

Report for Congress

Received through the CRS Web

Department of Homeland Security: Proposals to Consolidate Border and Transportation Security Agencies

August 30, 2002

William J. Krouse, Coordinator
Analyst in Social Legislation
Domestic Social Policy Division

Department of Homeland Security: Proposals to Consolidate Border and Transportation Security Agencies

Summary

To better prepare the United States against terrorist attacks, the Bush Administration released its plan to create a Department of Homeland Security (DHS) on June 6, 2002. To prevent terrorists from entering, or smuggling “instruments of terrorism” into, the United States and to prevent attacks on U.S. transportation, the plan calls for consolidating several federal agencies in a Border and Transportation Security division within a proposed DHS. These agencies include the Department of Justice’s Immigration and Naturalization Service (INS); the Department of the Treasury’s U.S. Customs Service; the Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS), the Department of Transportation’s U.S. Coast Guard and Transportation Security Administration; and the General Services Administration’s Federal Protective Service.

On July 25, 2002, the Senate Committee on Governmental Affairs revised the National Homeland Security and Combating Terrorism Act of 2002 (S. 2452). This bill was previously ordered reported by the Committee on May 22, 2002. While it differs from the Administration’s plan, particularly in regard to personnel management flexibility, the new version of S. 2452 was modified to more closely reflect not only that plan, but also other recommendations that had emerged in the course of congressional hearings and House consideration of similar proposals. This bill is scheduled for Senate consideration immediately following the August recess.

On July 26, 2002, the House passed the Homeland Security Act of 2002 (H.R. 5005). This bill reflects, in part, recommendations made by authorizing committees with jurisdiction over the affected agencies to the House Select Committee on Homeland Security. Like the Senate bill, the House bill includes provisions that give the departmental secretaries of Treasury, Transportation, and Agriculture, continued authority over certain elements of the agency operations that are not related to border security, such as Treasury’s “customs revenue functions.” Unlike the Senate bill, the House bill would give the President broad new personnel management flexibility.

It remains an open question for some whether consolidating these agencies in a proposed DHS would succeed in increasing border or transportation security. A related issue is the extent to which border security can be maintained during the transition period while the border security agencies are being administratively consolidated. Likewise, Congress may further consider whether giving the Secretary for Homeland Security statutory authority over visa issuance policy is politically and administratively feasible. In terms of the security of the nation’s transportation infrastructure and federal buildings, the issues for Congress would likely include identifying the most pressing security needs and determining a manageable scope of activities for this new division.

Key Policy Staff

Agency	Staff	Phone #
Immigration and Naturalization Service	Ruth Wasem Lisa Seghetti	707-7342 707-4669
Bureau of Consular Affairs	Susan Epstein Ruth Wasem (visas only)	707-6678 707-7342
U.S. Customs Service	William Krouse	707-2225
APHIS	Jean Rawson	707-7283
U.S. Coast Guard	Martin Lee Ronald O'Rourke	707-7260 707-7610
Seaport Security	John Frittelli	707-7033
Transportation Security Administration	Robert Kirk John Fischer	707-7769 707-7766
Federal Protective Service	Elaine Halchin	707-0646

Contents

Introduction	1
Legislative Action	3
Border Security, Management, and Agency Consolidation	4
Defining Border Security and Management	5
Multiple Agencies, Multiple Border Management Missions	5
Proposed Border Agency Consolidation	6
Lead Immigration Agencies: INS and Consular Affairs	8
Immigration and Naturalization Service (INS)	8
Consular Affairs (CA): Visa and Passport Issuance	11
Immigration and Homeland Security Legislation	13
U.S. Customs Service and International Trade	14
Customs and Homeland Security Legislation	15
Animal and Plant Health Inspection Service (APHIS)	16
APHIS and Homeland Security Legislation	17
Coast Guard and Maritime Security	18
Background Information on the Coast Guard	18
Coast Guard and Homeland Security Legislation	19
Seaport Security Legislation	20
Transportation Security: An Evolving Federal Activity	20
TSA and Homeland Security Legislation	21
Federal Building Security	22
FPS and Homeland Security Legislation	23
Issues for Congress	23
Would Border Security Be Improved?	24
Would It Be Cost Effective?	24
Should Both Immigration Services and Enforcement Be Transferred?	25
Should the Authority for Visa Issuance and/or Consular Affairs Be Transferred?	25
How Can The Customs Revenue Functions Be Maintained?	25
Should APHIS Non-Border Inspection Activities Be Transferred? ..	25
What About the Coast Guard's Non-Border Security Missions?	26
Should Seaport Security Be Addressed in the Context of Homeland Security?	26
Should Transportation Security Be Matched with Border Security? ..	26
Should The New Division Also Be Responsible for Some Federal Building Security?	26

Department of Homeland Security: Proposals to Consolidate Border and Transportation Security Agencies

This report examines legislative proposals and issues related to establishing a Border and Transportation Security division in a proposed Department of Homeland Security (DHS). These proposals call for consolidating several federal agencies charged with border, transportation, and federal building security responsibilities in this new division for border and transportation security. They also call for transferring the policy authority for visa issuance and denial to the Secretary of Homeland Security. Such a consolidation, according to key Members of Congress and the Administration, would better position federal agencies to prevent terrorists from entering, and smuggling instruments of terror into, the United States.

This report includes conceptual definitions for “border management” and “border security,” and discusses the missions of the principal border management agencies. It briefly touches on seaport security, since it relates to border security, and Congress has acted on related legislation; examines the Transportation Security Administration and that agency’s still evolving scope of responsibilities; and explores issues raised by transferring the Federal Protective Service to this new division. The report concludes with a summary of major issues raised by proposals to establish a Border and Transportation Security division within the proposed DHS.

Introduction

On June 6, 2002, the Bush Administration released its plan to create a Department of Homeland Security (DHS) to better prepare and protect the United States against terrorist attacks.¹ To prevent terrorists from entering, or smuggling “instruments of terrorism” into, the United States, and to prevent attacks on U.S. transportation, the Bush Administration’s plan calls for consolidating several federal agencies in a Border and Transportation Security division within a proposed DHS.

The border management agencies that would be consolidated under the Administration’s plan include the Department of Justice’s Immigration and Naturalization Service (INS); the Department of the Treasury’s U.S. Customs Service; the Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS); and the Department of Transportation’s U.S. Coast Guard. In addition, the

¹For further information on departmental-wide considerations and issues, see CRS Report RL31493, *Homeland Security: Department Organization and Management*, by Harold C. Relyea.

plan calls for placing the Transportation Security Administration and General Services Administration's (GSA) Federal Protective Service in this new division.

While the plan would possibly dismantle and merge various components of these agencies, it includes language specifying that the U.S. Coast Guard would remain a distinct entity, suggesting that it would not be merged with Customs or INS. It would also give the Secretary of Homeland Security exclusive policy authority "through the Secretary of State" over the "granting or refusal of visas." The Department of State would likely continue its current visa processing responsibilities, since the Administration's proposal anticipates no transfer of personnel or responsibilities from State to the proposed DHS.

Border security is achieved when "undesirable" peoples and harmful materials are prevented from entering the United States. Border security is an outcome of effective border management. Border management entails regulating the flow of people and goods into the United States and, in some instances, from the United States. The challenge for policy makers is to provide a level of border security that is commensurate with threats from abroad, while facilitating legitimate cross-border travel and commerce, as well as protecting civil liberties. At issue for Congress is whether consolidating border management agencies in a proposed DHS would increase border security in the short or long run. Likewise, Congress may further consider whether giving the Secretary of Homeland Security statutory authority over visa issuance policy would increase border security.

Transportation security is an evolving and expanding federal activity. The Administration's plan calls for merging the fledgling Transportation Security Administration (TSA), currently part of the Department of Transportation, into the proposed Border and Transportation Security division of DHS. From the earliest days of the Republic, the federal government has played a role in transportation security on the high seas. With the passage of the Interstate Commerce Act in 1887, the federal government began taking an active role in transportation regulation. Prompted by the September 11 terrorist attacks, Congress passed legislation creating the TSA, but the agency is still being organized and the scope of its border and transportation security activities for the time being are focused on implementing the airport and in-flight security provisions of the Aviation and Transportation Security Act.²

Suggesting that the new division will provide security for some, but not all, federal buildings, the plan would transfer the Federal Protective Service from GSA to the Border and Transportation Security division. In terms of the security of the nation's transportation infrastructure (air, land, and sea) and federal buildings, the issues for Congress would likely include identifying the most pressing security needs and determining a manageable scope of activities for this proposed division.

²P.L. 107-71, 115 STAT. 597.

Legislative Action

Legislation to create a Department of Homeland Security is being expedited. Following much discussion and conjecture as to the need for, and the scope of, a new department, President George W. Bush released a plan to create a cabinet-level Department of Homeland Security (DHS) on June 6, 2002.³ In response, the House Speaker, Representative J. Dennis Hastert, and the House Minority Leader, Representative Richard A. Gephardt, formed the Select Committee on Homeland Security. A draft bill was transmitted from the White House to Congress on June 18. The House Majority Leader, Representative Richard K. Armey, introduced the Administration's proposal, the Department of Homeland Security Act of 2002 (H.R. 5005) on June 24.

One month earlier, on May 22, the Senate Committee on Governmental Affairs, chaired by Senator Joseph Lieberman, ordered reported the National Homeland Security and Combating Terrorism Act of 2002 (S. 2452).⁴ This bill incorporated many of the proposals first made by the Hart-Rudman Commission⁵ regarding counter-terrorism and the creation of a Department of Homeland Security. While these bills differed in significant ways, their border and transportation security provisions were similar in major respects.

Meanwhile, the House leadership invited the 14 congressional committees with jurisdiction over the agencies and activities that would be transferred to the proposed DHS to make recommendations to the Select Committee on Homeland Security. Following a series of hearings and ad hoc discussions with the Administration and other interested parties, 6 of the 14 committees made recommendations concerning the proposed transfer of agencies under their jurisdiction to the Border and Transportation Security division:

- ! the Committee on International Relations addressed the Administration's proposal to transfer "exclusive" authority for visa issuance to the Secretary for Homeland Security;⁶
- ! the Committee on the Judiciary addressed visa issuance as well and the proposal to transfer INS to the proposed DHS;⁷
- ! the Committee on Ways and Means made recommendations about the Customs Service;⁸

³See: [<http://www.whitehouse.gov/deptofhomeland/>].

⁴Senate Report 107-175.

⁵U.S. Commission on National Security/21st Century. *Roadmap for National Security: Imperative for Change*. (Washington, February 15, 2001). p. 156. Available at [<http://www.nssg.gov/>].

⁶For further information, see [http://www.house.gov/international_relations/].

⁷For further information, see [<http://www.house.gov/judiciary/>].

⁸For further information, see [<http://waysandmeans.house.gov/whatnew.htm/>].

- ! the Committee on Transportation and Infrastructure made specific recommendations about the Coast Guard and the TSA;⁹
- ! the Committee on Agriculture also made specific recommendations on the APHIS, among other things;¹⁰ and
- ! the Committee on Government Reform made a recommendation in the form of a substitute proposal for the entire new department.¹¹

These recommendations are discussed in greater detail below in the sections dealing with the affected agencies.

On July 19, 2002, the Select Committee amended and approved H.R. 5005 by a vote of 5 to 4.¹² The reported bill reflects, in part, recommendations made by authorizing committees. In many cases, provisions were included in the bill that gave the departmental secretaries of Treasury, Transportation, and Agriculture, continued authority over certain elements of the agency operations that are not related to border security, such as Treasury's "customs revenue functions." Similar to the Administration's plan in many respects, the House bill would give the President broad new personnel management flexibility. On July 26, 2002, the House amended and approved H.R. 5005 by a vote of 295 to 132.

On July 25, 2002, the Senate Committee on Governmental Affairs revised S. 2452. As described above, the bill was previously reported by the Committee on May 22, 2002. While it differs from the Administration's plan, particularly in regard personnel management flexibility, the new version of S. 2452 was modified to more closely reflect not only that plan, but also other recommendations that had emerged in the course of congressional hearings and House consideration of similar proposals. This bill is scheduled for Senate consideration immediately following the August recess.¹³

Border Security, Management, and Agency Consolidation

In the past, there have been many proposals to reorganize border management agencies prompted by concerns about illegal immigration and international drug trafficking.¹⁴ The Administration's DHS proposal is notable in that the threat of terrorism is currently the factor prompting policy makers to explore border reorganization options with greater rigor. Indeed, today, policy makers are confronted with the possibility that the World Trade Center and Pentagon attacks

⁹For further information, see [<http://www.house.gov/transportation/>].

¹⁰For further information, see [<http://agriculture.house.gov/homeland.htm/>].

¹¹For further information, see [<http://www.house.gov/reform/homelandsecurity.htm/>].

¹²House Report 107-609, Part 1.

¹³For a detailed comparison, see CRS Report RL31513, *Homeland Security: Side-by-Side Comparison of H.R. 5005 and S. 2452, 107th Congress*, by the CRS Homeland Security Team.

¹⁴For further information on past attempt at border reorganizations, see CRS Report 97-974, *Reorganization Proposals for U.S. Border Management Agencies*, by Frederick M. Kaiser.

were not “singular” events, and many believe that international terrorists have planned, will attempt, and may successfully carry out, attacks of similar magnitude against the United States in the future. At the same time, trade experts emphasize that shutting down borders in the event of a terrorist attack on the United States would have detrimental and possibly catastrophic effects on the national and world economies.¹⁵ Hence, the security and livelihood of the United States depends more than ever upon how efficiently federal agencies charged with border management achieve their respective missions.

Defining Border Security and Management. Border management entails regulating the flow of people and goods into the United States and, in some instances, from the United States. Border security is derived from how well border management agencies perform their missions. That entails not only effective law enforcement in some cases, but also prompt, efficient, and courteous service to the traveling public. Over the past half-century, border management evolved as a balancing act between facilitating legitimate cross border commerce and travel, and deterring illegal immigration and the smuggling of drugs and other contraband.

Even before the September 11 terrorist attacks, border management was emerging as a public policy area of growing concern for Congress. The Canadian and North American free trade agreements created a perception, shared by some policy makers, that international borders were anachronistic, that they belonged to an earlier era of nationalism, and that their usefulness had passed. While these agreements fostered international trade, they did not cause the borders to disappear nor were they intended to. Instead, the borders emerged more manifestly as increased trade and travel outpaced the institutions and infrastructures set up to accommodate and regulate those activities. From 1985 to 2000, for example, trade between the United States and Canada increased from \$116.3 to \$409.8 billion, yet the number of Customs inspectors deployed to the northern border reportedly decreased by about 25%.¹⁶

Multiple Agencies, Multiple Border Management Missions. There is no single agency charged with border management. Rather, a handful of agencies is charged with what could be considered core border management missions. They include the U.S. Customs Service in the Department of the Treasury, the Immigration and Naturalization Service (INS) in the Department of Justice, and the U.S. Coast Guard in the Department of Transportation. Many other agencies, like the Bureau of Consular Affairs in the Department of State and the Animal and Plant Health Inspection Service (APHIS) in the Department of Agriculture, play integral roles in border management as well. By various counts, over 40 federal agencies are involved in some aspect of border management.

Critics of the status quo point to fragmented authorities, overlapping jurisdictions, duplicated efforts, and interagency rivalries. Despite significant

¹⁵O’Hanlon, Michael E., et al. *Protecting the American Homeland*. The Brookings Institution, Washington, 2002. p. 25.

¹⁶Flynn, Stephen E. America the Vulnerable. *Foreign Affairs*, January/February 2002. p. 66.

increases in resources (mostly deployed to the southern border), particularly for INS's Border Patrol, an unauthorized immigrant population of an estimated 7 to 9 million people¹⁷ and the continuing availability of illegal drugs of foreign origin¹⁸ are clear indicators that current federal border management efforts have had mixed results to date. Given the importance of efficient border management to the economy of the United States, the congressional debate may include whether addressing border security from the angle of counter-terrorism alone, without considering other governmental objectives, like stemming drug trafficking or facilitating legitimate cross border commerce, is practical or reasonable.

The missions of the border management agencies broadly classified into five traditional areas are: (1) immigration and nationality, (2) international trade, (3) environmental and health quarantine, (4) port security, and (5) border and coastal patrol. The Bureau of Consular Affairs and INS are charged with most immigration- and nationality-related activities and missions. Customs is charged chiefly with administering international trade laws and other federal laws that are enforceable at the border. At international ports of entry, Customs and INS make up the largest complement of the federal inspection services, but APHIS and many other agencies either conduct inspections at ports or support agencies that do so. As a possible sixth category, TSA's aviation security mission is viewed by many to be a border management mission as well. The vast majority of TSA resources, however, are directed to domestic flights and activities.

In addition, other federal inspection agencies, such as the Public Health Service, are charged with environmental and health quarantine missions, but the Customs Service and INS usually carry out the missions of these agencies at the border. Meanwhile, the Coast Guard usually coordinates the efforts of federal border management agencies at seaports. INS's Border Patrol has the largest presence on the Southwest border between ports of entry. The Customs Service and the Coast Guard conduct large-scale air and marine drug interdiction operations on the southern tier of the United States (Caribbean and Southwest border).¹⁹ And, the Coast Guard is charged with securing the nation's coastal and inland waterways, among other things. The following discussion will examine the agencies charged with carrying out those border security-related functions and missions in more detail.

Proposed Border Agency Consolidation. To increase border security and more effectively counter terrorism, the Administration proposed transferring the following four agencies and their respective missions to a proposed DHS Border and Transportation Security division: the Immigration and Naturalization Service (INS),

¹⁷Camarota, Steven. *Census Bureau: Eight Million Illegal Aliens in 2000 (Finding Raises Concern Over Border Control in light of Terrorist Threat)*. Center for Immigration Studies, Washington, October 24, 2001. [<http://www.cis.org/articles/2001/censusrelease1001.html>].

¹⁸According to Federal-wide Drug Seizure System, federal authorities seized between 100 to 130 tons of cocaine per year for the last 5 years. According to DEA estimates, federal authorities seized approximately 20% to 25% of the cocaine in transit to the United States, either at the border or on the high seas.

¹⁹It is notable that the Department of Defense supports both Customs and the Coast Guard with intelligence and aerial/maritime surveillance in the transit zones.

currently located in the Department of Justice; the U.S. Customs Service, currently located in the Department of the Treasury; the Animal and Plant Health Inspection Service (APHIS), currently located in the Department of Agriculture; and the U.S. Coast Guard, currently located in the Department of Transportation.

Recognizing the role that the Department of State's Bureau of Consular Affairs plays in the issuance of passports and visas, the Administration's proposal would give the Secretary of Homeland Security exclusive policy authority "through the Secretary of State" over the "granting or refusal of visas." Such a transfer of authority is intended to increase border security. On matters related to visa policy, it would, in effect, subordinate the Secretary of State to the Secretary of Homeland Security. Nevertheless, the Department of State would likely continue its current visa processing responsibilities, since the Administration's proposal anticipates no transfer of personnel or responsibilities from State to the proposed DHS.

In addition to these agencies and the transfer of the visa issuance authority, the Administration proposal would fold the newly created Transportation Security Administration (TSA), currently located in the Department of Transportation, and the Federal Protective Service (FPS), currently located in the General Services Administration, into this new division. The TSA's aviation security responsibilities, in certain circumstances, overlap with those of border management agencies. Some might argue, however, that the new agency's transportation security mandate raises questions about whether joining this agency with border management agencies is a good fit. Also, the transfer of the FPS to the new division and its possible expansion of duties for federal building security raises questions about the division's final mission and scope of responsibilities that have not been clearly defined.

While there are various coordinating mechanisms,²⁰ none of these agencies has responsibility for the entire range of border management missions. Rather, they specialize in certain types of missions. Currently located in their four separate departments (Justice, Treasury, Transportation, and Agriculture), these agencies bring certain professional specializations to the table that they might not otherwise have if transferred to a department exclusively devoted to counterterrorism. For example, as an agency in the Department of the Treasury, Customs is well placed to handle certain missions such as trade compliance and money laundering. Concerns have been voiced that in the proposed reorganization, these agencies may lose ready access to professional specializations, and their ability to complete certain missions may be diminished rather than enhanced.

Moreover, there is uneasiness among some in the "importing community"²¹ that Customs will become too enforcement-minded and less supportive of trade

²⁰For further information, see CRS Report RL31357, *Federal Interagency Coordinative Mechanisms: Varied Types and Numerous Devices*, by Frederick M. Kaiser.

²¹Possibly not all inclusive, the concept of "importing community" would include importers, exporters, customs brokers, shippers, freight forwarders, carriers, international trade attorneys and consultants, and foreign trade zones.

facilitation if located in the proposed DHS.²² Similar views have been expressed by some Members of Congress about transferring INS's immigration and naturalization application processing (service) activities to the DHS. On the other hand, consolidating key border agencies could eliminate overlapping jurisdictions, duplication of effort, and inter-agency rivalries, resulting in a more coordinated and effective border management strategy.

Lead Immigration Agencies: INS and Consular Affairs²³

U.S. immigration policy has historically balanced a set of generous principles with a set of restrictive priorities. The generous principles emphasize the reunification of families; the admission of immigrants with needed job skills; the protection of refugees and asylees; the promotion of opportunities for cultural exchange; the facilitation of trade, commerce, and diplomacy; and the diversity of admissions by the country of origin. Another principle of immigration policy is to provide immigrants an opportunity to integrate fully into society. Along these lines, immigrants (legal permanent residents) usually have the opportunity to become citizens through a process known as naturalization. The restrictive priorities of U.S. immigration law focus on protecting public health and welfare, national security, public safety, and labor markets.

These principles and priorities are embodied in the Immigration and Nationality Act (INA), first codified in 1952. It is significant to note that there is a tension between the generous principles and restrictive priorities of immigration law that are difficult to reconcile in the day-to-day operations of the two lead agencies charged with managing the migration of non-citizens across U.S. borders—Justice's Immigration and Naturalization Service and State's Bureau of Consular Affairs. This tension is in evidence as Congress considers proposals to establish a Department of Homeland Security.

Immigration and Naturalization Service (INS). Section 103 of the INA gives primary responsibility for the administration and enforcement of immigration law to the Attorney General. The Attorney General currently delegates most of this responsibility to the INS Commissioner.²⁴ It has been customary to view INS's responsibilities and activities as consisting of two functions, enforcement and service. For FY2002, Congress provided INS with \$6.2 billion, supporting 36,117 funded permanent positions. According to DOJ, the FY2002 budget includes \$4.0 billion (26,708 positions) for enforcement programs, over \$1.4 billion (5,707 positions) for

²²Edmonson, R.G. Trade Facilitation in Peril? Some Wonder if Customs Trade Role Will Be Diminished or Lost within Proposed Department of Homeland Security. *Journal of Commerce*, June 17, 2002. p. 39.

²³This section was prepared by Ruth Wasem, Lisa Seghetti, Susan Epstein, and William Krouse.

²⁴The Executive Office for Immigration Review (EOIR) and the Civil Division are DOJ entities that also administer certain elements of immigration law.

immigration services, and \$730 million (3,702 positions) for administration and support.²⁵

Immigration Enforcement. INS immigration enforcement functions are generally considered to include the following: (1) patrol of the border between ports of entry; (2) inspection of travelers seeking entry into the United States at ports of entry; (3) investigation of violations of immigration law both at the border and within the interior of the United States; (4) detention and removal of non-citizens found to be in violation of immigration law; and, (5) the collection of intelligence concerning immigration-related illegal activities.

Between ports of entry, the U.S. Border Patrol, a division of INS, enforces U.S. immigration law and other federal laws at the border. Border Patrol agents often apprehend drug smugglers and others engaged in criminal activities, but the principal focus of the Border Patrol is to stem illegal immigration,²⁶ by compelling border crossers to present themselves for inspection at a designated port of entry. *At ports of entry*, INS inspectors examine and verify the travel documents of international travelers to determine their eligibility to enter the United States.²⁷ Unlike INS's other enforcement functions, the inspections function includes service-related activities as well. For example, INS inspectors are the first line of contact with the traveling public, including non-citizens seeking to enter the United States for the first time. On the other hand, INS inspectors screen foreign travelers by checking border lookout systems to determine whether they are listed as known terrorists or supporters of terrorist organizations.²⁸

INS special agents investigate immigration violations at the border, since neither the Border Patrol nor INS inspections has a criminal investigations capability, and in the interior of the United States, as well. Such investigations include identifying criminal aliens for removal, immigration-related document and benefit fraud, alien smuggling, and employer sanctions. Federal law prohibits employers from knowingly hiring aliens who are unauthorized to work in the United States. INS special agents, immigration inspectors, and Border Patrol agents participate in interagency task forces, like the Joint Terrorism Task Forces, since only an immigration officer can determine immigration and nationality status, as opposed to a U.S. Marshal or FBI agent.²⁹ In addition, a small number of INS special agents are stationed abroad.

²⁵U.S. Department of Justice, *2003 Budget Summary*, (Washington, winter 2002). p. 105.

²⁶Over 90% of Border Patrol agents are deployed on the Southwest border.

²⁷According to the INS Statistics Office, INS inspectors screened about 511 million persons for entry (approximately 36% citizens and 64% non-citizens) in FY2001. The non-citizens they found inadmissible number in the hundreds of thousands, but represented less than 0.2% of all inspections annually.

²⁸In the INS budget, inspections is considered an enforcement program, but organizationally inspections has traditionally been considered an examinations or service program.

²⁹A term of art, "immigration officers" include special agents, immigration agents, immigration inspectors, Border Patrol agents, deportation officers, detention enforcement officers, Asylum Corps officers, and adjudications officers.

INS officers also oversee the detention and removal of non-citizens – many of whom cannot be released under the law until removed from the United States. In recent years, INS has come under intense criticism for not expeditiously deporting criminal aliens. Despite increased funding, INS officials have maintained that the agency does not possess the detention capacity to comply with the law. Furthermore, INS officers collect intelligence in regard to illegal immigration-related activities, such as alien smuggling or large-scale document and benefit fraud. Such intelligence is often useful to other federal law enforcement agencies, as well.

It is notable that INS enforcement functions are linked to the INS service functions. For example, INS inspectors routinely query INS application processing databases in order to determine the immigration status of applicants for admission at international ports of entry. Conversely, INS adjudicators routinely query INS enforcement databases to determine whether non-citizen applicants for certain immigration benefits have been or are in violation of immigration law. In addition, INS adjudicators are also required to conduct criminal background and lookout system checks on certain applicants by checking with the FBI and the Department of State. Along these lines, moreover, Congress has recently mandated that all INS databases, service and enforcement systems, be made interoperable.³⁰

Immigration Services. Immigration services consist of two major activities: (1) the adjudication of immigration- and naturalization-related benefits; and (2) the consideration of refugee and asylum claims. As part of the INS adjudications and nationality program, INS adjudication officers and clerks process family-sponsored and employment-based immigrant petitions to determine the eligibility of relatives of U.S. citizens and immigrants (legal permanent residents), and employees of U.S. businesses, to be permanently admitted to the United States. Another significant workload for INS adjudications officers is that associated with applications for adjustment of status to permanent residency for non-citizens who are already in the United States, but who are otherwise eligible for immigrant status. INS officers also process temporary (nonimmigrant) employment and fiancée visa applications, nonimmigrant visa adjustments and extensions of stay, as well as many other immigration- and naturalization-related applications.³¹

The INS Office of International Affairs, among other things, oversees the consideration of refugee claims abroad, and asylum claims domestically. Essentially, non-citizens are granted refugee and asylum status on the same basis. Under current law, refugees and asylees are persons who are outside of their home country (or the last country in which they habitually resided), and who are unable to return to that country because of a well founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. Asylum applicants apply in the United States; refugee applicants apply from abroad. Located in eight offices around the country, the INS Asylum Corps accounts for a small, but

³⁰Section 202(a)(1) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173; 116 Stat. 543).

³¹In FY2001, INS received about 7.8 million applications and completed a record 7 million, but INS ended the year with nearly 4.9 million applications pending, a nearly 24% increase over the previous year.

high profile portion of the INS workload. In addition, INS immigration officers (often Asylum Corps officers) are assigned to many foreign locations to consider refugee claims.

INS Reorganization Proposals. Preceding the Administration's June 6 plan and proposed transfer of INS to the proposed DHS, the Administration carried forward a restructuring plan to split the agency's service and enforcement programs within INS. On April 25, 2002, the House passed a measure (H.R. 3231) sponsored by Judiciary Committee Chairman, Representative F. James Sensenbrenner, that would dismantle INS. On May 2, a similar, but competing, measure (S. 2444) was introduced by the Senate Judiciary Immigration Subcommittee Chairman, Senator Edward Kennedy. Both bills would establish separate immigration services and enforcement bureaus. The Senate bill, however, would create an immigration director with overall statutory authority for immigration policy. The House bill would establish an Associate Attorney General for Immigration, but the statutory authority for immigration services and enforcement would devolve to the respective bureau directors.³²

Consular Affairs (CA): Visa and Passport Issuance. The Department of State's Bureau of Consular Affairs (CA) manages three functions, two of which – visa and passport issuance – are related to border management and security. Of these two functions, however, overseas visa issuance policy is a principal focus of border security proposals being considered by Congress. The third function, unrelated to border security, includes services to U.S. citizens abroad.

Section 104 of the INA gives primary responsibility for the administration and enforcement of immigration law to the Secretary of State as it relates to the duties and functions of diplomatic and consular officers.³³ CA's Visa Office carries out the Secretary of State's immigration responsibilities, processing immigrant and nonimmigrant visa applications (as opposed to visa petitions, which are processed by INS). Section 211(a) of Title 22 of the *United States Code* charges the Secretary of State with responsibilities related to issuing passports to U.S. citizens.³⁴ CA's Passport Office oversees the issuance of U.S. passports. While CA provides for headquarters management of all consular activities, these activities are conducted by the staff of many different bureaus (regional and administrative) within the

³²For further information, see CRS Report RL31388, *Immigration and Naturalization Service Restructuring Proposals in the 107th Congress*, by Lisa Seghetti.

³³Among other things, Section 221 of the INA (8 U.S.C., § 1201) sets out that, subject to limitations in the Act and relevant regulations, consular officers may issue immigrant and nonimmigrant visas.

³⁴With certain exceptions, Section 215 of the INA prohibits any U.S. citizen from departing from or entering the United States without a valid passport.

Department of State. For FY2002, the department-wide budget for consular activities is about \$574 million,³⁵ supporting 3,756 positions.³⁶

CA also maintains the Consolidated Lookout and Support System (CLASS), a system that is used to screen persons known to be ineligible for visas. CLASS lookout records, in turn, are downloaded into the Interagency Border Inspection System (IBIS), a system that is maintained by Customs and used by both Customs and INS inspectors to screen foreign travelers seeking to enter the United States.³⁷ CLASS was developed under State's Border Security Program, which is fully funded through machine readable visa (MRV) application fees that are paid by persons seeking nonimmigrant visas. For FY2002, under the Border Security Program, it was estimated the MRV fees would generate an estimated \$465 million,³⁸ but this estimate did not factor in the decline in travel due to the September 11 terrorist attacks. In addition to funding CLASS, significant amounts of MRV fees are allocated to passport issuance and systems, and to the Diplomatic Security Service to conduct visa and passport fraud investigations.³⁹

In regard to processing immigrant visas, CA works in tandem with INS in a two-step process. INS processes the family-sponsored and employment-based *immigrant* visa petitions and, if favorably adjudicated, CA contacts the prospective immigrants. Then, CA processes their visa applications and, if favorably adjudicated, issues the non-citizen beneficiaries immigrant visas. The burden of proof is on applicants to establish eligibility. For denials of visa applications (immigrant or nonimmigrant), there is only limited review, and no process for administrative or judicial appeal. Following inspection at a U.S. port of entry, the immigrant visa holder becomes a legal permanent resident. For the majority of *nonimmigrant* (temporary) visas, most of which do not require a U.S. petitioner, CA handles the entire application process.

In general, foreign nationals who wish to come to the United States must have a visa to be admitted.⁴⁰ A notable exception would be the visa waiver program under which foreign nationals from certain countries seeking to enter the United States for a temporary visit for business or pleasure may enter without a visa.⁴¹ In FY2001,

³⁵U.S. Department of State. *Congressional Presentation Document, FY2003*, (Washington, winter 2002). p. 40. (Hereafter cited as *Congressional Presentation Document, FY2003*.)

³⁶*Ibid.*, p. 41.

³⁷For further information, see CRS Report RL31019, *Terrorism: Automated Lookout Systems and Border Security Options and Issues*, by William J. Krouse and Raphael F. Perl.

³⁸*Congressional Presentation Document, FY2003*, p. 516.

³⁹Nearly all of this amount for the border security program, \$476 million, is allocated for consular activities; therefore, it overlaps with the \$574 million for consular activities.

⁴⁰Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of INA and the specific authority of the Visa Waiver Program in §217 of INA.

⁴¹See CRS Report RS21205, *Immigration: Visa Waiver Program*, by Alison Siskin.

Consular Affairs issued over 406,000 immigrant visas,⁴² and nearly 7.6 million nonimmigrant visas.⁴³ Often described as a double check system, both State's consular officers at overseas posts (when aliens apply for a visa), and INS inspectors at international ports of entry (when aliens apply for admission) are required to confirm that the alien is admissible and not subject to a grounds for exclusion as enumerated in the INA. Beside criminal and public health-related grounds, such grounds also include being a suspected terrorist or supporter of a terrorist organization.

Immigration and Homeland Security Legislation. The Administration's plan would have given the Secretary of Homeland Security exclusive policy authority "through the Secretary of State" over the "granting or refusal of visas." The Department of State, however, would have continued its current visa processing responsibilities, since the Administration's plan anticipated no transfer of personnel or responsibilities from State to the proposed DHS. The Administration's plan would have also transferred INS in its entirety to the proposed DHS Border Security and Transportation Security division. While supporting documents, accompanying the Administration's proposal, show separate border enforcement and immigration services branches, the proposal itself would not have statutorily split the agency's activities. This arrangement elicited the opposition of some Members of Congress, who maintained that transferring an unreformed INS to the proposed DHS would not increase border security.

Along those lines, the Chair of the House Committee on the Judiciary, Representative F. James Sensenbrenner, recommended splitting INS into separate bureaus; the service activities were to remain at the Department of Justice, while INS enforcement activities were to be transferred to the proposed Border and Transportation Security division. This split was reflected in the version of H.R. 5005 passed by the House. In addition, Representative Sensenbrenner favored transferring State's CA to the new department, but the Committee approved an amendment that left CA in State, and that was included in the version of H.R. 5005 approved by the House.

Meanwhile, the Senate bill (S. 2452), as most recently modified by the Senate Committee on Governmental Affairs, includes the Immigration Reform, Accountability, and Security Enhancement Act of 2002, which would abolish INS and establish a Directorate of Immigration Affairs in the new department. It would amend the INA to establish separate bureaus for "immigration services" and

⁴²In FY2001, over 1 million people gained immigrant status (legal permanent residency). Well over half were already in the United States and, therefore, processed by INS and adjusted status to legal permanent residency in the United States under section 245 of the INA. As a result, they were not issued immigrant visas by the Department of State.

⁴³In FY2001, according to INS, about 325 million nonimmigrants were admitted to the United States (includes multiple entries by the same visitors). Of those nonimmigrants, an estimated 17 million were admitted under the visa waiver program.

“enforcement and border affairs. Both bureaus would be under the proposed Directorate of Immigration Affairs in the proposed DHS.⁴⁴

U.S. Customs Service and International Trade⁴⁵

The U.S. Customs Service, an agency of the Department of the Treasury, screens goods and merchandise being imported into and, to a lesser extent, exported from, the United States. Customs is the lead agency charged with administering the Tariff Act of 1930, as amended. At international ports of entry, Customs officers represent about 40 other federal agencies, administering and enforcing over 400 statutes and regulations related to international trade and commerce, drug and crime control, immigration, public health and safety, environmental protection, child welfare, and national security.⁴⁶

Customs processes goods being imported into the United States, collecting duties and tariffs. The agency plays a major role in federal efforts to interdict illegal drugs and other contraband being smuggled into the United States. Customs administers U.S. export law, in part, by interdicting the export of unreported currency from narcotics trafficking and other illicit activities, preventing international terrorist groups and rogue nations from obtaining sensitive and controlled commodities, and interdicting stolen vehicles and other stolen property. Like other federal law enforcement agencies, Customs has also engaged in efforts to identify and investigate trans-border crimes committed through the Internet. These responsibilities comprise Customs’ dual mission of enforcing the laws of the United States, while fostering legitimate international commerce and travel. All of Customs’ activities are related to border management and security. If done well, they contribute to “homeland security.”

In FY2001, Customs collected over \$22 billion in trade-related duties, taxes, and fees.⁴⁷ Total imports for that year reached an estimated value of \$1.175 trillion.⁴⁸ A large percentage of these imports arrived in more than 16 million cargo containers, and about 5.7 million of these containers arrived by ship.⁴⁹ In FY2001, Customs processed more than 214,000 ships.⁵⁰ In addition, Customs processed over 472 million pedestrians and passengers (nearly 66 million arrived by aircraft, 11 million

⁴⁴For further information, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Wasem.

⁴⁵This section was prepared by William Krouse.

⁴⁶Provided they have the requisite training, certain INS officers, Inspectors and Border Patrol agents are authorized to act as Customs officers at the border.

⁴⁷U.S. Customs Service, *U.S. Customs Service: America’s Frontline, FY2001 Annual Report*. Washington, July 2002. p. 70.

⁴⁸*Ibid*, p. 16

⁴⁹U.S. Customs Service, *U.S. Customs Container Security Initiative to Safeguard U.S., Global Economy, Fact Sheet*. Washington, February 2002. p. 1. [<http://www.customs.gov/hot-new/pressrel/2002/0222-00.htm>]

⁵⁰*Ibid.*, p. 1.

by ship, 307 million by automobile, 53 million pedestrians, and 35 million by some other means of conveyance).⁵¹ For FY2002, Congress appropriated \$3.117 billion for Customs,⁵² supporting 18,595 full time equivalent staff positions; a 35% increase over the agency's FY2001 appropriation, most of which was provided to improve border security.⁵³

Customs and Homeland Security Legislation. All versions of the homeland security proposals would transfer Customs in its entirety to the proposed DHS, though the House-passed bill (H.R. 5005) and the Senate committee-modified bill (S. 2452) would give the Secretary of the Treasury continued authority over “customs revenue functions.” These provisions are largely an outgrowth of concerns among the “importing community” that Customs’ transfer to DHS – a department exclusively focused on counterterrorism – might result in less emphasis on facilitating legitimate international commerce and travel. Some Members of Congress explored the possibility of splitting Customs enforcement and trade compliance activities (loosely equivalent to those activities that would fall under “customs revenue functions”) along the same lines as splitting INS enforcement and services activities. Others observed, however, that Customs’ enforcement activities are derived largely from its regulatory activities, and that all these activities are part of managing international trade at the borders.

The Ways and Means Committee made a series of other recommendations, some of which address the concerns of the “importing community.” The Chairman’s mark approved by the Select Committee on Homeland Security included some, but not all, of the provisions recommended by the Ways and Means Committee. The Chairman’s mark included provisions that would:

- ! establish the Customs Service as a stand-alone agency vested with largely the same revenue-related responsibilities as the agency currently holds;
- ! require that the Customs Service be headed by a Commissioner (as is the case today), who would be appointed with advice and consent of the Senate;
- ! leave the statutory revenue collecting authority with the Secretary of the Treasury, but allow the Secretary to delegate revenue collecting responsibilities to the proposed DHS;
- ! require the development and implementation of a cost accounting system to track the use of Customs user fees;

⁵¹*Customs FY2001 Annual Report*, p. 16.

⁵²This amount includes the FY2002 emergency supplemental appropriation of \$393 million allocated in the Department of Defense Appropriations Act (P.L. 107-117). It also includes monies appropriated into four accounts: 1) \$2.501 billion in salaries and expenses account, 2) \$185 million in air and marine interdiction program account, 3) \$428 million in automation modernization account, and 4) \$3 million in the harbor maintenance fee account.

⁵³From FY1992 to FY2001, Congress increased direct appropriations for the U.S. Customs Service from \$1.454 to \$2.315 billion, a 59% increase. To cover the costs of commercial operations and as directed by Congress, Customs offsets its direct appropriation by the balance of merchandise processing fees in the Customs User Fee Account (\$930 million in FY2001). In addition to appropriated funding, the Customs Service collects COBRA fee receipts that are available to the agency for expenditure (\$305 million in FY2001).

- ! prohibit the use of Customs user fees for non-Customs-related activities;
- ! require the Administration to submit a separate budget on Customs' revenue functions within the proposed DHS;
- ! allow certain importers to pay duties and tariffs on a monthly basis;
- ! define "customs revenue function" and related activities, and
- ! require the GAO to report on all trade functions performed by the executive branch.

During Select Committee mark up, several other Customs-related provisions, originally recommended by the Ways and Means Committee, were approved. These additional provisions would:

- ! direct the DHS Secretary to maintain adequate staffing to assure that the agency's revenue services are maintained;
- ! establish reporting requirements to ensure that the level of revenue services provided by Customs prior to enactment are maintained; and
- ! dedicate a portion of merchandise processing fees for the continued development, establishment, and implementation of an Automated Commercial Environment (a computer system to track imports).

All of these provisions were included in the House-passed version of H.R. 5005.

The Senate bill (S. 2452), as most recently revised by the Committee on Governmental Affairs on July 25, 2002, would transfer Customs as a distinct entity to the proposed DHS. Like the House bill, it includes provisions that would leave "customs revenue functions"⁵⁴ authority with the Secretary of the Treasury. The House bill would authorize the Secretary of Treasury to delegate such authority to the Secretary of Homeland Security, while the Senate bill would require that the Secretary of the Treasury exercise this authority with the concurrence of the Secretary of Homeland Security.

Animal and Plant Health Inspection Service (APHIS)⁵⁵

While the INS and Customs Service are the principal border management and inspection agencies, they are assisted in this endeavor by other federal inspection agencies that are charged with protecting the environment, food supply, and public

⁵⁴Both bills would statutorily define "customs revenue functions" to include activities related to the following provisions of law: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreement of 1979; the North American Free Trade Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any of the other provision of law vesting customs revenue functions in the Secretary of the Treasury.

⁵⁵This section was prepared by Jean Rawson and William Krouse.

health. The Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), following INS and Customs, has the largest presence at the border. As a lead inspections agency, nearly 60% of APHIS's staff and 30% of its \$1.2 billion FY2001 budget were dedicated to border inspection-related duties. As such, APHIS has been included in recent proposals to consolidate border management agencies.

Like APHIS, other agencies bring their expertise to bear at the border, as well, supporting the federal inspection services in carrying out their responsibilities related to the environmental and public health quarantine function. They include the Environmental Protection Agency; the Fish and Wildlife Service in the Department of the Interior; the Food Safety Inspection Service in the Department of Agriculture;⁵⁶ and the Food and Drug Administration, the Public Health Service's Commissioned Officer Corps, and the Centers for Disease Control and Prevention in the Department of Health and Human Services.

All of these agencies conduct their inspections-related responsibilities differently. For example, APHIS conducts its inspections at the ports of entry. The FDA, for the most part, analyzes electronic cargo manifests and targets certain shipments for inspection by Customs. The Food Safety Inspection Service conducts off-site inspections at either locations abroad or within the United States. Earlier in the year, the President's Office of Homeland Security had discussed transferring FDA to a DHS.⁵⁷ However, the Administration later only identified APHIS as an agency that should be transferred to the proposed DHS, suggesting that significant coordination with these entities may remain a challenge.

Agriculture's APHIS conducts inspection and quarantine activities at international ports of entry to minimize the risk that agricultural pests and exotic animal and plant diseases will be introduced into the United States. APHIS, however, is also charged with several non-border management responsibilities that include nationwide monitoring of animal and plant health; pest and disease management; animal care; and controlling and eradicating pests and diseases that are harmful to agriculture, wildlife, or public safety.

APHIS and Homeland Security Legislation. The Administration's original plan would have transferred APHIS in its entirety to the proposed DHS. The Select Committee-reported and House-passed bill (H.R. 5005), however, reflect the recommendations made by the House Committee on Agriculture. The bill would transfer APHIS import and entry inspection functions to the proposed DHS, but explicitly exempt the agency's plant and animal quarantine operations. The DHS Secretary would be required to follow APHIS regulations, policies, and procedures concerning border inspections, and the USDA Secretary would retain the authority to make changes in the same, with the requirement to coordinate with the DHS Secretary.

⁵⁶For further information, see CRS Issue Brief, IB10099, *Food Safety and Protection Issues in the 107th Congress*, by Jean Rawson and Donna Vogt.

⁵⁷Booth, William. Where Sea Meets Shore, Scenarios for Terrorists: Nation's Vulnerable Ports Revamp Defenses. *Washington Post*, January 3, 2002. p. A1.

Nonetheless, under H.R. 5005, the DHS Secretary would have the authority to issue directives and guidelines to ensure the effective use of the transferred personnel, pursuant to consultation with USDA. The bill would transfer 3,200 APHIS employees to the new department, and would require USDA to transfer – from the fees it collects from importers for inspection services – sufficient funds to cover the costs incurred by DHS in carrying out agricultural inspection activities at borders and ports of entry.

In addition, H.R. 5005 (as amended) would transfer the Plum Island Foreign Animal Disease Diagnostics Laboratory to the Science and Technology division in the proposed DHS. This lab is currently operated jointly by APHIS and USDA's in-house research agency, the Agricultural Research Service (ARS). A provision in H.R. 5005 would direct the USDA and DHS Secretaries to create an agreement of understanding so that ARS personnel would continue to be able to use the facility.

The Senate committee-modified bill (S. 2452) would transfer the authorities, functions, personnel, and assets that pertain to the entire APHIS agricultural inspection program (including the quarantine function) to the new department. There is no language in the proposal addressing questions of joint administration. However, S. 2452 would not transfer the Plum Island lab to the new department.⁵⁸

Coast Guard and Maritime Security⁵⁹

In recent years, many analysts have identified U.S. vessels, ports, shoreside facilities, and infrastructure as vulnerable to terrorist attacks. Both homeland security bills (H.R. 5005 and S. 2452) would transfer the U.S. Coast Guard to a proposed DHS to enhance border security. In addition, Congress has acted on other separate, but related, measures (S. 1214/H.R. 3983) to enhance seaport security as well.

Background Information on the Coast Guard. Currently located in the Department of Transportation, the U.S. Coast Guard is one of five military services. It contributes to border security in the areas of maritime intervention and seaports and coastal waterways security. Charged with federal law enforcement in both U.S. territorial waters and on the high seas, border security-related missions include multi-agency maritime drug interdiction; illegal migrant interdiction; and regulating foreign fishing vessel transits into the 200-mile U.S. Exclusive Economic Zone (EEZ).

In addition, the Coast Guard is responsible for the search and rescue of those who find themselves in distress in all waters, and icebreaking operations in areas like the Great Lakes to maintain year-round access to those waterways and the polar regions in support of scientific and national security operations. The Coast Guard, with its ports and waterways security mandate, is the federal agency that coordinates

⁵⁸For further information, see CRS Report RL31466, *Homeland Security Department: U.S. Department of Agriculture Issues*, by Jean Rawson.

⁵⁹This section was prepared by Martin Lee and Ron O’Roarke (Coast Guard), and John Frittelli (seaport security).

the inspection and security activities of other federal agencies and local port authorities.⁶⁰

There has been continuing concern over the adequacy of Coast Guard operating resources and the condition of some of its vessels and equipment. The Administration and Congress have significantly increased these resources. For FY2002, Congress earlier in the year appropriated \$5.7 billion for the Coast Guard (including a \$209 million counterterrorism supplemental). This amount funds about 37,000 active-duty personnel, about 6,000 civilian employees, and about 8,000 reserve uniformed personnel. More recently, Congress appropriated for the Coast Guard an additional \$255 million in a supplemental spending measure⁶¹ to further recovery and response to the September 11 terrorist attacks. The President signed this measure on August 2, 2002, bringing total FY2002 Coast Guard funding to over \$6.0 billion.⁶²

As with other agencies, Members of Congress are concerned that, if the Coast Guard is transferred to the proposed DHS, certain non-security functions such as boating safety, search and rescue, and fishing regulation may be de-emphasized. However, a July 12th report by the Brookings Institution argued that institutionally splitting the Coast Guard's security and non-security activities would not be cost effective, since Coast Guard personnel and craft are dual-purpose and most efficiently managed in that mode.⁶³

Coast Guard and Homeland Security Legislation. The Administration's proposal would transfer the Coast Guard to the new department and place it under the proposed Border and Transportation Security division, but the proposal included language that would preserve the Coast Guard as a distinct entity in the new department and mandated that the Coast Guard Commandant report directly to the Secretary of Homeland Security. Meanwhile, the House Committee on Transportation and Infrastructure recommended that the Coast Guard remain in DOT, a new Coast Guard Vice Commandant for Homeland Security be created, and all core missions be performed at adequate levels.⁶⁴ Notwithstanding, the Select Committee-reported and House-passed H.R. 5005 would transfer the Coast Guard in its entirety as a distinct entity to the proposed DHS, like the Administration's plan.

The Lieberman substitute to Senate bill (S. 2452), as approved by the Committee on Governmental Affairs on July 25, 2002, would transfer the Coast

⁶⁰For Further information, see CRS Report RS20924, *Homeland Security: Coast Guard Legislation in the 107th Congress*, by Martin Lee, and CRS Report RS21125, *Homeland Security: Coast Guard Operations-Background and Issues for Congress*, by Ronald O-Rourke. (Hereafter cited as CRS Report RS21125, *Homeland Security*)

⁶¹Public Law 107-206; 116 STAT. 820.

⁶²From FY1992 to FY2001, the Coast Guard budget increased from about \$3.6 to \$5.1 billion

⁶³Daalder, Ivo H., et al. *Assessing the Department of Homeland Security*. The Brookings Institution, Washington, July 2002. p. 14.

⁶⁴For further information, see CRS Report RS21125, *Homeland Security*.

Guard to a Border and Transportation Security directorate of the proposed DHS. Like H.R. 5005, it would require the Commandant to report directly to the Secretary of Homeland Security (and not to the head of the directorate). The Senate bill also includes a provision that is geared towards maintaining the Coast Guard's current missions. Among other things, it would: (1) define the Coast Guard's homeland and non-homeland security missions; (2) prohibit a reduction or transfer of Coast Guard authorities, functions, personnel, and assets; (3) prohibit the modification of the Coast Guard's non-homeland security missions; and (4) require the DHS Inspector General to report annually to the appropriate authorizing and appropriations committees as to the Coast Guard's non-homeland security mission performance. Another provision would authorize appropriations for certain homeland security technology research, and development funds for improving ports, waterways, and coastal security.

Seaport Security Legislation. While the Administration's proposed transfer of the Coast Guard to DHS may address some aspects of security at U.S. seaports, the Senate and House have passed separate measures (S. 1214 and H.R. 3983) addressing this issue in further detail. Even before the September 11 terrorist attacks, an interagency commission issued a report that found, with a few exceptions, the level of security at seaports was poor to fair.⁶⁵ Today, there is heightened concern that a cargo container or ship's hull could be used to transport a weapon of mass destruction to the United States and then be detonated in a major seaport.⁶⁶ While the House-passed bill addresses counter-terrorism principally, the Senate-passed bill addresses drug smuggling, cargo theft, trade fraud, and alien smuggling, in addition to counter-terrorism. Like the homeland security legislation, the port security legislation is on the fast track and a conference agreement may be considered on the House and Senate floor in the near future.

An issue for Congress is how the homeland and seaport security legislation may be overlapping, complementary, or contradictory in their provisions. For example, both of the port security bills would give the Secretary of Transportation and Treasury's Customs Service varying degrees of responsibility for seaport security. In addition, the House-passed bill would give TSA limited counter-terrorism responsibilities in the seaport environment related to cargo containers.⁶⁷

Transportation Security: An Evolving Federal Activity⁶⁸

The Transportation Security Administration (TSA) is an agency in the making. Under its founding legislation, the Aviation and Transportation Security Act

⁶⁵*Report of The Interagency Commission on Crime and Security in U.S. Seaports.* Washington, Fall 2000. p. 169.

⁶⁶For further information, see CRS Report RS21293, *Terrorist Nuclear Attacks on Seaports: Threat and Response*, by John Medalia.

⁶⁷For further information, see CRS Report RL31424, *Maritime and Port Security: A Comparison of Major Provisions of S. 1214 and H.R. 3983*, by John Frittelli.

⁶⁸This section was prepared by Robert Kirk.

(ATSA),⁶⁹ the new agency is to assume the responsibility for the security of *all modes of transportation*. Because aircraft were used as weapons in the September 11 attacks and ATSA's tight aviation security deadlines, it is not surprising that the TSA's early efforts have focused on aviation security.

Meanwhile, the rising TSA budget and estimates of the agency's eventual size have sparked significant controversy. For FY2002, Congress initially appropriated \$1.3 billion for TSA. The agency received another \$1.1 billion transfer from the Federal Aviation Administration, most of whose security functions were transferred to TSA. More recently, Congress appropriated an additional \$3.4 billion for TSA in another supplemental spending act⁷⁰ to further the recovery and response to the September 11 terrorist attacks. These amounts bring the agency's operational FY2002 budget to about \$5.8 billion.

Early estimates of TSA's personnel needs were in the range of 28,000 to 33,000 employees. More recent estimates have been in the range of 60,000 to 70,000 employees. The agency asserts that this increase in funding and personnel is largely an outgrowth of ATSA's tight implementation guidelines and the mandates for a fully federal screener workforce by November 18, 2002, and explosive detection system screening of all checked baggage (which requires the hiring of more screeners) by December 31, 2002. Despite this, some Members of Congress have expressed alarm at the growth in the expected final size of the TSA.

ATSA remains largely silent on how TSA is to assert its authority over the security of the non-aviation modes of transportation. Under ATSA, the design of TSA was influenced significantly by the decision to put the proposed agency in the Department of Transportation. While TSA's security mandate covers both domestic and international transportation, its international transportation security role overlaps with border security. For example, when TSA baggage screeners prevent someone with ill intent from boarding an international flight, this could be viewed as a border security activity. Also, when TSA sky marshals provide security on international flights departing from airports abroad, this could also be viewed as a border security activity. Nonetheless, how TSA's security functions will be merged or coordinated with border management agencies, like INS and Customs, has yet to be specified. The shift of TSA to the proposed DHS may magnify some of the unresolved issues of transportation security.

TSA and Homeland Security Legislation. Like the Administration's original plan, the House-passed H.R. 5005 would transfer TSA to the proposed DHS. Other provisions related to TSA emerged from a contentious mark up meeting of the House Select Committee on Homeland Security on July 22, 2002. Among other things, the bill would require further that the TSA be maintained as a distinct entity within the new Department for 2 years after enactment.

The House bill would also provide a process by which airports that determine they cannot meet the December 31, 2002, deadline for the ATSA requirement that

⁶⁹P.L. 107-71; 115 STAT. 597.

⁷⁰P.L. 107-206; 116 STAT. 820.

all checked baggage be screened by explosive detection systems (EDS), can have up until December 31, 2003, to execute their EDS implementation plans. In addition, the bill prohibits the new department from receiving any funding from the various transportation trust funds.

The Senate bill (S. 2452), as approved by the Committee on Governmental Affairs on July 25, 2002, is more in line with the Administration's plan, and differs from H.R. 5005 significantly in that it transfers the authorities, functions, personnel, and assets of the TSA to the Directorate of Border and Transportation Protection within the new Department, but does not require that the TSA be maintained as a distinct entity. The Senate bill would not extend the EDS deadline or prohibit the use of transportation trust fund revenues for the proposed DHS.⁷¹

Federal Building Security⁷²

The Administration's plan would have transferred the Office of Federal Protective Service (FPS) to the Border and Transportation Security division of the proposed DHS. FPS is currently part of the Public Buildings Service (PBS) at the General Services Administration (GSA). Approximately 7,000 contract security personnel supplement nearly 1,400 FPS employees.⁷³

FPS delivers integrated security and law enforcement services to all federal buildings that GSA owns, controls, or leases, providing protection to federal employees and visitors in 8,300 properties within the United States. Services provided by FPS include:⁷⁴

- ! Providing a visible uniformed presence in major federal facilities
- ! Responding to criminal incidents and other emergencies
- ! Installing and monitoring security devices and systems
- ! Investigating criminal incidents
- ! Conducting physical security surveys
- ! Coordinating a comprehensive program for occupant agencies' emergency plans
- ! Providing formal crime prevention and security awareness programs
- ! Providing police emergency and special security services during natural disasters, major civil disturbances, and other incidents and emergencies

⁷¹For further information, see CRS Report RS21244, *Department of Homeland Security: Should the Transportation Security Administration be Included?*, by Robert S. Kirk.

⁷²This section was prepared by Elaine Halchin.

⁷³Information provided in a facsimile by the Office of Federal Protective Service, May 9, 2002.

⁷⁴General Services Administration. Security and Law Enforcement Services -- Frequently Asked Questions. Available at: [<http://www.gsa.gov/>]. Last visited on August 9, 2002. Click on "FAQs." Click on "Federal Protective Service Information on Chemical, Biological and Bomb Threats." Click on "Office of Federal Protective Service." Click on the document cited above.

It is notable that many agencies are responsible for securing their buildings and protecting their personnel. These include agencies and associated facilities that: (1) are exempted statutorily from GSA's authority; (2) have requested and received a delegation of security authority from GSA; or (3) have independent real property authority.⁷⁵ At the same time, any federal agency may contract with FPS for security services.

FPS and Homeland Security Legislation. Both the Administration's plan and the House-passed H.R. 5005 would transfer FPS to the Border and Transportation Security division. It is unclear why FPS would be moved to a division whose focus is border and transportation security, since the primary function of FPS is the protection of federal facilities and employees. The recently revised version of S. 2452 would place FPS in what some would argue might be a more appropriate location: the proposed Directorate of Critical Infrastructure Protection.

Federal agencies that occupy GSA controlled buildings pay a basic security fee to GSA. Under H.R. 5005, the GSA Administrator would retain the authority to collect such fees and would be authorized to transfer funds from the rents and fees collected by GSA to DHS. The bill also would require that these funds be used solely for the protection of buildings and grounds owned or occupied by federal government entities. Furthermore, it would prohibit the DHS Secretary from obligating amounts in the Federal Buildings Fund.

Issues for Congress

No single department or agency is charged with responding to the threat of terrorism. In response to an increased threat of terrorism, Congress is considering proposals to create a Department of Homeland Security and, within that cabinet-level department, merging several federal agencies charged with overseeing elements of border, transportation, and federal building security into a Border and Transportation Security division or directorate.

Currently located in five different departments, INS, Consular Affairs, Customs, APHIS, and the Coast Guard are the federal agencies charged with what are generally considered core border management missions that would be transferred to this new division. In addition, over 40 other federal agencies are involved in some aspect of border management, but Customs and INS largely carry out their responsibilities at the border. With an evolving transportation security mission, the fledgling TSA would also be transferred from the Department of Transportation to the new division. Lastly, the Federal Protective Service, which handles security for buildings owned, operated, and leased by the GSA, would be transferred to the new division/directorate under the both the House-passed and the Senate committee modified bills.

⁷⁵Twenty-six agencies have independent real property authority. The list includes, for example, all 13 executive departments, the Federal Emergency Management Agency, the General Services Administration, and the U.S. Postal Service. (U.S. Department of Justice, *Vulnerability Assessment of Federal Facilities*. Washington, DC, U.S. Department of Justice, 1995. p. H-2.)

The Department of Homeland Security model has strong support, particularly in regard to border security and management. Supporters point to fragmented authorities, overlapping jurisdictions, duplicated efforts, and interagency rivalries among the key border management agencies. Moreover, there is strong consensus that greater information sharing, inter-agency coordination, and shortened lines of command and control are imperative to respond more decisively to the new terrorist threat. Yet, hard questions remain concerning current proposals to consolidate these agencies.

Would Border Security Be Improved? It remains an open question for some whether consolidating border management agencies (INS, Customs, APHIS, and Coast Guard), TSA, and the Federal Protective Service under a single division at the proposed DHS would improve border, transportation, and federal building security in either the short or long run.

In the short run, would launching such a large-scale reorganization make the country more vulnerable to terrorist attacks by disrupting these agencies, fragmenting their resources, and distracting their attention from more immediate threat responses and related initiatives? As follow-on issues: What steps could be taken to maintain an increased focus on counterterrorism and border security while consolidating these agencies? How could any disruption to legitimate travel and commerce caused by an increased focus on counterterrorism be mitigated?

In the long run, after the physical consolidation of these agencies has been completed, there could still be many integrative and harmonization of operations steps that would be necessary. How would these agencies (even in the same division) share information needed for border security? How would agreements be struck to more effectively integrate the border inspection activities? How would coordination be improved with the multiple agencies that are left out of the consolidation?

Would It Be Cost Effective? The Administration maintains that its proposed reorganization will achieve savings by eliminating redundancies. Several outside observers, including Congressional Budget Office⁷⁶ and General Accounting Office,⁷⁷ disagree with this assessment, however. Several questions arise here. Would costs really be reduced through eliminating redundancies, or would it be necessary to increase spending to more fully integrate disparate systems and operations? Or, alternatively, would it be more effective to allocate increased

⁷⁶Based on the assumption that the necessary amounts were appropriated, CBO estimates that implementing H.R. 5005 would cost about \$4.5 billion over the FY2003 to FY2007 period, and estimated that implementing S. 2452 would cost about \$10.6 billion over the same time period. These amounts are in addition to the funding necessary to maintain the ongoing activities of the transferred agencies. Neither estimate broke out costs associated with establishing the Border and Transportation Security division/directorate. To view these estimates in their entirety, visit [<http://www.cbo.gov/CESearch.htm>,], click on “cost estimates,” and search these bills.

⁷⁷U.S. General Accounting Office, GAO-02-957T, *Homeland Security: Critical Design and Implementation Issues*, Statement of David Walker Comptroller General of the United States, (Washington: July 17, 2002), p. 20. [<http://www.gao.gov/new.items/d02957t.pdf>]

funding to more immediate border security-related initiatives, such as continuing the development and implementation of automated interoperable information systems that track persons and merchandise (possibly international terrorists and instruments of terror) entering the United States, or putting additional inspectors and agents on the border?

Should Both Immigration Services and Enforcement Be Transferred? Congress has already considered proposals to restructure the INS by separating the agency's enforcement and service functions. The Administration, meanwhile, has supported the separation of these functions, but wants them to remain in a single immigration agency. Where these functions should reside is a difference between the House and Senate homeland security bills. The House would place the immigration enforcement functions in the new department, leaving the immigration service functions in DOJ. The Senate bill would create separate immigration enforcement and service bureaus, but would house both bureaus in a stand-alone Directorate of Immigration Affairs in the new department. If located in separate departments, would this exacerbate coordination problems between agencies charged with administering the Immigration and Nationality Act? How would inter-departmental/inter-bureau coordination be achieved? Which bureau, immigration enforcement or services, would maintain shared immigration information systems? Or, would it be necessary to develop separate, but interoperable systems? On the other hand, if both the enforcement and service functions were transferred to the new department, would the service functions suffer?

Should the Authority for Visa Issuance and/or Consular Affairs Be Transferred? Under current law, the Secretary of State plays a pivotal role in administering and enforcing immigration policy. Both pending homeland security proposals would transfer the Secretary of State's general authority over visa issuance policy to the Homeland Security Secretary. If this is done, some may question whether the Bureau of Consular Affairs' visa issuance function should be transferred from the Department of State to the proposed DHS as well. If so, should the passport issuance function be transferred as well? In either case, issues relating to administrative feasibility or coordination may be raised.

How Can The Customs Revenue Functions Be Maintained? As the "frontline" border management agency, all proposals to create a DHS envision transferring the U.S. Customs Service in its entirety to the new department, though both the House-passed bill and the Senate committee-modified bill give the Secretary of the Treasury continued authority for "customs revenue functions." Many in the "importing community," however, fear that transferring Customs to this new department would result in a de-emphasis on facilitating legitimate cross-border commerce and travel. Would transferring Customs to the proposed DHS impede legitimate cross-border commerce and travel, harming national economic growth and well being? What steps would be taken to ensure that both security and commerce goals are balanced and met?

Should APHIS Non-Border Inspection Activities Be Transferred? The House-passed bill, unlike the Senate committee-modified bill, would dismantle the APHIS, sending its border inspection responsibilities and attributable personnel and assets to the new department. If this transfer is effected, would the inspectors

charged with these responsibilities maintain the same level of expertise as when they were with the Department of Agriculture?

What About the Coast Guard's Non-Border Security Missions?

While the Coast Guard plays a pivotal role in providing border security, this agency carries out many other missions as well. If the Coast Guard is transferred to the proposed DHS, would certain non-security missions such as boating safety, search and rescue, and fishing regulation receive appropriate attention?

Should Seaport Security Be Addressed in the Context of Homeland Security?

Congress is considering legislation to improve seaport security. Both versions of the House- and Senate-passed seaport security bills would give the Secretary of Transportation and Treasury's Customs Service varying degrees of responsibility for seaport security. In addition, the House-passed bill would give TSA limited counter-terrorism responsibilities in the seaport environment related to cargo. In terms of homeland and seaport security, Congress may examine where these proposals are overlapping, complementary, or contradictory.

Should Transportation Security Be Matched with Border Security?

Congress created and charged the Transportation Security Administration with securing *all modes of transportation*. While it could be argued that TSA's security mandate overlaps with border security, the extent of this overlap has yet to be determined, since providing transportation security as a federal activity is still evolving. However, it is clear that the vast majority of TSA's counterterrorism efforts will be directed toward protecting *domestic* transportation. Moreover, in the near future, this fledgling agency will likely turn its attention to providing security for non-aviation modes of transportation. Should the proposed DHS have a stand-alone division charged exclusively with transportation security?

Should The New Division Also Be Responsible for Some Federal Building Security? The Federal Protective Service is a relatively small agency charged with providing law enforcement services in GSA buildings. Has the rationale for including this agency in DHS been spelled out?

In summation, increased information sharing, greater inter-agency coordination, and shortened lines of command and control are in principle objectives that, if achieved, will enhance the federal government's ability to respond to terrorist threats and to prevent terrorist attacks. Notwithstanding these objectives about which there is widespread agreement, serious questions remain as to the long and short term benefits of a large scale consolidation of federal agencies charged with border, transportation, and federal building security.