies for, and oversee the functions of, the planning, programming, and budgeting system of the Department, including development of annual fiscal guidance for departmental components.

“(D) Review and ensure that the Department meets performance-based budget requirements established by the Office of Management and Budget.

“(E) Provide guidance for, and oversee the development of, the Future Years Homeland Security Program of the Department, as specified under section 874.

“(F) Ensure that the costs of Department programs, including classified programs, are presented accurately and completely.

“(G) Oversee the preparation of the annual performance plan for the Department and the program and performance section of the annual report on program performance for the Department, consistent with sections 1115 and 1116, respectively, of title 31, United States Code.

“(H) Provide leadership in developing and promoting improved analytical tools and methods for analyzing homeland security planning and the allocation of resources.

“(I) Any other responsibilities delegated by the Secretary consistent with an effective program analysis and evaluation function.

“(3) DIRECTOR OF PROGRAM ANALYSIS AND EVALUATION.—There shall be a Director of Program Analysis and Evaluation, who—

“(A) shall be a principal staff assistant to the Chief Financial Officer of the Department for program analysis and evaluation; and

“(B) shall report to an official no lower than the Chief Financial Officer.”.

SEC. 7. NOTIFICATION REGARDING TRANSFER OR REPROGRAMMING OF FUNDS FOR DEPARTMENT OF HOMELAND SECURITY.

Section 702 of the Homeland Security Act of 2002 (6 U.S.C. 342) is further amended by adding at end the following:

“(c) NOTIFICATION REGARDING TRANSFER OR REPROGRAMMING OF FUNDS.—In any case in which appropriations available to the Department or any officer of the Department are transferred or reprogrammed and notice of such transfer or reprogramming is submitted to the Congress (including any officer, office, or Committee of the Congress), the Chief Financial Officer of the Department shall simultaneously submit such notice to the Select Committee on Homeland Security of the House of Representatives and the Committee on Governmental Affairs of the Senate.”.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 2886, the “Department of Homeland Security Financial Accountability Act” is to: (1) make the Department of Homeland Security (DHS or “the Department”) subject to the provisions of the Chief Financial Officer Act of 1990 (CFO Act), Pub. Law 101–576, 104 Stat. 2842; (2) require an opinion-level audit of the Department’s internal controls beginning after fiscal year 2004; (3) ensure that DHS budget priorities are tied to and driven by a comprehensive homeland security strategy; and (4) make certain that the Select Committee on Homeland Security and the Senate Government Affairs Committee are given notice of transfer or reprogramming of DHS appropriations.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2886 is needed to ensure that the newly-created Department of Homeland Security (DHS) implements and adheres to a number of sound financial management, planning and budgeting practices. Currently, DHS is not included among the list of cabinet-level Departments subject to the CFO Act. The CFO Act was designed to increase Federal accountability through financial management reforms, and provides that the 14 cabinet-level Departments, the Environmental Protection Agency, and the National Aeronautics and Space Administration must have Presidentially-appointed CFOs, confirmed by the Senate. The House version of the Homeland Security Act of 2002 would have included DHS among the listed CFO Act agencies, but the language was stripped from the bill before it became law on November 25, 2002. As a result, the CFO of DHS is not subject to Senate confirmation, and reports to the Department of Homeland Security Under Secretary for Management instead of directly to the Secretary. H.R. 2886 resolves this inconsistency by amending the CFO Act and the Homeland Security Act of 2002 to make the Department’s CFO a Presidential appointee subject to Senate confirmation. The bill also provides that the CFO will report directly to the Secretary, and serve as a member of the CFO Council. Applying the CFO Act to DHS has the added effect of mandating the Department’s compliance with the Federal Financial Management Improvement Act of 1996

(FFMIA), a statute setting forth important requirements for financial management systems applicable to all CFO Act agencies.

In addition to resolving the CFO Act inconsistencies, H.R. 2886 amends 31 U.S.C. §3516, the Reports Consolidation Act of 2000 (P.L. 106-531), to require the Department to submit its financial and performance management reports in the form of a “performance and accountability report” for Fiscal Year 2003 and each subsequent fiscal year. The Reports Consolidation Act of 2000 encourages the consolidation of financial and performance management reports within Departments and Agencies into a single annual report in order to enhance coordination and efficiency, improve the quality of relevant information, and provide it in a more meaningful and useful format. H.R. 2886 would require DHS to submit its financial and performance management reports in the performance and accountability format beginning in fiscal year 2004.

H.R. 2886 also calls for DHS to obtain annual opinion-level audits of its internal controls. Current Office of Management and Budget (OMB) guidance requires a report on internal controls in conjunction with annual financial audits. The terms “internal controls and procedures for financial reporting” are generally defined as controls that pertain to the preparation of external financial statements that are fairly presented in conformity with generally accepted accounting principles. Controls over financial reporting include the objectives of ensuring that transactions are properly recorded, processed, and summarized to permit the preparation of financial statements. Raising the standard for the Department’s internal controls report to an opinion-level audit is aimed at uncovering inherent weaknesses and addressing them as DHS business practices are being established, and before they become ingrained.

The Select Committee on Homeland Security agreed by Voice Vote to an Amendment in the Nature of a Substitute to H.R. 2886, offered by Chairman Cox, which incorporates the following changes to the original text:

1. A new section is added to incorporate findings of Congress with respect to the need for strong and effective financial management practices and policies at DHS.

2. The Fiscal Year 2003 waiver for the Department’s compilation and audit of its financial statements is removed. Because DHS is on track to complete its financial statements and audit for fiscal year 2003, the waiver is unnecessary.

3. The requirement for DHS to obtain an audit opinion on its internal controls is delayed until Fiscal Year 2005—a move designed to allow DHS additional time to develop and prepare the information necessary for the audit opinion.

4. A new paragraph is added to require the CFO Council and the President’s Council on Integrity and Efficiency to complete a joint study on the potential costs and benefits of requiring all CFO Act agencies to obtain audit opinions of their internal controls. The purpose of this study is to promote a broader discussion of the audit opinion over internal controls to determine whether this requirement should also be applied to other CFO Act agencies.

5. A new section is added that amends Section 702 of the Homeland Security Act to establish an Office of Program Analysis and Evaluation (OPA&E) reporting to the CFO (or a more senior DHS official). The OPA&E’s primary role is to link financial manage-

ment and budgeting with program analysis and evaluation—a practice modeled after the system currently utilized by the Department of Defense.

6. A new section is added specifying that, whenever DHS provides notice of reprogramming of appropriations to the Congress, the CFO must also notify both the House Select Committee on Homeland Security and the Senate Committee on Governmental Affairs. This provision is necessary to apprise the Department's authorizing committees of any changes in funding priorities.

7. A new section is included that requires the Secretary of DHS to transmit to Congress a comprehensive report on the national homeland security strategy of the United States at the same time the President submits the annual budget request to the Congress. This report is to cover a variety of subjects, including a comprehensive assessment of the risks of terrorism in the United States and the priorities of those risks; the capabilities of the United States to deter, prevent, and mitigate acts of terrorism; and the priorities that guide resource allocation based on those criteria.

HEARINGS

The Select Committee on Homeland Security held a hearing on H.R. 2886 on October 8, 2003. Testimony was received from Dr. Bruce Carnes, Chief Financial Officer, Department of Homeland Security; Mr. Richard Berman, Assistant Inspector General for Audits, Office of Inspector General, Department of Homeland Security; The Honorable Linda Springer, Controller, Office of Federal Financial Management, Office of Management and Budget; and Ms. Michèle Flournoy, Senior Adviser, International Security Program, Center for Strategic and International Studies.

COMMITTEE CONSIDERATION

H.R. 2886 was introduced in the House on July 24, 2003 by Representative Platts (PA-19) and four cosponsors. The bill was referred to the Committee on Government Reform, and in addition to the Select Committee on Homeland Security.

On October 8, 2003, the Full Committee held a hearing on H.R. 2886.

On Thursday, October 30, 2003, the Full Committee met to consider H.R. 2886. The Chairman, Mr. Cox (CA-48) offered an Amendment in the Nature of a Substitute. Ms. Jackson-Lee (TX-18) offered an amendment to the Amendment in the Nature of a Substitute to insert a new section entitled "Mid-Year Interim Status Reports", this amendment was withdrawn by unanimous consent. The Amendment in the Nature of a Substitute offered by Mr. Cox, was agreed to, without amendment, by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives by a motion.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

H.R. 2886, to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department

of Homeland Security, and for other purposes; was ordered favorably reported to the House, amended, by motion.

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by Mr. Cox (No. 1) was agreed to by Voice Vote.

An Amendment offered by Ms. Jackson-Lee to the Amendment in the Nature of a Substitute offered by Mr. Cox (No. 1A), to insert a new section entitled "Mid-Year Interim Status Reports" was Withdrawn by unanimous consent.

The following motions were offered:

A motion by Ms. Dunn (WA-08) to report the bill to the House, with an Amendment in the Nature of a Substitute with the recommendation that the Amendment in the Nature of a Substitute be agreed to and the bill as amended do pass, was not objected to.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 2886, the Department of Homeland Security Financial Accountability Act is to instruct the Secretary of Homeland Security to (1) submit for FY 2004, and thereafter, a performance and accountability report that incorporates a certain program performance report for the Department of Homeland Security; and (2) include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2886, the Department of Homeland Security Financial Accountability Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 10, 2003.

Hon. CHRISTOPHER COX,
*Chairman, Select Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2886, the Department of Homeland Security Financial Accountability Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2886—Department of Homeland Security Financial Accountability Act

H.R. 2886 would amend the Chief Financial Officers Act and the Homeland Security Act to require the President to appoint a Chief Financial Officer (CFO) to be confirmed by the Senate to oversee the financial accounting practices of the Department of Homeland Security (DHS). The legislation would require DHS to submit a performance and accountability report and to submit an audit of its internal financial controls to the Office of Management and Budget and to the Congress. The legislation also would establish an Office of Program Analysis and Evaluation in DHS and require the department to prepare a national homeland security strategy each year.

CBO estimates that implementing H.R. 2886 would cost \$4 million annually, subject to the availability of appropriated funds. Enacting the bill would not affect direct spending or revenues. H.R. 2886 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

DHS currently employs a CFO who has the same duties and responsibilities as CFOs in other agencies. According to the agency, DHS currently complies with the provisions of the Chief Information Officers Act. The legislation would codify current practices of DHS including the operations of the department's existing Program Analysis and Evaluation Office. Based on information from DHS, CBO estimates that the requirement to prepare an audit of the department's internal financial controls would cost \$4 million a year, subject to the availability of appropriated funds.

In addition, H.R. 2886 would require DHS to develop and annually update a comprehensive national homeland security strategy. Under the Homeland Security Act, DHS is already charged with implementing a future year security program and a homeland security funding analysis. Because the agency is already developing such a strategy, CBO expects that the new reporting requirement would not add significant costs.

On October 29, 2003, CBO transmitted a cost estimate for S. 1567, the Department of Homeland Security Financial Accountability Act, as ordered reported by the Senate Committee on Governmental Affairs on October 22, 2003. The two pieces of legislation are similar and our estimates of the costs of implementing each bill are the same.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 states that the Act is may be cited as the “Department of Homeland Security Financial Accountability Act”

Section 2. Findings

Section 2 summarizes the findings of Congress with respect to the importance of financial management to the success of the Department of Homeland Security (DHS), as well as the need for a strong Chief Financial Officer (CFO) to consolidate financial management operations, design comprehensive management control systems, and improve financial information available to agency managers and the Congress.

Section 3. Chief Financial Officer of the Department of Homeland Security

Section 3, paragraph (a) amends 31 U.S.C. § 901(b)(1) by adding DHS to the list of departments and agencies covered by the CFO Act of 1990. (Pub. Law 101–576, 104 Stat. 2842)

Paragraph (b) requires the President to appoint or designate a CFO for DHS within 180 days from the enactment of the Act.

Paragraph (c) specifies that the current CFO at DHS may stay in place until the date of confirmation or designation of a successor.

Paragraph (d) makes conforming amendments to both the Homeland Security Act of 2002 and the CFO Act. Section (1) of paragraph (d) amends the Homeland Security Act of 2002 by substituting language in section 103 to make the CFO at DHS subject to the requirements of the CFO Act, chapter 9 of title 31, U.S.C. The substituted language further provides that the CFO shall also report to the Under Secretary for Management, in addition to the

Secretary as provided under Section 902(a)(1) of title 31, U.S.C. Section (2) of paragraph (d) amends CFO Act, section 901(b)(2) of title 31, U.S.C., to remove the Federal Emergency Management Agency (FEMA) from the list of CFO Act agencies.

Section 4. Functions of the Chief Financial Officer of the Department of Homeland Security

Section 4, paragraph (a) amends 31 U.S.C. § 3516 to make it a requirement that DHS submit their financial and performance management reports in the form of a “performance and accountability report” for fiscal year 2003 and each subsequent fiscal year. DHS is also required to include in each performance and accountability report an audit opinion of the Department’s internal controls over its financial reporting. DHS is further instructed to design and implement Department-wide management controls that reflect the homeland security strategy developed under section 102(e) of the Homeland Security Act of 2002, and permit assessment by Congress and managers within the Department of the Department’s performance in executing that strategy.

Paragraph (b) states that DHS must include audit opinions of its internal controls in its performance and accountability reports beginning in fiscal year 2005 and continuing indefinitely.

Paragraph (c) states that the Secretary of DHS must include an assertion of DHS’ internal controls that apply to its financial reporting in its fiscal year 2004 performance and accountability report.

Paragraph (d) includes a requirement that the CFO Council and the President’s Council on Integrity and Efficiency (PCIE) conduct a study on the potential costs and benefits of requiring the CFO Act agencies to obtain audit opinions of their internal controls over their financial statements. The report shall be completed within 180 days of the enactment of the bill and shall be submitted to the House Committee on Government Reform, the Committee on Governmental Affairs of the Senate, and the Comptroller General of the United States. The General Accounting Office (GAO) shall perform an analysis of the report within 90 days after receiving it.

Section 5. National homeland security strategy

Section 5 amends section 102 of the Homeland Security Act of 2002 to require DHS to develop and annually update a comprehensive national homeland security strategy based on an assessment of risks from terrorism; a prioritization of those risks; the homeland security capabilities necessary to deter, prevent, mitigate, and respond to acts of terrorism and implement the strategy; the adequacy of those capabilities; the long and short term actions necessary to promote homeland security; the priorities guiding resource allocations included in the President’s annual budget request for homeland security; and other information necessary for developing a comprehensive national strategy. The report on national homeland security strategy must be submitted to Congress in a classified and unclassified form on the date on which the President submits the budget request for each fiscal year.

Section 6. Establishment of Office of Program Analysis and Evaluation

Section 6 amends section 702 of the Homeland Security Act of 2002 to establish an Office of Program Analysis and Evaluation with the responsibility to analyze and evaluate plans programs and budgets of the Department; develop and perform analyses and evaluations of alternative plans programs, personnel levels, and budget submissions for the Department; establish policies for and oversee the functions of the planning programming and budgeting system of the Department; review and ensure that the Department meets performance-based budget requirements; provide guidance for and oversee development of the future years Homeland Security Program; ensure that costs of Department programs are presented accurately and completely; oversee preparation of the annual performance plan for the Department and the program and performance section of the annual report on program performance; develop and promote improved analytical tools and methods for analyzing homeland security planning and the allocation of resources; and perform any other responsibilities delegated by the Secretary with respect to program analysis and evaluation.

Section 7. Notification regarding transfer or re-programming of funds for Department of Homeland Security

Section 7 amends section 702 of the Homeland Security Act of 2002 to require that in any case where DHS notifies Congress of the transfer or reprogramming of appropriations, notice of such transfer or reprogramming must be simultaneously submitted to the House Select Committee on Homeland Security and the Senate Committee on Government Affairs.

Section 8. Authorization of appropriations

Section 8 states that any necessary funds to carry out this Act are authorized to be appropriated to the Secretary of Homeland Security.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

* * * * *

SUBTITLE I—GENERAL

* * * * *

CHAPTER 9—AGENCY CHIEF FINANCIAL OFFICERS

* * * * *

§ 901. Establishment of agency Chief Financial Officers

(a) * * *

(b)(1) The agencies referred to in subsection (a)(1) are the following:

(A) * * *

* * * * *

(G) *The Department of Homeland Security.*

[(G)] (H) *The Department of Housing and Urban Development.*

[(H)] (I) *The Department of the Interior.*

[(I)] (J) *The Department of Justice.*

[(J)] (K) *The Department of Labor.*

[(K)] (L) *The Department of State.*

[(L)] (M) *The Department of Transportation.*

[(M)] (N) *The Department of the Treasury.*

[(N)] (O) *The Department of Veterans Affairs.*

[(O)] (P) *The Environmental Protection Agency.*

[(P)] (Q) *The National Aeronautics and Space Administration.*

(2) The agencies referred to in subsection (a)(2) are the following:

(A) * * *

[(B)] *The Federal Emergency Management Agency.*]

[(C)] (B) *The General Services Administration.*

[(D)] (C) *The National Science Foundation.*

[(E)] (D) *The Nuclear Regulatory Commission.*

[(F)] (E) *The Office of Personnel Management.*

[(G)] (F) *The Small Business Administration.*

[(H)] (G) *The Social Security Administration.*

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SUBTITLE III—FINANCIAL MANAGEMENT

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CHAPTER 35—ACCOUNTING AND COLLECTION

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**SUBCHAPTER II—ACCOUNTING REQUIREMENTS, SYSTEMS,
AND INFORMATION**

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§ 3516. Reports consolidation

(a) * * *

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(f) *The Secretary of Homeland Security—*

(1) shall for each fiscal year submit a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security;

(2) shall include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting; and

(3) shall design and implement Department-wide management controls that—

(A) reflect the national homeland security strategy developed under section 102(e) of the Homeland Security Act of 2002; and

(B) permit assessment, by the Congress and by managers within the Department, of the Department's performance in executing such strategy.

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HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE I—DEPARTMENT OF HOMELAND SECURITY

* * * * *

SEC. 102. SECRETARY; FUNCTIONS.

(a) * * *

* * * * *

(e) NATIONAL HOMELAND SECURITY STRATEGY.—

(1) IN GENERAL.—The Secretary shall develop, and update each year, a comprehensive national homeland security strategy of the United States (hereinafter in this subsection referred to as the “national strategy”).

(2) ELEMENTS.—The national strategy shall be based on the following:

(A) A comprehensive assessment, pursuant to paragraphs (1) through (3) of section 201(d), of the risks to the United States from terrorism, which shall be based on—

(i) the threat posed by terrorism, including an assessment of intentions and capabilities of terrorist actors;

(ii) vulnerabilities in potential targets of acts of terrorism, whether owned or operated by the Federal Government, State or local governments, or nongovernmental entities;

(iii) the criticality or severity of potential effects of acts or terrorism; and

(iv) the likely effects of existing countermeasures to such acts of terrorism.

(B) A prioritization of the risks identified in the assessment under subparagraph (A), from highest level of risk to lowest level of risk, that takes into account all of the factors described in clauses (i) through (iv) of subparagraph (A).

(C) The homeland security capabilities of the United States necessary to deter, prevent, mitigate, and respond to acts of terrorism and to implement the national strategy.

(D) The adequacy of the capabilities of the United States to carry out the national strategy, including an assessment of such capabilities as they pertain to the Federal Govern-

ment, State and local governments, and nongovernmental entities.

(E) The proposed short-term and long-term actions and capabilities of the United States necessary to promote homeland security.

(F) The priorities, based on subparagraphs (A) through (E), that guide the resource allocations included in the President's annual budget request for the homeland security requirements of the Federal Government.

(G) Such other information as may be necessary for the development of a comprehensive national strategy.

(3) REPORTS.—The Secretary shall submit to the Congress a classified report and an unclassified report on the national strategy, on the date on which the President submits to the Congress the budget request for each fiscal year. Both versions of the report shall cover each element of the national strategy outlined in paragraph (2).

[(e)] *(f) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.*

[(f)] *(g) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—*

*(1) * * **

** * * * **

[(g)] *(h) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A-119.*

SEC. 103. OTHER OFFICERS.

*(a) * * **

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(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

*(1) * * **

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[(4) A Chief Financial Officer.]

[(5)] *(4) An Officer for Civil Rights and Civil Liberties.*

(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.

[(e)] *(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.*

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TITLE VII—MANAGEMENT

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SEC. 702. CHIEF FINANCIAL OFFICER.

(a) *IN GENERAL.*—The Chief Financial Officer [shall report to the Secretary, or to another official of the Department, as the Secretary may direct.] *shall perform functions as specified in chapter 9 of title 31, United States Code, and, with respect to all such functions and other responsibilities that may be assigned to the Chief Financial Officer from time to time, shall also report to the Under Secretary for Management.*

(b) PROGRAM ANALYSIS AND EVALUATION FUNCTION.—

(1) *ESTABLISHMENT OF OFFICE OF PROGRAM ANALYSIS AND EVALUATION.*—Not later than 90 days after the date of enactment of this subsection, the Secretary shall establish an Office of Program Analysis and Evaluation within the Department (in this section referred to as the “Office”).

(2) *RESPONSIBILITIES.*—The Office shall perform the following functions:

(A) Analyze and evaluate plans, programs, and budgets of the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the national homeland security strategy developed under section 102(e).

(B) Develop and perform analyses and evaluations of alternative plans, programs, personnel levels, and budget submissions for the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the national homeland security strategy developed under section 102(e).

(C) Establish policies for, and oversee the functions of, the planning, programming, and budgeting system of the Department, including development of annual fiscal guidance for departmental components.

(D) Review and ensure that the Department meets performance-based budget requirements established by the Office of Management and Budget.

(E) Provide guidance for, and oversee the development of, the Future Years Homeland Security Program of the Department, as specified under section 874.

(F) Ensure that the costs of Department programs, including classified programs, are presented accurately and completely.

(G) Oversee the preparation of the annual performance plan for the Department and the program and performance section of the annual report on program performance for the Department, consistent with sections 1115 and 1116, respectively, of title 31, United States Code.

(H) Provide leadership in developing and promoting improved analytical tools and methods for analyzing homeland security planning and the allocation of resources.

(I) Any other responsibilities delegated by the Secretary consistent with an effective program analysis and evaluation function.

(3) DIRECTOR OF PROGRAM ANALYSIS AND EVALUATION.—There shall be a Director of Program Analysis and Evaluation, who—

(A) shall be a principal staff assistant to the Chief Financial Officer of the Department for program analysis and evaluation; and

(B) shall report to an official no lower than the Chief Financial Officer.

(c) NOTIFICATION REGARDING TRANSFER OR REPROGRAMMING OF FUNDS.—In any case in which appropriations available to the Department or any officer of the Department are transferred or reprogrammed and notice of such transfer or reprogramming is submitted to the Congress (including any officer, office, or Committee of the Congress), the Chief Financial Officer of the Department shall simultaneously submit such notice to the Select Committee on Homeland Security of the House of Representatives and the Committee on Governmental Affairs of the Senate.

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