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Executive Branch Reorganization and Management Initiatives

Updated December 6, 2004

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Executive Branch Reorganization and Management Initiatives

SUMMARY

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

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

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

Administration and congressional reinvention efforts resulted in mostly modest

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

Following his 2001 inauguration, President Bush announced plans to address a number of management problems in the federal government. Then, in the aftermath of the September 11, 2001 terrorist attacks, the organization of the federal government for maintaining homeland security and combating terrorism became an important consideration for both the President and Congress. Establishment of the Office of Homeland Security in October 2001 as a coordinating entity was an important first step, followed by the creation of a Department of Homeland Security during the final weeks of the 107th Congress. Oversight of the initial operations of the new department was a primary matter for the 108th Congress, which, in the closing months of 2004, sought to implement the recommendations of the national commission which had investigated the circumstances of the September 11 terrorist attacks.

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

MOST RECENT DEVELOPMENTS

Although the November 20 conference committee version of the intelligence reform bill is devoid of any authority for either the President or the National Intelligence Director (NID) to reorganize the intelligence community, Representative Tom Davis, chairman of the Committee on Government Reform, has indicated that reinstatement of the President's mandate to prepare and submit reorganization plans (5 U.S.C. 901-912) will be a top priority for the 109th Congress. The House version of the reform legislation (H.R. 10), approved on a 282-134 vote on October 8, would have authorized the President to prepare and submit reorganization plans for fast-track congressional consideration and approval by a joint resolution affirming them. This reorganization authority was limited to submissions of reorganization plans for 11 named intelligence community entities, as well as elements of other departments or agencies that may be designated by the President alone or jointly by the NID and the head of the department or agency concerned. Allowance was made for the abolition of all or part of the functions of a covered entity without limitation, and to allow a plan to propose creation of a new agency. The President's authority to submit plans with respect to intelligence community reorganizations would have been permanent. Senate counterpart legislation (S. 2845), adopted by a 96-2 vote on October 6, would have authorized the NID, with the approval of the President and notice to Congress, to make functional and structural reorganizations within the National Intelligence Program. Conferee deliberations, which began on October 20, became prolonged due to considerable differences between the two bills, including their institutional and organizational aspects. Agreement on a November 20 compromise version of the legislation quickly unraveled in the House. Opposition to the measure expressed in the House Republican Conference prompted the Speaker to cancel a scheduled vote on the legislation. A vote on the bill could occur when the House convenes on December 6.

BACKGROUND AND ANALYSIS

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

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

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

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

Modification of the President's reorganization plan authority was made necessary in 1983 when the Supreme Court, in the *Chadha* case (462 U.S. 919), effectively invalidated continued congressional reliance upon a concurrent resolution to disapprove a proposed plan. Under the Reorganization Act Amendments of 1984, which were signed by President Ronald Reagan on November 8, several significant changes were made in the reorganization plan law. Any time during the period of 60 calendar days of continuous session of Congress following the submission of a reorganization plan, the President might make amendments or modifications to it. Within 90 calendar days of continuous session of Congress following the submission of a reorganization plan, both houses must adopt a joint resolution (which, unlike a concurrent resolution, becomes law with the President's signature — a central issue in the *Chadha* case) for a plan to be approved. This amendment, however, continued the President's reorganization plan authority only to the end of 1984, when it automatically expired (see 5 U.S.C. 901-912 (1988)). Neither President Reagan nor President George H. W. Bush requested its reauthorization. President William Clinton did not seek its renewal, although his National Performance Review (see below) recommended this course of action in September 1993. The National Strategy for Homeland Security, released by President Bush on July 16, recommended the restoration of reorganization plan authority to allow reconfiguring portions of the executive branch to better combat terrorism and maintain homeland security. In his FY2003 budget message, President George W. Bush had indicated that his Administration would "seek to re-institute permanent reorganization authority for the President to permit expedited legislative approval of plans to reorganize the Executive Branch." However, no draft legislation was subsequently offered in this regard. When the National Commission on the Public Service presented its report in January 2003, one of its recommendations was to give the President "expedited authority to recommend structural reorganization of federal agencies and departments." In an April 3, 2003, hearing, the House Committee on Government Reform, under chairman Tom Davis, began congressional consideration of restoring the President's reorganization authority (see below).

Currently, in the absence of reorganization plan authority, the President may propose executive branch reorganizations to be realized through the normal legislative process. The Departments of Energy, Education, Veterans Affairs, and, most recently, Homeland Security were established in this manner. This approach, however, does not incorporate action-forcing deadlines or a required final congressional vote on proposed reorganization plans that are thought to expedite the consideration of reorganizations. The President might attempt

a minor reorganization, such as establishing a small, temporary entity within the Executive Office of the President, by issuing a directive, such as an executive order. Attempting more ambitious reorganizations through a presidential directive, if not ultimately found to be illegal, may incur congressional displeasure and subsequent legislative and fiscal reaction. As a result of the absence of reorganization plan authority, more recent reform efforts to improve the efficiency and economy of government operations have emphasized management improvements of both a governmentwide and specific program variety, including applications of information technology that some have characterized as electronic government.

Reinventing Government

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

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

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

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

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

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

A New Administration

During his campaign for the presidency, Texas Governor George W. Bush emphasized efficiency in government, particularly through the use of information technology, but revealed no plans for reorganizing the executive branch. The terrorist attacks of September 11, 2001, however, prompted various structural modifications. A major objective of restructuring was to realize governmental arrangements resulting in more efficient, economical, and effective homeland security. Reinstatement of the President's reorganization plan authority was proposed to allow the Chief Executive to create the structure he deemed appropriate, and legislation creating a Department of Homeland Security was introduced (S. 1534) and later expanded (S. 2452 and H.R. 4660). On February 14, 2002, the leadership of the House and Senate intelligence committees announced a bipartisan investigation of the operations and activities of the intelligence community pertaining to the September 11 attacks. This joint investigation resulted in a report (S.Rept. 107-351; H.Rept.

107-792), which, among other recommendations, called for the appointment of a Cabinet-level national intelligence chief, who would rank above the Director of Central Intelligence.

Another long-standing reorganization matter concerned border security administration. For many years prior to the September 11 terrorist attacks, proposals had been made from time to time to consolidate various aspects of border security within a single entity or minimum number of federal agencies. Such proposals attracted greater interest after the attacks as part of counterterrorism efforts to secure the nation's northern and southern borders. In late December 2001, Office of Homeland Security staff reportedly produced a tempest within the Bush Administration when they unveiled a broad proposal to create an agency consolidating border security management responsibilities. Opponents represented a wide range of agencies, including five Cabinet departments.

This proposal, however, was used by presidential assistants to formulate the Department of Homeland Security plan unveiled by President Bush on June 6. His surprise announcement was viewed not only as an attempt to regain the initiative in the nation's efforts at combating terrorism, but also to move beyond the coordination efforts of the Office of Homeland Security to a strong administrative structure for managing consolidated programs concerned with border security and effective response to domestic terrorism incidents. On June 18, the President transmitted to the House of Representatives proposed legislation to establish a Department of Homeland Security. This legislation was subsequently introduced by request (H.R. 5005) on June 24. According to a legislative strategy announced by Speaker Dennis Hastert and Minority Leader Richard Gephardt, standing committees of jurisdiction would make recommendations regarding the bill, followed by a review and markup by the special, ad hoc House Select Committee on Homeland Security. On July 19, the House select committee marked up the legislation and ordered it to be reported (H.Rept. 107-609). Meeting during July 24-25, the Senate Committee on Governmental Affairs authorized Chairman Joseph Lieberman to withdraw his version of a Department of National Homeland Security bill (S. 2452) that had been amended and ordered favorably reported on May 22, modified his offered amendment in the nature of a substitute to the text of the bill, and approved the amendment as modified. Floor action on the measure, however, was postponed until the Senate returned from a summer recess in early September. During July 25-26, the House of Representatives began floor debate and amendment of its counterpart department bill (H.R. 5005), and then approved the legislation, as amended, on a 295-132 vote.

Senate consideration of the House-passed bill began on September 3, 2002, when Senator Lieberman submitted an amendment (S.Amdt. 4471) containing the language of his modified department bill as a substitute for the text of the House-passed legislation. Initial amendments to the Lieberman substitute were adopted on September 5. Additional amendments were considered and adopted, but, by the end of September and into October, the Senate found itself in deadlock, unable to reach closure on the department legislation. Further discussion of the matter was discontinued in the Senate, and both houses subsequently adjourned on November 8 for the fall elections.

When the House and the Senate reconvened on November 12, it was clear from the recent election returns that the President's political party would have majority control of both houses of the 108th Congress. Furthermore, Representative Dick Armey, the House Majority Leader and chairman of the Select Committee on Homeland Security, had introduced, with

bipartisan support, a new bill (H.R. 5710) to establish a Department of Homeland Security, which was supported by the Bush Administration. The bill was brought up for floor consideration the following day under a closed rule (no amendments), and was approved on a 299-121 vote.

On November 13, the Senate resumed consideration of the initial House-passed bill (H.R. 5005) establishing a Department of Homeland Security. Pending on the floor was the Lieberman substitute (S.Amdt. 4471), which was subsequently tabled on a 50-47 vote. Senator Fred Thompson offered the text of the second House-passed bill (H.R. 5710) creating a Department of Homeland Security as an amendment (S.Amdt. 4901) for later consideration as a substitute to the language of the initial House-passed department bill. The following day, Senator Lieberman offered an amendment (S.Amdt. 4911) to make certain provisions of the Thompson substitute noneffective. On November 15, the Senate, on a 65-29 vote, ended further debate on the Thompson substitute (S.Amdt. 4901). Four days later, the Thompson substitute was adopted on a 73-26 vote, and the Senate then passed the House bill (H.R. 5005), as amended, on a 90-9 vote and returned the measure to the House. The House agreed to the Senate-amended version of the bill on November 22, clearing the measure for the President's signature. President Bush signed the legislation into law on November 25, 2002 (116 Stat. 2135).

The primary issue for Congress and the President was determining the program composition and administrative organization of the new department. In the course of mandating the Department of Homeland Security, this overarching consideration broke down into a series of lesser, more finite issues, not the least of which were threshold questions concerning the value of the new entity. President Bush contended that his proposal did not constitute an expansion of the federal government, but merely consolidated existing programs within a more efficient and effective management structure. However, neither the President's proposal nor the principal congressional bills made use of a definition of the concept of homeland security to guide the component composition of the new department. Moreover, whole agencies were proposed for transfer to the department with very little effort to sort out non-homeland security functions and programs for more appropriate administration elsewhere other than the new department. Some contended that the creation of any new department would result in budget expansion. In a July 9, 2002 cost estimate, the Congressional Budget Office proffered that the initial House-passed bill (H.R. 5005) establishing a new Department of Homeland Security "would cost about \$3 billion over the 2003-2007 period," which would be "in addition to projected net spending for ongoing activities of the transferred agencies — about \$20 billion in 2002, growing to \$31 billion by 2007."

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

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

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

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

The President's proposal contained a provision not included in the initial version of the Senate bill authorizing the Secretary of Homeland Security, in regulations prescribed jointly with the director of the Office of Personnel Management, to establish and, from time to time, adjust a human resources management system for some or all of the organizational units of the department, "which shall be flexible, contemporary, and grounded in public employment principles of merit and fitness." In testimony before the Senate Committee on Governmental Affairs on June 20, 2002, OHS Director Ridge indicated that the President would request for the department "significant flexibility in hiring processes, compensation systems and practices, and performance management to recruit, retain, and develop a motivated, high-performance and accountable workforce."

The provision raised various issues concerning staffing requirements, such as adequate numbers of personnel and planning for the replacement of retiring staff; hiring, particularly direct hiring which would not involve traditional guarantees of being merit-based and free of political influence and lacked preference for veterans; and pay, particularly pay parity or equity for employees who are performing similar jobs. Civil service protections and collective bargaining rights for department workers were among the most contentious issues surrounding the establishment of the Department of Homeland Security. Ultimately, the statute mandating the new department largely supported the President's position on these matters. (See CRS Report RL31493.)

Upon signing the Homeland Security Act of 2002 into law (P.L. 107-296) on November 25, President Bush transmitted, pursuant to Section 1502 of the statute, his reorganization plan for the Department of Homeland Security. This document set deadlines for the transfer of agencies, programs, and functions to the new department, and specified related agency consolidations, reorganizations, or streamlinings. The Department of Homeland Security became operational on January 24, 60 days after its statutory mandate was signed into law. That same day, presidential adviser Tom Ridge was sworn in as the Secretary of Homeland Security. A reorganization of border agencies was announced by Secretary Ridge on January 30. Formulation of the Department of Homeland Security took a major step on March 1 when, in accordance with the President's reorganization plan, some three dozen agencies and programs were transferred to the new department. Ultimately, all such transfers were completed by September 30, 2003. (See CRS Report RL31751.)

Testifying before the House Select Committee on Homeland Security at a May 20, 2003, hearing, Secretary Ridge announced plans to create regional offices that would serve as primary contact points with state and local government officials. Pursuant to Section 706 of the Homeland Security Act, the Secretary filed a report on department plans for field entity consolidations on February 4, 2004. While very few actual consolidations were evidenced, the report indicated ongoing efforts were underway to develop a strategic real estate and facilities management plan to realize more flexible, effective, efficient and mission-enabling field arrangements.

On June 6, 2003, department officials announced the creation of a National Cyber Security Division within the Information Analysis and Infrastructure Protection Directorate. A main objective of the new entity will be implementing the recently unveiled National Strategy to Secure Cyberspace. The head of the division will also be the President's chief cybersecurity adviser, moved from the National Security Council staff to the Department of Homeland Security. Critics view this move as not only a loss of status for the position, but

also a loss of authority, as the incumbent would be at least three steps below the office of Secretary of Homeland Security Tom Ridge.

Earlier, at an April 3, 2003, hearing, the House Committee on Government Reform, under the chairmanship of Representative Tom Davis, began considering the restoration of presidential reorganization authority as specified in Chapter 9 of Title 5, United States Code. No legislation on this matter was before the panel at that time. The authority had automatically expired at the end of 1984. One course of action open to the committee was to report legislation simply reauthorizing the chapter. During the course of the hearing, however, it became clear that certain caveats might be necessary, such as protecting the rights of federal employees in reorganization efforts, to garner adequate support for restoring the authority. Favorable views for the action were expressed by OMB Deputy Director Nancy Dorn, Comptroller General David Walker, and representatives of the public administration community, while two labor union officials were not supportive. In his FY2003 budget message, President George W. Bush had indicated that his Administration would “seek to re-institute permanent reorganization authority for the President to permit expedited legislative approval of plans to reorganize the Executive Branch.” However, no draft legislation was subsequently offered in this regard until late September 2004. When the National Commission on the Public Service presented its report in January 2003, one of its recommendations was to give the President “expedited authority to recommend structural reorganization of federal agencies and departments.” The primary House bill for realizing intelligence community reforms (H.R. 10), introduced on September 24, 2004, included among its provisions authority for the President to prepare and submit to Congress for affirmation plans to reorganize components of the intelligence community (see below).

The future of the Office of Homeland Security (OHS), created by E.O. 13228 of October 8, 2001, came into question in late July 2003 when House appropriators, in their report on the Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004 (H.R. 2989), revealed that the Bush Administration had changed the “Office of Homeland Security” account to one for the “Homeland Security Council.” The current council is mandated by the Homeland Security Act of 2002. The report (H.Rept. 108-243) questioned the role of OHS, saying “it is not clear what work remains that cannot be effectively performed by the Department of Homeland Security.” The account change apparently also implied the shift of 66 staff from OHS to the council, which the report questioned “given the existence and support of the Department of Homeland Security.” The committee cut the President’s request for the council of \$8.3 million to \$4.1 million. The full House approved the recommended amount. In the Senate counterpart bill (S. 1589), appropriators recommended \$8.3 for the council, the amount requested, but placed the funds in a separate account (S.Rept. 108-146). Conferees on the Consolidated Appropriations Act, 2004 (H.R. 2673), which included funding for agencies of the Executive Office of the President, made no recommendation of funds for OHS, but did propose \$7.2 million for the Homeland Security Council in the White House Office account. The House agreed to the conference report (H.Rept. 108-401) on December 8 and adjourned sine die; the Senate completed action on the legislation on January 23, 2004, and the President signed the measure the following day (P.L. 108-199). OHS disappeared from the President’s budget request for FY2005.

In a first-year assessment of the Department of Homeland Security (DHS), Donald F. Kettl, a veteran public administration analyst and professor at the Robert M. LaFollette

School of Public Affairs of the University of Wisconsin-Madison, gave it a grade of C+. This overall grade derived from evaluations of five areas of department responsibility: aviation security (B-), intelligence (B-), immigration (C+), coordination with state and local governments (C), and departmental management (C+). “As is scarcely surprising given the enormity of the task it faced,” wrote Kettl, “the department’s performance has varied widely. In some areas, the DHS has done exceptionally well, yet in other areas, conditions are worse than before the DHS was created. The biggest areas needing improvement,” he proffered, “in fact, deal with the very coordination — ‘connecting the dots’ — problems that the department was created to solve.” Kettl’s study, made available in an advance copy in early March, subsequently appeared in a book published by the Century Foundation of New York.

The Office of Inspector General at the Department of Homeland Security also released a report, *Review of the Status of Department of Homeland Security Efforts to Address Its Major Management Challenges*, in March. Discussing the results of the review, the assessment stated that “DHS has made significant progress in addressing all of its management challenges. However,” it added, “some of the planned improvements will take years to develop and implement, and much remains to be done.” The following examples were offered: “many ... support services operations, including financial management, contracting, and human resources ... are still not under central control, and contracts management and information technology present formidable challenges”; while “proposed human resources regulations ... could serve as a model for the whole federal government ..., finalizing and implementing these regulations will be challenging”; and “tight legislative deadlines, funding difficulties, a shortage of trained and qualified personnel to oversee and implement ... legislation, delays in the acquisition and implementation of technological solutions, and a shortage of critical infrastructure to support homeland security initiatives, continue to challenge the department.”

The first authorization bill for the Department of Homeland Security was introduced (H.R. 4852) on July 19 by Representative Christopher Cox, but an attempt to mark up the measure within the Select Committee on Homeland Security stalled due to differences over how action on the measure should proceed. Among the provisions in the legislation for improving homeland security management and coordination among federal agencies, as well as state and local governments, is one relocating the department’s Management Directorate in the office of the department’s Deputy Secretary, with the result that some management officials, such as the Chief Information Officer (CIO), would report directly to the Deputy Secretary. Another provision mandates an interagency Homeland Security Information Requirements Board, chaired by the Secretary of Homeland Security, to oversee the establishment of homeland security requirements and collection management for all terrorism-related and other homeland security information, and to prioritize the collection and use of such information. Seven other House committees may consider, mark up, and report portions of the bill within their jurisdictions. Action on the measure, however, generally has been delayed by public demands for Congress to respond to the recommendations of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission).

In its final report, released July 22, 2004, the 9/11 Commission recommended, among other proposals, the creation of a board within the executive branch to monitor the federal government’s commitment to defending civil liberties, a National Counterterrorism Center (NCTC), and a National Intelligence Director (NID) to replace the current Director of Central

Intelligence. It also suggested establishing other national intelligence centers — for example, on counterproliferation, crime and narcotics, and China — and folding the responsibilities of the Homeland Security Council into the National Security Council. During the August recess, several House and Senate committees began hearings to explore the commission's recommendations.

Legislative efforts to implement the 9/11 Commission's recommendations began in earnest when Congress convened after Labor Day. Among the first major proposals in this regard were bills introduced by Senator John McCain and Representative Christopher Shays (S. 2774/H.R. 5040) and by Representative Nancy Pelosi (H.R. 5024) implementing all of the recommendations of the commission. Included were proposals for a civil liberties oversight board, a National Counterterrorism Center (NCTC), and a National Intelligence Director (NID). In August, Senator Pat Roberts, chairman of the Senate Select Committee on Intelligence, offered a draft intelligence community and activities reform proposal, which he said had the support of eight Republican members of his panel. The measure, which appeared to be more extensive than the reorganization recommended by the 9/11 Commission, would break up the Central Intelligence Agency and divide its responsibilities among three new intelligence entities — national assessments, national clandestine service, and technical support — under the direct supervision of an NID, who would have virtually complete control over the intelligence budget, including the counterterrorism and counterintelligence programs of the Federal Bureau of Investigation. The extent to which an NID would have budgetary, personnel, and managerial control of the intelligence community was rapidly becoming a primary issue in the intelligence reform debate, as was the location of the NID and NCTC within the executive branch. Meeting with congressional leaders on September 8 to discuss reforming and strengthening the federal intelligence services, President Bush endorsed establishing an NID who, among other considerations, would be located within the executive branch, but not within the Executive Office of the President; would not serve in the Cabinet; would receive National Foreign Intelligence Program funds and allocate them, as apportioned by OMB, to the intelligence community; would supervise the NCTC; and would have a role in the appointment of any individual to a position that heads an organization or element within the intelligence community. The President subsequently sent to Congress a September 16 draft proposal to strengthen the intelligence capabilities of the federal government.

During the latter weeks of September, the principal legislative vehicles for implementing 9/11 Commission recommendations and strengthening intelligence capabilities emerged. The Senate bill (S. 2845) was developed in the Committee on Governmental Affairs, introduced on September 23, and initially considered in the Senate on September 27. The legislation would have mandated a National Intelligence Authority (NIA) as an independent establishment within the executive branch, which would have been headed by a NID, who would have been appointed by the President with Senate confirmation. A NCTC would have been established within the NIA; the head of this entity also would have been appointed by the President with Senate confirmation and would have reported to the NID on the NCTC budget, programs, and activities and to both the President and the NID on the planning and progress of joint counterterrorism operations. A Privacy and Civil Liberties Oversight Board would have been established within the Executive Office of the President. Its chair and four additional members would have been appointed by the President with Senate confirmation for six-year terms.

The House bill (H.R. 10) was introduced on September 24 by Representative Dennis Hastert and was referred to 13 committees, five of which — Armed Services, Financial Services, Government Reform, Intelligence, and Judiciary — conducted markups and ordered reported on September 29 amended versions of the bill. As introduced, the bill would have created a NID, who would have been appointed by the President with Senate confirmation and not located within the Executive Office of the President. A NCTC would have been established within the office of the NID and would have been headed by a director, who would have been appointed by the NID. A Civil Liberties Protection Officer, who would have been appointed by the NID, also would have been created within the office of the NID to serve as a civil liberties and privacy overseer of the intelligence community, but no provision was made for a civil liberties oversight board. The President would have been authorized to prepare and submit to Congress for affirmation plans to reorganize components of the intelligence community. On October 7, the Committee on Rules reported a version of the legislation for floor consideration and made 23 amendments in order for consideration (H.Rept. 108-751). The House completed its action on the legislation on October 8 when it approved the modified bill on a 282-134 vote.

Conference committee deliberations on the reform bills began on October 20, but became prolonged due to considerable differences between the two bills, including their institutional and organizational aspects. Agreement on a November 20 compromise version of the legislation quickly unraveled in the House. Opposition to the measure expressed in the House Republican Conference prompted the Speaker to cancel a scheduled vote on the legislation. A vote on the bill could occur when the House convenes on December 6. (See CRS Report RS21906 and CRS Report RL32501.)

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House. Committee on Rules. *Providing for Consideration of H.R. 10, 9/11 Recommendations Implementation Act*. Report to accompany H.Res. 827. 108th Congress. 2nd session. H.Rept. 108-751. Washington: GPO, 2004.

———. Select Committee on Homeland Security. *H.R. 5005, the Homeland Security Act of 2002, Days 1 and 2*. Hearings. 107th Congress, 2nd session, July 15, 16, 2002. Washington: GPO, 2002.

———. *Homeland Security Technical Corrections Act of 2003*. Report to accompany H.R. 1416. 108th Congress, 1st session. H.Rept. 108-104. Washington: GPO, 2003.

———. Senate. Committee on Governmental Affairs. *Homeland Security Technical Corrections Act of 2003*. Report to accompany H.R. 1416. 108th Congress, 1st session. S.Rept. 108-214. Washington: GPO, 2003.

CHRONOLOGY

07/22/04 — The National Commission on Terrorist Attacks Upon the United States issued its final report with 41 recommendations for combating terrorism and strengthening homeland security.

- 11/25/02** — President George W. Bush signed the Homeland Security Act, establishing the Department of Homeland Security, into law (P.L. 107-296, 116 Stat. 2135).
- 06/06/02** — President George W. Bush called for the creation of a Department of Homeland Security by Congress and provided a plan for the structure and programs of the new entity.
- 08/25/01** — President George W. Bush, in his radio address to the nation, announced the release of *The President's Management Agenda*, a report identifying 14 management problems in the federal government and offering specific solutions to address them.
- 07/18/01** — OMB Director Mitchell E. Daniels, Jr., on behalf of President Bush, apprised executive department and agency heads of administration efforts to develop an electronic government action plan using an interagency task force to be headed by OMB Associate Director for Information Technology and E-Government Mark Forman.
- 01/01/98** — The National Performance Review became the National Partnership for Reinventing Government.
- 09/09/96** — The National Performance Review marked its third-year anniversary, reporting that 43% of its initial 833 agency action items were completed and 42% were in progress, and 49% of its initial 430 management systems action items were completed and 49% were in progress; of an additional 187 recommendations, 19% were completed and 62% were in progress; “savings of about \$97.4 billion have been ensured through legislative or administrative action” and an “additional \$5.2 billion in savings is contained in legislation pending before Congress;” and, as of January 1996, an executive workforce reduction of nearly 240,000 employees had been realized.
- 09/11/95** — The National Performance Review marked its second year anniversary, reporting that 32% of its initial agency action items were completed and 61% were in progress, and 27% of its initial 417 management systems action items were completed and 63% were in progress; more than 180 additional recommendations had been made; and “about \$57.7 billion of [approximately \$108 billion] projected savings have been achieved” and an “additional \$4.3 billion in savings are currently pending before Congress.”
- 09/27/94** — Republican leaders of the House of Representatives unveiled a “Contract With America” reform plan with core principles that regard the federal government as being too big, spending too much, unresponsive to the citizenry, and the perpetrator of burdensome regulations.
- 09/14/94** — The National Performance Review marked its one-year anniversary, reporting that over 90% of its recommendations “are under way,” implementation occurring through 22 presidential directives, several enacted bills, and a variety of agency actions, with the result that “\$46.9 billion of NPR’s \$108

billion in proposed savings are already enacted” and another “\$16 billion in savings is pending before Congress.”

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

LEGISLATION

H.R. 10 (Hastert)

9/11 Recommendations Implementation Act. Provides for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination. Introduced September 24, 2004, and referred to the Permanent Select Committee on Intelligence, as well as the Committees on Armed Services, Education and the Workforce, Energy and Commerce, Financial Services, Government Reform, International Relations, the Judiciary, Rules, Science, Transportation and Infrastructure, Ways and Means and (Select) Homeland Security; markups held and bill ordered to be reported (Armed Services, Financial Services, Government Reform, Intelligence, Judiciary) September 29 (H.Rept. 108-724 5 parts); debate begun on amendment in the nature of a substitute and other amendments (H.Rept. 108-751) October 7; approved as amended on 282-134 vote October 8; conference committee consideration begun October 20.

H.R. 1416 (Cox)

Homeland Security Technical Corrections Act of 2003. Makes technical corrections to the Homeland Security Act of 2002. Introduced March 25, 2003, and referred to the Select Committee on Homeland Security; hearing held March 28; markup held and bill ordered to be reported March 31; reported with amendments (H.Rept. 108-104) and placed on Union Calendar May 15; considered under suspension of the rules and subsequently adopted on a 415-0 roll call vote June 24; received in the Senate and referred to the Committee on Governmental Affairs June 25; ordered to be reported with an amendment October 22; reported with amendments (S.Rept. 108-214) and placed on Senate Legislative Calendar November 25, 2003.

H.R. 4852 (Cox)

Department of Homeland Security Authorization Act for Fiscal Year 2005. Authorizes appropriations for the Department of Homeland Security for the next fiscal year, and effects other modifications of the organization and operations of the department. Introduced July 19, 2004, and referred to the Select Committee on Homeland Security and Committees on Science, Transportation and Infrastructure, Energy and Commerce, the Judiciary, Government Reform, and Agriculture, and the Permanent Select Committee on Intelligence.

H.R. 5024 (Pelosi)

9/11 Commission Recommendations Implementation Act of 2004. Implements the recommendations of the National Commission on Terrorist Attacks Upon the United States by establishing the position of National Intelligence Director, by establishing a National Counterterrorism Center, by making improvements to enhance the national security of the United States, and for other purposes. Introduced September 8, 2004, and referred to the Permanent Select Committee on Intelligence, and the Committees on Armed Services, Energy and Commerce, Financial Services, Government Reform, International Relations, Judiciary, Rules, Science, Transportation and Infrastructure, and Ways and Means.

H.R. 5050 (Jackson-Lee)

Director of National Intelligence Act of 2004. Establishes the Director of National Intelligence as a Cabinet level position in the Executive Office of the President to oversee budget, operations, and personnel of the entire intelligence community of the federal government. Introduced September 9, 2004, and referred to the Permanent Select Committee on Intelligence.

S. 2774 (McCain)/H.R. 5040 (Shays)

9/11 Commission Report Implementation Act of 2004. Implements the recommendations of the National Commission on Terrorist Attacks Upon the United States, and for other purposes. S. 2774 introduced September 7, 2004, read the first time, and placed upon the Senate legislative calendar. H.R. 5040 introduced September 9, 2004, referred to the Permanent Select Committee on Intelligence, Committees on Armed Services, Energy and Commerce, Government Reform, International Relations, Judiciary, Rules, Transportation and Infrastructure, Ways and Means, and Select Committee on Homeland Security.

S. 2840 (Collins)/S. 2845 (Collins)/ H.R. 5150 (Shays)

National Intelligence Reform Act of 2004. Provides for reform of the intelligence community and the intelligence and intelligence-related activities of the United States. S. 2840 reported from the Committee on Governmental Affairs as an original bill; introduced September 23, read twice, and place on the Senate calendar. S. 2845 introduced September 23 and read once; September 24 read the second time and placed on the Senate calendar; September 27 consideration proceeded by unanimous consent agreement; October 6 approved as amended on 96-2 vote; conference committee consideration begun October 20. H.R. 5150 introduced September 24 and referred to the Permanent Select Committee on Intelligence.

FOR ADDITIONAL READING

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

Kettl, Donald F. *Reinventing Government: A Fifth-Year Report Card*. Washington, Brookings Institution, 1998. 71 p.

———, ed. *The Department of Homeland Security's First Year: A Report Card*. New York, Century Foundation, 2004 (draft manuscript available at [<http://www.tcf.org/Publications/HomelandSecurity/overview.pdf>]). 33p.

National Commission on the Public Service. *Urgent Business for America: Revitalizing the Federal Government for the 21st Century*. Washington, Brookings Institution, 2003. 49 p.

National Performance Review. Most literature may be found at the NPR website “library” at [<http://govinfo.library.unt.edu/npr/default.html>].

U.S. Department of Homeland Security. Office of Inspector General. *Review of the Status of Department of Homeland Security Efforts to Address Its Major Management Challenges*. OIG-04-21. Washington, March 2004. 73 p.

CRS Reports

CRS Report RL31751. *Homeland Security: Departmental Organization and Management — Implementation Phase*, by Harold C. Relyea.

CRS Report RL31493. *Homeland Security: Department Organization and Management — Legislative Phase*, by Harold C. Relyea.

CRS Report RL31500. *Homeland Security: Human Resources Management*, by Barbara L. Schwemle.

CRS Report RL31148. *Homeland Security: The Presidential Coordination Office*, by Harold C. Relyea.

CRS Report RS21412. *Limited-Term Appointments to Presidentially Appointed, Senate Confirmed Positions*, by Henry B. Hogue.

CRS Report RL30596. *The National Performance Review and Other Government Reform Initiatives: An Overview, 1993-1999*, by Harold C. Relyea, Maricele J. Cornejo Riemann, and Henry B. Hogue.

CRS Report RS21906. *9/11 Commission Recommendations: A Civil Liberties Oversight Board*, by Harold C. Relyea.

CRS Report RL32501. *9/11 Commission Recommendations: New Structures and Organization*, by Harold C. Relyea.