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## **Homeland Security Financial Accountability Act: History and Recent Developments**

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# Homeland Security Financial Accountability Act: History and Recent Developments

## Summary

Prior to the enactment of the Department of Homeland Security (DHS) Financial Accountability Act (P.L. 108-330), the DHS was the only federal cabinet department not included under the Chief Financial Officers (CFO) Act of 1990. DHS had a CFO, but the position was not subject to Senate confirmation.

In the 108<sup>th</sup> Congress, S. 1567, to bring DHS under the CFO Act, passed the Senate on November 21, 2003, and a related bill, H.R. 4259, was approved by the House on July 20, 2004. Supporters of the DHS Financial Accountability Act contended that the CFO Act and related laws should apply consistently across the executive branch, and that the “unequal” status initially accorded the CFO in DHS denigrated the CFO position and the importance of financial management in DHS. Proponents also argued that the CFO position, with its fiduciary responsibilities, carries with it special needs for accountability which Senate confirmation reinforces.

On the other hand, at the beginning of the 108<sup>th</sup> Congress the Bush Administration continued to oppose bringing the DHS CFO under the CFO Act, on grounds of special managerial principles for the new DHS, and, subsequently, from the rationale of reducing the number of positions subject to Senate confirmation. By the summer of 2004, however, the Administration’s opposition to the legislation appeared to have lessened. On September 29, 2004, under unanimous consent in the Senate, H.R. 4259 was discharged from the Governmental Affairs Committee, and the bill was then passed. The Department of Homeland Security Financial Accountability Act was signed into law on October 16, 2004 (P.L. 108-330).

As enacted, H.R. 4259 brings the CFO in DHS directly under the CFO Act, as amended. The new law also serves to bring DHS under the Government Management Reform Act of 1994 and the Federal Financial Management Improvement Act of 1996, and makes the CFO in DHS a statutory member of the Chief Financial Officers Council. There is a dual reporting framework for the CFO in DHS — to the head of the department (as in all the other CFO Act agencies) and, concurrently, to the Under Secretary for Management (the prior arrangement for the CFO in DHS). The measure requires an audit of internal controls over financial reporting in DHS after FY2005. H.R. 4259 as enacted creates an Office of Program Analysis and Evaluation within DHS, requires DHS to prepare a Future Years Program and a Security Strategy Report for Congress, and requires a joint study by the CFO Council and the President’s Council on Integrity and Efficiency (PCIE) of the costs and benefits of having all CFO agencies obtain audit opinions of their internal controls. Finally, the new law requires that specified DHS authorizing committees receive notification 15 days in advance of transfer and reprogramming actions.

This report will not be further updated.

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# Homeland Security Financial Accountability Act: History and Recent Developments

## Background Prior to the 108<sup>th</sup> Congress

The Chief Financial Officers (CFO) Act of 1990<sup>1</sup> sought to improve financial management practices by establishing a new leadership structure for federal financial management.<sup>2</sup> The framework created by the law included two new positions within the Office of Management and Budget and 23 chief financial officers (CFO) and deputy CFOs in major executive departments and agencies.<sup>3</sup> Of the 23 CFO positions, 16 were filled by presidential appointees, as confirmed by the Senate. CFO positions subject to confirmation included those in the 14 cabinet-level departments (excluding the Department of Homeland Security or DHS), the Environmental Protection Agency, and the National Aeronautics and Space Administration. The remaining seven CFO positions (for the Agency for International Development, General Services Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, and Social Security Administration), along with all 23 deputy CFO positions, were career positions, filled by agency head appointment.

The Homeland Security Act of 2002 provided for a CFO position in the new department.<sup>4</sup> Unlike the appointment procedure for CFOs in other cabinet-level departments, however, the CFO in the Department of Homeland Security was appointed by the President, but not subject to Senate confirmation. With respect to specific duties and responsibilities of the CFO for DHS, Section 103(e), Performance of Specific Functions, stated: “Subject to the provisions of this Act, every officer of the Department [the CFO included] shall perform the functions specified by law for

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<sup>1</sup> 104 Stat. 2838; codified as amended at 31 U.S.C., Chapters 5, 9, 11, and 35; also 5 U.S.C. 5313-5315, 38 U.S.C. 201 nt, and 42 U.S.C. 3533.

<sup>2</sup> For additional discussion of the CFO Act and related financial management laws, see CRS Report RL31965, *Financial Management in the Federal Government: Efforts to Improve Performance*, by (name redacted).

<sup>3</sup> There were originally 23 CFO agencies, but when the Social Security Administration was established as an independent agency, pursuant to the Social Security Independence and Program Improvements Act of 1994 (108 Stat. 1467), an additional CFO position was created, bringing the total to 24. When the Department of Homeland Security was created, the Federal Emergency Management Agency (FEMA) was merged into it, along with FEMA’s CFO position, bringing the total back to 23 CFOs. With enactment of the DHS Financial Accountability Act, as detailed below, there are now 24 CFOs.

<sup>4</sup> P. L. 107-296, Sec. 103; 116 Stat. 2145.

the official's office or prescribed by the Secretary.”<sup>5</sup> The law made no reference to the CFO Act or to Chapter 9 of Title 31. In addition, unlike all the other CFOs, who report directly to the agency head, the CFO for DHS might report to the Secretary, or to “another official of the Department, as the Secretary may direct.”<sup>6</sup>

Although the act establishing DHS did not place the new CFO position under Chapter 9 of Title 31, the issue was addressed in both chambers during consideration of the legislation in the 107<sup>th</sup> Congress. In the Senate, the initial measure to create DHS (S. 2452 in the 107<sup>th</sup> Congress), as approved by the Governmental Affairs Committee in May 2002, did not include a requirement that the new department be subject to the CFO Act. Likewise, in June 2002, when another bill to create a DHS (H.R. 5005 in the 107<sup>th</sup> Congress) was introduced in the House, the requirement was absent. As debate concerning specific provisions in the measures continued into the summer, there were efforts to establish linkage to the CFO Act for the proposed CFO position in DHS. The Senate Governmental Affairs Committee adopted a substitute amendment to S. 2452 on July 25, 2002, offered by then-Chairman Joseph Lieberman, “that would have made the Department of Homeland Security subject to the CFO Act. Also in July 2002, Representative Stephen Horn offered a similar amendment during the House Government Reform’s consideration of H.R. 5005, which the Committee approved.”<sup>7</sup> H.R. 5005, as passed by the House on July 25, 2002, contained in Section 911 conforming and technical amendments to Chapter 9 of 31 U.S.C. to add DHS to the list of agencies covered by the CFO Act.

## Initial Developments in the 108<sup>th</sup> Congress

On March 1, 2003, the Department of Homeland Security became the 15<sup>th</sup> department in the federal government when 22 separate agencies were merged into the new entity. Some of the agencies transferred to DHS came with known serious financial management problems. For example, four of the major agencies transferred — the Immigration and Naturalization Service, Transportation Security Administration, Customs Service, and Federal Emergency Management Agency — had a total of 18 material weaknesses in internal control reported by auditors for FY2002.<sup>8</sup>

Following establishment of DHS, awareness grew of the linkages between the CFO Act and other laws enacted as amendments to it. Since the CFO in DHS was not formally under the CFO Act, DHS was not covered by the Federal Financial Management Improvement Act (FFMIA) of 1996 (110 Stat. 3009-389), which amended the CFO Act. FFMIA requires agencies subject to the CFO Act to

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid., Sec. 702, 116 Stat. 2219.

<sup>7</sup> U.S. Congress, Senate Committee on Governmental Affairs, *Department of Homeland Security Financial Accountability Act*, report to accompany S. 1567, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 108-211 (Washington: GPO, 2003), p. 4.

<sup>8</sup> U.S. General Accounting Office, *Department of Homeland Security: Challenges and Steps in Establishing Sound Financial Management*, GAO-03-1134T (Washington: Sept. 10, 2003), p. 2.

implement and maintain financial management systems that comply substantially with federal financial management systems requirements, applicable federal accounting standards, and the federal government's standard general ledger at the transaction level. Under FFMIA, auditors report on compliance with these requirements in the annual financial statement audits. Agency CFOs subject to the CFO Act, along with their deputies, are members of the Chief Financial Officers Council, established "to advise and coordinate the activities of the agencies of its members on such matters as consolidation and modernization of financial systems, improved quality of financial information, financial data and information standards, internal controls, legislation affecting financial operations and organizations, and any other financial management matter." The CFO in DHS was not a statutory member of the Council.

In summer 2003, legislation was introduced, with bipartisan support, relating to the status of the CFO in DHS. On July 24, Representative Todd Platts, chair of the Subcommittee on Government Efficiency and Financial Management, introduced H.R. 2886, the Department of Homeland Security Financial Accountability Act; cosponsors included the vice chair and ranking member of the subcommittee and the chair and ranking member of the Committee on Government Reform. In introducing the bill, Representative Platts noted that provisions in H.R. 2886 would put the CFO in DHS "on the same footing as the CFOs at the rest of the cabinet-level departments by ensuring that the Department's CFO is a presidential appointee subject to Senate confirmation, that the CFO reports directly to the Secretary, and that the CFO is a part of the statutorily created CFO Council."<sup>9</sup> A companion bill, S. 1567, was introduced by Senator Peter Fitzgerald, chair of the Subcommittee on Financial Management, the Budget, and International Security, on August 1, 2003, with the subcommittee's ranking member as a cosponsor. Senator Fitzgerald noted that while DHS Secretary Tom Ridge had testified that the department would make every effort to adhere to provisions of the CFO Act, as amended, passage of S. 1567 "will ensure that future secretaries and future administrations also will comply with the CFO Act."<sup>10</sup>

## Senate Action

On October 22, 2003, the Governmental Affairs Committee met to consider S. 1567 and adopted by voice vote an amendment in the nature of a substitute, and then ordered the amended bill to be reported to the full Senate.<sup>11</sup> The bill was reported on November 20, 2003, and passed the Senate by unanimous consent the following day.<sup>12</sup>

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<sup>9</sup> Rep. Todd Platts, "Introducing the Department of Homeland Security Financial Accountability Act," *Congressional Record*, daily edition, vol. 149, July 25, 2003, p. E1587.

<sup>10</sup> Sen. Peter Fitzgerald, remarks in the Senate, *Congressional Record*, daily edition, vol. 149, Aug. 1, 2003, p. S10916.

<sup>11</sup> Greta Wodele, "Senate Panel Institutes Financial Accountability at Homeland Security Department," at [<http://nationaljournal.com/members/markups/2003/10/200329506.htm>].

<sup>12</sup> "Department of Homeland Security Financial Accountability Act," vote in the Senate, (continued...)

A written report was filed on November 25, 2003.<sup>13</sup> In discussing S. 1567, the report stated: “Application of the CFO Act to the Department of Homeland Security is essential to ensure that the newest, and one of the largest, Cabinet-level departments in the Federal Government adheres to the same financial management reporting requirements and standards that other agencies must follow and that were developed over more than a decade.” In addition to the CFO requirements, the Senate bill would have required DHS to produce audit opinions on internal controls for financial reporting; this goes beyond current guidance in OMB Bulletin 01-02 for agencies simply to obtain testing and report on internal controls. According to the report, such a requirement for an audit opinion “will provide assurances that the Department’s internal controls are effective in deterring fraudulent financial reporting, protecting assets, and providing an early warning of significant control weaknesses.”<sup>14</sup>

### **Subsequent House Action in 2003**

The legislative history of H.R. 2886 in the House was more complex, since the bill was jointly referred and two committees became involved, the Committee on Government Reform and the Select Committee on Homeland Security. On September 10, 2003, the Subcommittee on Government Efficiency and Financial Management held a hearing on “Developing Sound Business Practices at the Department of Homeland Security.” Testimony was received from OMB, GAO, and DHS.<sup>15</sup> On September 24, 2003, the subcommittee voted to report H.R. 2886 to the full committee, after adopting an amendment in the nature of a substitute, offered by Subcommittee Chair Platts, unanimously by voice vote. The Platts substitute modified dates in the original bill, by delaying the requirement for DHS to obtain an audit opinion on its internal controls until FY2005 and moving up the preparation and audit of DHS’s first financial statements to FY2003 (by removing an extension waiver provision). The third change in the substitute version entailed a new requirement that the CFO Council and the President’s Council on Integrity and Efficiency undertake a joint study assessing potential costs and benefits if all of the CFO agencies were required to obtain audit opinions of their internal controls.

On October 8, 2003, the Select Committee on Homeland Security held a hearing on “Review of Homeland Security’s Financial Accountability and Performance Evaluation Process to Examine Waste, Fraud, and Abuse,” and received testimony from DHS, OMB, and private sector witnesses.<sup>16</sup> On October 30, 2003, the select committee voted to report H.R. 2886 favorably, after agreeing to a substitute amendment offered by Chairman Cox; both actions were taken unanimously, by

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<sup>12</sup> (...continued)

*Congressional Record*, daily edition, vol. 149, Nov. 21, 2003, pp. S15499-S15500.

<sup>13</sup> See S.Rept. 108-211 (Washington: GPO, 2003).

<sup>14</sup> *Ibid.*, p. 4.

<sup>15</sup> Statements available at [<http://reform.house.gov/GEFM/Hearings/EventSingle.aspx?EventID=403>].

<sup>16</sup> Statements available at [[http://hsc.house.gov/testimony1.cfm?get\\_archive=yes](http://hsc.house.gov/testimony1.cfm?get_archive=yes)].

voice vote. The Cox amendment incorporated the changes included in the Platts substitute. H.R. 2886 emerged from markup by the select committee with additional provisions as well:

- new section on “findings of Congress,” presenting a rationale for strong and effective financial management policies and practices in DHS;
- new reporting requirement for DHS Secretary to submit to Congress an annual comprehensive report on U.S. homeland security strategy;
- creation of a new Office of Program Analysis and Evaluation within DHS, to link financial management and budgeting with program analysis and evaluation, and modeled on the system currently utilized by the Department of Defense;
- notice of appropriations reprogramming actions to include the House Select Committee on Homeland Security and the Senate Committee on Government Affairs;<sup>17</sup>
- arrangement whereby the CFO in DHS would report to the Secretary regarding financial management matters and to the Under Secretary for Management regarding other responsibilities of the CFO.

The select committee filed a written report to accompany H.R. 2886 on November 12, 2003; with respect to background and need for the legislation, the report stated, in part, “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.”<sup>18</sup>

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<sup>17</sup> Reprogramming entails the shifting of funds from one purpose to another within an appropriations account during the implementation phase of the federal budget process. Unlike a transfer of funds, which involves shifting of budgetary resources from one appropriations account to another, reprogramming does not require statutory authorization. In an effort to facilitate congressional oversight of reprogramming actions, appropriations subcommittees, and sometimes authorizing committees as well, may establish rules and procedures for reprogramming. Typically such guidelines involve formal agency notification to stipulated congressional committees prior to implementing the reprogramming and are included in committee reports accompanying appropriations bills. Less commonly, reprogramming procedures may be incorporated in statutory language, as is the case for DHS. The Department of Homeland Security Appropriations Act, 2004, requires that the House and Senate Appropriations committees be notified 15 days in advance of certain reprogramming actions (P.L. 108-90, Sec. 503; 117 Stat. 1152-53). One of the provisions added to H.R. 2886, during markup by the Select Committee on Homeland Security, would extend the requirement of notification to include the select committee along with the Senate Governmental Affairs Committee. H.R. 4259 added the House Government Reform Committee to the list.

<sup>18</sup> U.S. Congress, House Select Committee on Homeland Security, *Department of Homeland Security Financial Accountability Act*, report to accompany H.R. 2886, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., (continued...)

Meanwhile, on November 6, 2003, the Government Reform Committee voted to report H.R. 2886, as amended, favorably; the voice vote was unanimous. At markup the full committee considered the version of the bill as marked up at the Government Efficiency Subcommittee, absent the additional changes resulting from markup by the select committee.<sup>19</sup>

## House Action in 2004

On May 4, 2004, Representative Platts introduced H.R. 4259, a bill representing a revised version of the DHS Financial Accountability Act, to supersede H.R. 2886. The new bill, characterized as a consensus measure, was cosponsored by the vice chair and ranking member of the Subcommittee on Government Efficiency and Financial Management and by the chairs and ranking members of the Government Reform Committee and Select Committee on Homeland Security. Administrative concerns apparently prompted this action, since both Government Reform and Homeland Security reported H.R. 2886 favorably in the fall of 2003, but with differing amendments. “It was just cleaner to introduce a new bill,” a committee staff member explained.<sup>20</sup> On May 6, 2004, the Government Reform Committee reported H.R. 4259 favorably, by voice vote.<sup>21</sup> The ranking Democrat on the full committee, Representative Henry Waxman, characterized the legislation as “the product of a serious, productive conversation that includes compromises from all sides.”<sup>22</sup> H.R. 4259 was also referred to the Select Committee on Homeland Security, but on May 19, 2004, the chair waived further consideration of the bill by the select committee.<sup>23</sup> The four major additions to H.R. 2886 as reported by the select committee were retained in the new measure.

On July 20, 2004, H.R. 4259 passed the House under suspension of the rules.<sup>24</sup> Representative Platts commended DHS for its efforts in being fiscally responsible: “Although they [DHS Secretary Tom Ridge and other administration officials] are not required to comply with the CFO Act, they have made a determined effort to do

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<sup>18</sup> (...continued)

H.Rept. 108-358, part 1 (Washington: GPO, 2003), p. 5.

<sup>19</sup> U.S. Congress, House Committee on Government Reform, *Department of Homeland Security Financial Accountability Act*, report to accompany H.R. 4259, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-533, part 1 (Washington: GPO, 2004), p. 4.

<sup>20</sup> Cited by Amelia Gruber, “House Committee Advances DHS Financial Accountability Bill,” GovExec.com, May 6, 2004.

<sup>21</sup> A written report was filed on June 9, 2004. See U.S. Congress, House Committee on Government Reform, *Department of Homeland Security Financial Accountability Act*, report to accompany H.R. 4259, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-533, part 1 (Washington: GPO, 2004).

<sup>22</sup> Cited by Zach Patton, “Reform Panel Raises Homeland Security Department Accounting Standards,” *Congress Daily*, May 6, 2004.

<sup>23</sup> The letter from Chairman Cox is included in H.Rept. 108-533, part 1, p. 7.

<sup>24</sup> Department of Homeland Security Financial Accountability Act, vote in the House, *Congressional Record*, daily edition, vol. 150, July 20, 2004, p. H6074.

so and are setting a good example.” Enactment of H.R. 4259, nonetheless, was necessary, according to Representative Platts, in order to ensure DHS compliance with provisions in the CFO Act, as amended, in the future.<sup>25</sup> Representative Towns, the ranking member of the Government Efficiency Subcommittee, likewise urged passage of H.R. 4259, noting, in concluding his remarks, “This is a necessary step forward if we are to develop an efficient and effective agency that is ready to achieve its purposes of protecting our citizens, infrastructure, and borders.”<sup>26</sup>

H.R. 4259 (subsequently enacted as P.L. 108-330) sought to amend Chapter 9 of 31 U.S.C. to bring DHS under the CFO Act and subsequent amendments, such as FFMIA. The CFO for DHS would be appointed by the President, subject to Senate confirmation, and would serve as a member of the CFO Council. H.R. 4259 would require DHS to obtain annual audit opinions on its internal controls over financial reporting after FY2005.<sup>27</sup> The report from the Government Reform Committee accompanying H.R. 4259 noted the importance of the requirement for an opinion-level audit of DHS’ internal controls:

Currently, audit guidance from OMB requires a report on internal controls in conjunction with annual financial audits. Having an auditor issue an opinion on the internal controls report would help uncover inherent weaknesses and address problems as business practices are being established, before they become ingrained. Strong internal controls are essential to sound management.<sup>28</sup>

An important modification in H.R. 4259 from S. 1567 and the earlier House bill as reported by the Government Reform Committee in 2003 was a dual reporting structure for the DHS CFO, who would report both to the DHS Secretary (akin to other cabinet-level CFOs) and concurrently to the Under Secretary for Management (the arrangement for the CFO in DHS prior to enactment of P.L. 108-330). H.R. 4259 also would create an Office of Program Analysis and Evaluation within DHS, and would require DHS to prepare a Future Years Program and a Security Strategy Report for Congress. Further, the House-passed bill would require the Chief Financial Officers Council and the PCIE jointly to conduct a study of the costs and benefits of having all CFO agencies obtain audit opinions of their internal controls. Finally, H.R. 4259 would require that the House Government Reform Committee, the Senate Governmental Affairs Committee, and the Homeland Security Select Committee receive notification 15 days in advance of transfer and reprogramming actions.<sup>29</sup>

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<sup>25</sup> Rep. Todd Platts, *ibid.*, p. H6073.

<sup>26</sup> Rep. Edolphus Towns, *ibid.*, H6074.

<sup>27</sup> Currently CFO Act agencies undergo annual audits of their financial statements, but are not required to have formal audit opinions of their internal controls.

<sup>28</sup> H.Rept. 108-533, part 1, p. 2.

<sup>29</sup> Previous language, originating in the markup by the select committee, which extended the requirement for reprogramming notification to two of the authorizing committees, did not include the House Government Reform Committee.

## Other Considerations

The Senate version of the DHS Financial Accountability Act (S. 1567) passed the Senate on November 21, 2003, and a related bill (H.R. 4259) was approved by the House on July 20, 2004. The legislation appeared to enjoy considerable support; as noted in testimony by GAO:

The goals of the CFO Act and related financial reform legislation, such as FFMI, are to provide Congress and agency management with reliable financial information for managing and making day-to-day decisions and to improve financial management systems and controls to properly safeguard the government's assets. DHS should not be the only cabinet-level department not covered by what is the cornerstone for pursuing and achieving the requisite financial management systems and capabilities in the federal government.<sup>30</sup>

Supporters also contended that the CFO Act and related laws should apply consistently across the executive branch, and that the “unequal” status previously accorded the CFO in DHS denigrated the CFO position and the importance of financial management in DHS. The CFO position, with its fiduciary responsibilities, carried with it special needs for accountability, which Senate confirmation reinforces, proponents argued.

On the other hand, the Bush Administration had opposed bringing the DHS CFO under the CFO Act, on grounds of special managerial principles for the new DHS and, subsequently, from the rationale of reducing the number of positions subject to Senate confirmation. As an OMB official testified in September 2003 regarding application of the CFO Act to DHS:

It is OMB's position that the substantive provisions of the CFO Act should apply to the new Department of Homeland Security.... However, the CFO Act specifies an organization structure — direct reporting of the CFO to the agency head — that is inconsistent with the structure Congress endorsed when it passed the Homeland Security Act of 2002. The Homeland Security Act enacted the President's proposal to consolidate management responsibilities at the new Department under the Under Secretary for Management.... Requiring the CFO at ... [DHS] to report directly to the Secretary of Homeland Security would dilute this principle.

The Administration is also working with Congress to reduce the number of officials subject to confirmation by the Senate, and therefore opposes making the CFO subject to confirmation by the Senate.<sup>31</sup>

Andrew Maner, currently serving as CFO for DHS, along with his predecessor, Bruce Carnes, had maintained that, however well-intentioned the legislation, it was unnecessary. In testimony before a House subcommittee in March 2004, Mr. Maner stated:

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<sup>30</sup> GAO-03-1134T, p. 2.

<sup>31</sup> Statement of Linda M. Springer before the Subcommittee on Government Efficiency and Financial Management, Sept. 10, 2003. Available at [[http://house.gov/UploadedFiles/springer\\_testimony0910.pdf](http://house.gov/UploadedFiles/springer_testimony0910.pdf)].

Like many others, I appreciate and applaud the objectives of H.R. 2886... That said, I do believe that much of what is contemplated in the legislation may not be critical or necessary to DHS at this juncture.... [T]his legislation will not alter the way in which I perform my job, nor will it provide me any tools, reporting structures, or other authorities that I do not have today.<sup>32</sup>

Concern was also voiced about the potential cost of conducting audits of internal controls in DHS, as well as creating a new Office of Program Analysis and Evaluation, and imposing additional planning and reporting requirements on DHS.

On July 8, 2004, the Senate Subcommittee on Financial Management, the Budget, and International Security held a hearing focusing on the federal government's consolidated financial statements and on financial management at the Departments of Defense and Homeland Security. In his opening statement, Chairman Fitzgerald referred to the legislation to bring the CFO position in DHS under the 1990 statute, noting "We look forward to hearing from our witnesses on their views regarding the importance of applying the CFO Act to DHS."<sup>33</sup>

Testimony from DHS CFO Andrew Maner at the Senate subcommittee hearing in July arguably might be construed as indicative of a lessening of the Administration's opposition to the legislation. Unlike prior statements from Administration officials, which suggested that the DHS Financial Accountability Act was unnecessary and undesirable, in July, Mr. Maner stated:

As CFO of DHS, I commend all relevant efforts by the executive and legislative branches, including those of the chairman [Senator Fitzgerald] and Mr. Akaka [ranking minority member of the subcommittee] with S. 1567 ... to make our controls tighter and to provide financial managers better tools to complete our mission more efficiently and effectively.<sup>34</sup>

Further, Mr. Maner's July testimony did not reiterate the Administration's previous objections to bringing DHS directly under the CFO Act, especially with regard to the framework for Senate confirmation and administrative placement of the CFO. One might surmise that the absence of such commentary in July reflected tacit acceptance of the dual reporting arrangement for the CFO in DHS, as developed in the House.<sup>35</sup> Mr. Maner cited one remaining objectionable provision in S. 1567 —

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<sup>32</sup> Statement of Andrew B. Maner before House Subcommittee on Government Efficiency and Financial Management, March 10, 2004. Available at [[http://house.gov/UploadedFiles/Maner\\_Testimony.pdf](http://house.gov/UploadedFiles/Maner_Testimony.pdf)].

<sup>33</sup> Statement of Sen. Peter Fitzgerald before the Senate Subcommittee on Financial Management, the Budget, and International Security, July 8, 2004. Available at [<http://govt-aff.senate.gov/index.cfm?Fuseaction=Hearings.Testimony&TestimonyID=633&HearingID=188>].

<sup>34</sup> Statement of Andrew B. Maner, *ibid.*

<sup>35</sup> The dual reporting language emerged in the fall of 2003, during consideration of H.R. 2886 by the House Select Committee on Homeland Security, as an apparent attempt to craft a compromise provision acceptable to the Administration. Conversation between the author (continued...)

the requirement for an opinion audit of DHS’s internal controls, beginning in FY2005 — stating, in part, “Such an audit could be costly in dollars and staff time and may not bring the level of benefits to the agency that it might be intended to provide.”<sup>36</sup> Therefore, he recommended postponing the effective date of the audit of internal controls until at least FY2006, as provided in the House version.<sup>37</sup>

## Comparison of House and Senate Bills

**Table 1** provides an overview of major provisions in the DHS Financial Accountability Act, as initially passed by the Senate in 2003 (S. 1567) and by the House (H.R. 4259).

**Table 1. Comparison of Major Provisions in House-Passed and Senate-Passed Versions of the DHS Financial Accountability Act**

Issue	Found in H.R. 4259	Found in S. 1567
Amend 31 USC 901(b) to place CFO in DHS directly under the CFO Act	Yes	Yes
Reporting Framework	Dual (to DHS Secretary and also to Under Secretary for Management)	Only to Secretary
Audit of DHS internal controls for financial reporting	Yes, <i>after</i> FY2005	Yes, <i>starting</i> FY2005
Create new Office of Program Analysis and Evaluation in DHS	Yes	No
DHS to prepare Future Years Program and Security Strategy Report	Yes	No
Joint study by CFO Council and PCIE of costs/benefits of requiring audits of internal controls for all CFO agencies	Yes	No
Notify DHS authorizing committees 15 days in advance of transfer and reprogramming actions	Yes	No

<sup>35</sup> (...continued)  
and staff of the select committee, Oct. 29, 2003.

<sup>36</sup> *Ibid.*

<sup>37</sup> H.R. 4259 would require DHS to include audit opinions of internal controls over its financial reporting “... only for fiscal years after fiscal year 2005.” See *Congressional Record*, daily edition, vol. 150, July 20, 2004, p. H6072.

Both versions of the DHS Financial Accountability Act, as initially passed by the Senate (S. 1567) and by the House (H.R. 4259), would have brought the CFO in DHS directly under the CFO Act, as amended. This would also have brought DHS under the Government Management Reform Act of 1994 and the Federal Financial Management Improvement Act of 1996, and would have made the CFO in DHS a statutory member of the Chief Financial Officers Council. The House-passed version, however, provided a dual reporting framework for the CFO in DHS — to the head of the department (as in all the other CFO Act agencies) and, concurrently, to the Under Secretary for Management (the initial arrangement for the CFO in DHS).

Both measures would have required an audit of internal controls over financial reporting in DHS, although the timing in the two bills differed (beginning with FY2005 in S. 1567 and after FY2005 in H.R. 4259). The House bill also contained additional provisions not found in the Senate version. H.R. 4259 also would have created an Office of Program Analysis and Evaluation within DHS, would have required DHS to prepare a Future Years Program and a Security Strategy Report for Congress, and would have required a joint study by the CFO Council and the President's Council on Integrity and Efficiency (PCIE) of the costs and benefits of having all CFO agencies obtain audit opinions of their internal controls for financial reporting. Finally, H.R. 4259 would have required that the DHS authorizing committees (the Senate Committee on Governmental Affairs, the House Committee on Government Reform, and the House Select Committee on Homeland Security), receive notification 15 days in advance of transfer and reprogramming actions.

## Final Enactment

The DHS Financial Accountability Act passed the Senate under unanimous consent and the House under suspension of the rules, reflecting substantial bipartisan support for the measure. However, S. 1567 and H.R. 4259 contained some differences, and the Constitution requires that both chambers pass a bill in identical form before presentment to the President.

When legislation has passed the House and Senate in differing versions, one mechanism for resolving differences is the conference committee.<sup>38</sup> This approach seemed unlikely with respect to S. 1567 and H.R. 4259, because of time constraints for the remainder of the 108<sup>th</sup> Congress. Another possibility was for the House and Senate to reach agreement via exchange of amendments between the houses.<sup>39</sup> Time constraints also worked against use of this technique.

An alternative approach used previously to enact financial management legislation toward the end of a Congress entails incorporating bill language acceptable to both the House and Senate as an amendment to an essential

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<sup>38</sup> See CRS Report 98-696 GOV, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by (name redacted) and (name redacted).

<sup>39</sup> *Ibid.*, pp. 7-8.

appropriations measure.<sup>40</sup> For example, a bill to create a special CFO position in the Executive Office of the President was enacted in 1999 as part of the Treasury and General Government Appropriations Act for FY2000.<sup>41</sup> Likewise, the Federal Financial Management Improvement Act of 1996, containing noteworthy amendments to the CFO Act of 1990, was enacted as a part of the Omnibus Consolidated Appropriations Act for FY1997.<sup>42</sup>

In line with such past practice, Senator Fitzgerald submitted an amendment (S.Amdt. 3592),<sup>43</sup> incorporating the provisions of H.R. 4259, intended to be proposed by him during Senate consideration of the DHS FY2005 appropriations bill.<sup>44</sup> However, the amendment was not offered before Senate passage of H.R. 4567, following a vote to substitute the provisions of S. 2537, on September 14, 2004.<sup>45</sup>

Instead, a simpler procedure was employed to resolve differences in the versions of the DHS Financial Accountability Act as passed by the House and Senate, whereby either chamber may approve the bill as passed by the other body. On September 29, 2004, the Senate Committee on Governmental Affairs was discharged from further consideration of H.R. 4259 and the bill was then passed by unanimous consent.<sup>46</sup> President George W. Bush signed the bill into law on October 18, 2004.<sup>47</sup>

As enacted, H.R. 4259 brings the CFO in DHS directly under the CFO Act, as amended. The new law also serves to bring DHS under the Government Management Reform Act of 1994 and the Federal Financial Management Improvement Act of 1996, and makes the CFO in DHS a statutory member of the

<sup>40</sup> Procedural rules in the House and Senate exist to promote separate consideration of bills providing annual appropriations from those containing substantive legislative provisions. Departure from the procedural separation may occur, however, since the rules are not self-enforcing, may be waived, and are not fully comprehensive. See CRS Report RL30619, *Examples of Legislative Provisions in Omnibus Appropriations Acts*, by (name redacted).

<sup>41</sup> See P.L. 106-58, Sec. 638; 113 Stat. 475, Sept. 29, 1999.

<sup>42</sup> P.L. 104-208; 110 Stat. 3009, at 3009-389. After a rather complicated legislative history, the FFMIA provisions became a part of the conference agreement approved by both chambers.

<sup>43</sup> See *Congressional Record*, daily edition, vol. 150, Sept. 8, 2004, pp. S8970-S8971. At the same time, Senator Fitzgerald submitted three other amendments (S.Amdt. 3590, S.Amdt. 3591, and S.Amdt. 3593), each of which incorporated pieces of H.R. 4259.

<sup>44</sup> S. 2537 was reported by the Senate Appropriations Committee (S.Rept. 108-280) on June 17, 2004. H.R. 4567, the House version of FY2005 appropriations for DHS, passed the House on June 18, 2004 by vote of 400-5. See CRS Report RL32302, *Appropriations for FY2005: Department of Homeland Security*, by (name redacted) and Dennis Snook.

<sup>45</sup> A conference report to accompany H.R. 4567 was filed on Oct. 9, 2004, with House approval occurring that same day, and Senate approval following on Oct. 11. The measure was signed into law on Oct. 18, 2004 (P.L. 108-334). See *ibid.*

<sup>46</sup> Department of Homeland Security Financial Accountability Act, vote in the Senate, *Congressional Record*, vol. 150, Sept. 29, 2004, pp. S9987-S9988.

<sup>47</sup> P.L. 108-330, 118 Stat. 1275. See *Weekly Compilation of Presidential Documents*, vol. 40, num. 43, Oct. 25, 2004, p. 2531.

Chief Financial Officers Council. There is a dual reporting framework for the CFO in DHS — to the head of the department (as in all the other CFO Act agencies) and, concurrently, to the Under Secretary for Management (the prior arrangement for the CFO in DHS). The measure requires an audit of internal controls over financial reporting in DHS to begin after FY2005. H.R. 4259 as enacted creates an Office of Program Analysis and Evaluation within DHS, requires DHS to prepare a Future Years Program and a Security Strategy Report for Congress, and requires a joint study by the CFO Council and the President's Council on Integrity and Efficiency (PCIE) of the costs and benefits of having all CFO agencies obtain audit opinions of their internal controls. Finally, the new law requires that specified DHS authorizing committees receive notification 15 days in advance of transfer and reprogramming actions.

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