

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for a complete substitute.

**IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.**

**S. 2452**

To establish the Department of National Homeland Security  
and the National Office for Combating Terrorism.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. LIEBERMAN or his designee

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Homeland  
5 Security and Combating Terrorism Act of 2002”.

6 **SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF**  
7 **CONTENTS.**

8 (a) DIVISIONS.—This Act is organized into 2 divi-  
9 sions as follows:

1           (1) Division A—National Homeland Security  
2           and Combating Terrorism.

3           (2) Division B—Immigration Reform, Account-  
4           ability, and Security Enhancement Act of 2002.

5           (b) TABLE OF CONTENTS.—The table of contents for  
6 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Organization of Act into divisions; table of contents.
- Sec. 3. Definitions.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING  
TERRORISM

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

- Sec. 101. Establishment of the Department of Homeland Security.
- Sec. 102. Secretary of Homeland Security.
- Sec. 103. Deputy Secretary of Homeland Security.
- Sec. 104. Under Secretary for Management.
- Sec. 105. Assistant Secretaries.
- Sec. 106. Inspector General.
- Sec. 107. Chief Financial Officer.
- Sec. 108. Chief Information Officer.
- Sec. 109. General Counsel.
- Sec. 110. Civil Rights Officer.
- Sec. 111. Privacy Officer.
- Sec. 112. Chief Human Capital Officer.
- Sec. 113. Executive Schedule positions.

Subtitle B—Establishment of Directorates and Offices

- Sec. 131. Directorate of Border and Transportation Protection.
- Sec. 132. Directorate of Intelligence.
- Sec. 133. Directorate of Critical Infrastructure Protection.
- Sec. 134. Directorate of Emergency Preparedness and Response.
- Sec. 135. Directorate of Science and Technology.
- Sec. 136. Directorate of Immigration Affairs.
- Sec. 137. Office for State and Local Government Coordination.
- Sec. 138. United States Secret Service.
- Sec. 139. Border Coordination Working Group.
- Sec. 140. Executive Schedule positions.

Subtitle C—National Emergency Preparedness Enhancement

- Sec. 151. Short title.
- Sec. 152. Preparedness information and education.
- Sec. 153. Pilot program.
- Sec. 154. Designation of National Emergency Preparedness Week.

## 3

## Subtitle D—Miscellaneous Provisions

- Sec. 161. National Bio-Weapons Defense Analysis Center.
- Sec. 162. Review of food safety.
- Sec. 163. Exchange of employees between agencies and State or local governments.

## Subtitle E—Transition Provisions

- Sec. 171. Definitions.
- Sec. 172. Transfer of agencies.
- Sec. 173. Transitional authorities.
- Sec. 174. Incidental transfers.
- Sec. 175. Implementation progress reports and legislative recommendations.
- Sec. 176. Transfer and allocation.
- Sec. 177. Savings provisions.
- Sec. 178. Transfer of related functions.

## Subtitle F—Administrative Provisions

- Sec. 191. Reorganizations and delegations.
- Sec. 192. Reporting requirements.
- Sec. 193. Environmental protection, safety, and health requirements.
- Sec. 194. Labor standards.
- Sec. 195. Authorization of appropriations.

## TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

- Sec. 201. National Office for Combating Terrorism.
- Sec. 202. Funding for Strategy programs and activities.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM  
AND THE HOMELAND SECURITY RESPONSE

- Sec. 301. Strategy.
- Sec. 302. Management guidance for Strategy implementation.
- Sec. 303. National Combating Terrorism Strategy Panel.

TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR  
GENERAL AGENTS

- Sec. 401. Law enforcement powers of Inspector General agents.

## TITLE V—EFFECTIVE DATE

- Sec. 501. Effective date.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND  
SECURITY ENHANCEMENT ACT OF 2002

- Sec. 1001. Short title; table of contents.
- Sec. 1002. Definitions.

## TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

## Subtitle A—Organization

- Sec. 1101. Abolition of INS.
- Sec. 1102. Establishment of Directorate of Immigration Affairs.

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- Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
- Sec. 1104. Bureau of Immigration Services.
- Sec. 1105. Bureau of Enforcement and Border Affairs.
- Sec. 1106. Office of the Ombudsman within the Directorate.
- Sec. 1107. Office of Immigration Statistics within the Directorate.
- Sec. 1108. Clerical amendments.

## Subtitle B—Transition Provisions

- Sec. 1111. Transfer of functions.
- Sec. 1112. Transfer of personnel and other resources.
- Sec. 1113. Determinations with respect to functions and resources.
- Sec. 1114. Delegation and reservation of functions.
- Sec. 1115. Allocation of personnel and other resources.
- Sec. 1116. Savings provisions.
- Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
- Sec. 1118. Executive Office for Immigration Review authorities not affected.
- Sec. 1119. Other authorities not affected.
- Sec. 1120. Transition funding.

## Subtitle C—Miscellaneous Provisions

- Sec. 1121. Funding adjudication and naturalization services.
- Sec. 1122. Application of Internet-based technologies.
- Sec. 1123. Alternatives to detention of asylum seekers.

## Subtitle D—Effective Date

- Sec. 1131. Effective date.

## TITLE XII—IMMIGRATION PERSONNEL

- Sec. 1201. Improvements in personnel flexibilities.
- Sec. 1202. Voluntary separation incentive payments for INS employees.
- Sec. 1203. Voluntary separation incentive payments for employees of the Directorate of Immigration Affairs.
- Sec. 1204. Basis for evaluation of immigration employees.
- Sec. 1205. Effective date.

## TITLE XIII—UNACCOMPANIED ALIEN CHILD PROTECTION

- Sec. 1301. Short title.
- Sec. 1302. Definitions.

## Subtitle A—Structural Changes

- Sec. 1311. Responsibilities of the Office of Refugee Resettlement With Respect to Unaccompanied Alien Children.
- Sec. 1312. Establishment of Interagency Task Force on Unaccompanied Alien Children.
- Sec. 1313. Transition provisions.
- Sec. 1314. Effective date.

## Subtitle B—Custody, Release, Family Reunification, and Detention

- Sec. 1321. Procedures when encountering unaccompanied alien children.

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- Sec. 1322. Family reunification for unaccompanied alien children with relatives in the United States.
- Sec. 1323. Appropriate conditions for detention of unaccompanied alien children.
- Sec. 1324. Repatriated unaccompanied alien children.
- Sec. 1325. Establishing the age of an unaccompanied alien child.
- Sec. 1326. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

- Sec. 1331. Right of unaccompanied alien children to guardians ad litem.
- Sec. 1332. Right of unaccompanied alien children to counsel.
- Sec. 1333. Transitional pilot program.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

- Sec. 1341. Special immigrant juvenile visa.
- Sec. 1342. Training for officials and certain private parties who come into contact with unaccompanied alien children.
- Sec. 1343. Effective date.

Subtitle E—Children Refugee and Asylum Seekers

- Sec. 1351. Guidelines for children's asylum claims.
- Sec. 1352. Unaccompanied refugee children.

Subtitle F—Authorization of Appropriations

- Sec. 1361. Authorization of appropriations.

TITLE XIV—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structural and Function

- Sec. 1401. Establishment.
- Sec. 1402. Director of the Agency.
- Sec. 1403. Board of Immigration Appeals.
- Sec. 1404. Chief Immigration Judge.
- Sec. 1405. Chief Administrative Hearing Officer.
- Sec. 1406. Removal of judges.
- Sec. 1407. Authorization of appropriations.

Subtitle B—Transfer of Functions and Savings Provisions

- Sec. 1411. Transition provisions.

Subtitle C—Effective Date

- Sec. 1421. Effective Date.

**1 SEC. 3. DEFINITIONS.**

- 2** Unless the context clearly indicates otherwise, the fol-
- 3** lowing shall apply for purposes of division A:

1           (1) AGENCY.—Except for purposes of subtitle E  
2 of title I, the term “agency”—

3           (A) means—

4                 (i) an Executive agency as defined  
5 under section 105 of title 5, United States  
6 Code;

7                 (ii) a military department as defined  
8 under section 102 of title 5, United States  
9 Code;

10                (iii) the United States Postal Service;

11           and

12           (B) does not include the General Account-  
13 ing Office.

14           (2) ASSETS.—The term “assets” includes con-  
15 tracts, facilities, property, records, unobligated or  
16 unexpended balances of appropriations, and other  
17 funds or resources (other than personnel).

18           (3) DIRECTOR.—The term “Director” means  
19 the Director of the National Office for Combating  
20 Terrorism.

21           (4) DEPARTMENT.—The term “Department”  
22 means the Department of National Homeland Secu-  
23 rity established under title I.

24           (5) FEDERAL TERRORISM PREVENTION AND  
25 RESPONSE AGENCY.—The term “Federal terrorism

1 prevention and response agency” means any Federal  
2 department or agency charged under the Strategy  
3 with responsibilities for carrying out the Strategy.

4 (6) FUNCTIONS.—The term “functions” in-  
5 cludes authorities, powers, rights, privileges, immu-  
6 nities, programs, projects, activities, duties, respon-  
7 sibilities, and obligations.

8 (7) HOMELAND.—The term “homeland” means  
9 the United States, in a geographic sense.

10 (8) LOCAL GOVERNMENT.—The term “local  
11 government” has the meaning given under section  
12 102(6) of the Robert T. Stafford Disaster Relief and  
13 Emergency Assistance Act (Public Law 93–288).

14 (9) OFFICE.—The term “Office” means the  
15 National Office for Combating Terrorism established  
16 under title II.

17 (10) PERSONNEL.—The term “personnel”  
18 means officers and employees.

19 (11) SECRETARY.—The term “Secretary”  
20 means the Secretary of Homeland Security.

21 (12) STRATEGY.—The term “Strategy” means  
22 the National Strategy for Combating Terrorism and  
23 the Homeland Security Response developed under  
24 this division.

1           (13) UNITED STATES.—The term “United  
2 States”, when used in a geographic sense, means  
3 any State (within the meaning of section 102(4) of  
4 the Robert T. Stafford Disaster Relief and Emer-  
5 gency Assistance Act (Public Law 93–288), any pos-  
6 session of the United States, and any waters within  
7 the jurisdiction of the United States.

8 **DIVISION A—NATIONAL HOME-**  
9 **LAND SECURITY AND COM-**  
10 **BATING TERRORISM**

11 **TITLE I—DEPARTMENT OF**  
12 **HOMELAND SECURITY**

13 **Subtitle A—Establishment of the**  
14 **Department of Homeland Security**

15 **SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF**  
16 **HOMELAND SECURITY.**

17           (a) IN GENERAL.—There is established the Depart-  
18 ment of National Homeland Security.

19           (b) EXECUTIVE DEPARTMENT.—Section 101 of title  
20 5, United States Code, is amended by adding at the end  
21 the following:

22                   “The Department of Homeland Security.”.

23           (c) MISSION OF DEPARTMENT.—

24                   (1) HOMELAND SECURITY.—The mission of the  
25 Department is to—



1 (A) promote homeland security, particu-  
2 larly with regard to terrorism;

3 (B) prevent terrorist attacks or other  
4 homeland threats within the United States;

5 (C) reduce the vulnerability of the United  
6 States to terrorism, natural disasters, and other  
7 homeland threats; and

8 (D) minimize the damage, and assist in  
9 the recovery, from terrorist attacks or other  
10 natural or man-made crises that do occur with-  
11 in the United States.

12 (2) OTHER MISSIONS.—The Department shall  
13 be responsible for carrying out the other functions,  
14 and promoting the other missions, of entities trans-  
15 ferred to the Department as provided by law.

16 (d) SEAL.—The Secretary shall procure a proper  
17 seal, with such suitable inscriptions and devices as the  
18 President shall approve. This seal, to be known as the offi-  
19 cial seal of the Department of Homeland Security, shall  
20 be kept and used to verify official documents, under such  
21 rules and regulations as the Secretary may prescribe. Ju-  
22 dicial notice shall be taken of the seal.

23 **SEC. 102. SECRETARY OF HOMELAND SECURITY.**

24 (a) IN GENERAL.—The Secretary of Homeland Secu-  
25 rity shall be the head of the Department. The Secretary

1 shall be appointed by the President, by and with the advice  
2 and consent of the Senate.

3 (b) RESPONSIBILITIES.—The responsibilities of the  
4 Secretary shall be the following:

5 (1) To develop policies, goals, objectives, prior-  
6 ities, and plans for the United States for the pro-  
7 motion of homeland security, particularly with re-  
8 gard to terrorism.

9 (2) To administer, carry out, and promote the  
10 other established missions of the entities transferred  
11 to the Department.

12 (3) To develop, with the Director, a comprehen-  
13 sive strategy for combatting terrorism and the home-  
14 land security response in accordance with title III.

15 (4) To advise the Director on the development  
16 of a comprehensive annual budget for programs and  
17 activities under the Strategy, and have the responsi-  
18 bility for budget recommendations relating to border  
19 and transportation security, critical infrastructure  
20 protection, emergency preparedness and response,  
21 science and technology promotion related to home-  
22 land security, and Federal support for State and  
23 local activities.

24 (5) To plan, coordinate, and integrate those  
25 Federal Government activities relating to border and

1 transportation security, critical infrastructure pro-  
2 tection, all-hazards emergency preparedness, re-  
3 sponse, recovery, and mitigation.

4 (6) To serve as a national focal point to analyze  
5 all information available to the United States related  
6 to threats of terrorism and other homeland threats.

7 (7) To establish and coordinate an integrated  
8 program to evaluate, identify, anticipate, and miti-  
9 gate threats, vulnerabilities, and risks through  
10 threat and vulnerability assessments (including red  
11 teaming) and risk analysis, and to disseminate infor-  
12 mation and intelligence derived from such activities  
13 to appropriate entities.

14 (8) To identify and promote key scientific and  
15 technological advances that will enhance homeland  
16 security.

17 (9) To include, as appropriate, State and local  
18 governments and other entities in the full range of  
19 activities undertaken by the Department to promote  
20 homeland security, including—

21 (A) providing State and local government  
22 personnel, agencies and authorities, with appro-  
23 priate intelligence information, including warn-  
24 ings, regarding threats posed by terrorism in a  
25 timely and secure manner;

1 (B) facilitating efforts by State and local  
2 law enforcement and other officials to assist in  
3 the collection and dissemination of intelligence  
4 information and to provide information to the  
5 Department, and other agencies, in a timely  
6 and secure manner;

7 (C) coordinating with State, regional, and  
8 local government personnel, agencies, and au-  
9 thorities and, as appropriate, with the private  
10 sector, other entities, and the public, to ensure  
11 adequate planning, team work, coordination, in-  
12 formation sharing, equipment, training, and ex-  
13 ercise activities;

14 (D) consulting State and local govern-  
15 ments, and other entities as appropriate, in de-  
16 veloping the Strategy under title III;

17 (E) systematically identifying and remov-  
18 ing obstacles to developing effective partner-  
19 ships between the Department, other agencies,  
20 and State, regional, and local government per-  
21 sonnel, agencies, and authorities, the private  
22 sector, other entities, and the public to secure  
23 the homeland.

24 (10)(A) To consult and coordinate with the Sec-  
25 retary of Defense and the governors of the several

1 States regarding integration of the United States  
2 military, including the National Guard, into all as-  
3 pects of the Strategy and its implementation, includ-  
4 ing detection, prevention, protection, response, and  
5 recovery.

6 (B) To consult and coordinate with the Sec-  
7 retary of Defense and make recommendations con-  
8 cerning organizational structure, equipment, and po-  
9 sitioning of military assets determined critical to  
10 executing the Strategy.

11 (11) To seek to ensure effective day-to-day co-  
12 ordination of homeland security operations, and es-  
13 tablish effective mechanisms for such coordination,  
14 among the elements constituting the Department  
15 and with other involved and affected Federal, State,  
16 and local departments and agencies.

17 (12) To administer the Homeland Security Ad-  
18 visory System, exercising primary responsibility for  
19 public threat advisories, and (in coordination with  
20 other agencies) providing specific warning informa-  
21 tion to State and local government personnel, agen-  
22 cies and authorities, the private sector, other entities  
23 and the public, and advice about appropriate protec-  
24 tive actions and countermeasures.

1           (13) To conduct exercise and training programs  
2 for employees of the Department and other involved  
3 agencies, and establish effective command and con-  
4 trol procedures for the full range of potential contin-  
5 gencies regarding United States homeland security,  
6 including contingencies that require the substantial  
7 support of military assets.

8           (14) To annually develop a Federal response  
9 plan for homeland security and emergency prepared-  
10 ness with regard to terrorism and other manmade  
11 and natural disasters.

12           (15) To direct the acquisition and management  
13 of all of the information resources of the Depart-  
14 ment, including communications resources.

15           (16) To endeavor to make the information tech-  
16 nology systems of the Department, including com-  
17 munications systems, effective, efficient, secure, and  
18 appropriately interoperable.

19           (17) In furtherance of paragraph (16), to over-  
20 see and ensure the development and implementation  
21 of—

22                   (A) an enterprise architecture for Depart-  
23 ment-wide information technology, with time-  
24 tables for implementation; and

1 (B) a plan to achieve appropriate  
2 interoperability—

3 (i) among the information systems of  
4 the Department, including communications  
5 systems; and

6 (ii) between the information systems  
7 of the Department and those of other Fed-  
8 eral, State, and local agencies with respon-  
9 sibility for homeland security.

10 (18) As the Secretary considers necessary, to  
11 oversee and ensure the development and implemen-  
12 tation of updated versions of the enterprise architec-  
13 ture and plan under paragraph (16).

14 (19) To report to Congress on the development  
15 and implementation of the enterprise architecture  
16 and plan referred to in paragraph (16) in—

17 (A) each implementation progress report  
18 required under section 175; and

19 (B) each biennial report required under  
20 section 192(b).

21 (c) VISA ISSUANCE BY THE SECRETARY.—

22 (1) DEFINITION.—In this subsection, the term  
23 “consular officer” has the meaning given that term  
24 under section 101(a)(9) of the Immigration and Na-  
25 tionality Act (8 U.S.C. 1101(a)(9)).

1           (2) IN GENERAL.—Notwithstanding section  
2 104(a) of the Immigration and Nationality Act (8  
3 U.S.C. 1104(a)) or any other provision of law, and  
4 except as provided under paragraph (3), the  
5 Secretary—

6           (A) shall be vested exclusively with all au-  
7 thorities to issue regulations with respect to,  
8 administer, and enforce the provisions of such  
9 Act, and of all other immigration and nation-  
10 ality laws, relating to the functions of consular  
11 officers of the United States in connection with  
12 the granting or refusal of visas, which authori-  
13 ties shall be exercised through the Secretary of  
14 State, except that the Secretary shall not have  
15 authority to alter or reverse the decision of a  
16 consular officer to refuse a visa to an alien; and

17           (B)(i) may delegate in whole or part the  
18 authority under subparagraph (A) to the Sec-  
19 retary of State; and

20           (ii) shall have authority to confer or im-  
21 pose upon any officer or employee of the United  
22 States, with the consent of the head of the exec-  
23 utive agency under whose jurisdiction such offi-  
24 cer or employee is serving, any of the functions  
25 specified in subparagraph (A).



1           (3) AUTHORITY OF THE SECRETARY OF  
2 STATE.—

3           (A) IN GENERAL.—The Secretary of State  
4 may direct a consular officer to refuse a visa to  
5 an alien if the Secretary of State considers such  
6 refusal necessary or advisable in the foreign  
7 policy or security interests of the United States.

8           (B) STATUTORY CONSTRUCTION.—Nothing  
9 in this subsection shall be construed as affect-  
10 ing the authorities of the Secretary of State  
11 under the following provisions of law:

12           (i) Section 101(a)(15)(A) of the Im-  
13 migration and Nationality Act (8 U.S.C.  
14 1182(a)(3)(C)).

15           (ii) Section 212(a)(3)(B)(i)(IV)(bb) of  
16 the Immigration and Nationality Act (8  
17 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

18           (iii) Section 212(a)(3)(B)(i)(VI) of  
19 the Immigration and Nationality Act (8  
20 U.S.C. 1182(a)(3)(B)(i)(VI)).

21           (iv) Section 212(a)(3)(B)(vi)(II) of  
22 the Immigration and Nationality Act (8  
23 U.S.C. 1182 (a)(3)(B)(vi)(II)).

1 (v) Section 212(a)(3)(C) of the Immi-  
2 gration and Nationality Act (8 U.S.C.  
3 1182(a)(3)(C)).

4 (vi) Section 212(a)(10)(C) of the Im-  
5 migration and Nationality Act (8 U.S.C.  
6 1182(a)(10)(C)).

7 (vii) Section 212(f) of the Immigra-  
8 tion and Nationality Act (8 U.S.C.  
9 1182(f)).

10 (viii) Section 219(a) of the Immigra-  
11 tion and Nationality Act (8 U.S.C. 1189).

12 (ix) Section 237(a)(4)(C) of Immigra-  
13 tion and Nationality Act (8 U.S.C.  
14 1227(a)(4)(C)).

15 (x) Section 104 of the Cuban Liberty  
16 and Democratic Solidarity (LIBERTAD)  
17 Act of 1996 (22 U.S.C. 6034).

18 (xi) Section 616 of the Departments  
19 of Commerce, Justice, and State, the Judi-  
20 ciary, and Related Agencies Appropriations  
21 Act, 1999.

22 (xii) Section 103(f) of the Chemical  
23 Weapons Convention Implementation Act  
24 of 1998 (112 Stat. 2681–865).

1 (xiii) Section 801 of the Admiral  
2 James W. Nance and Meg Donovan For-  
3 eign Relations Authorization Act, Fiscal  
4 Years 2002 and 2001 (113 Stat 1501A-  
5 468).

6 (xiv) Section 568 of the Foreign Op-  
7 erations, Export Financing, and Related  
8 Programs Appropriations Act, 2002 (Pub-  
9 lic Law 107–115).

10 (xv) Section 51 of the State Depart-  
11 ment Basic Authorities Act of 1956 (22  
12 U.S.C. 2723).

13 (4) CONSULAR OFFICERS AND CHIEFS OF MIS-  
14 SIONS.—Nothing in this subsection may be construed  
15 to alter or affect—

16 (A) the employment status of consular offi-  
17 cers as employees of the Department of State;  
18 or

19 (B) the authority of a chief of mission  
20 under section 207 of the Foreign Service Act of  
21 1980 (22 U.S.C. 3927).

22 (5) ASSIGNMENT OF HOMELAND SECURITY EM-  
23 PLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

24 (A) IN GENERAL.—The Secretary is au-  
25 thorized to assign employees of the Department

1 to diplomatic and consular posts abroad to per-  
2 form the following functions:

3 (i) Provide expert advice to consular  
4 officers regarding specific security threats  
5 relating to the adjudication of individual  
6 visa applications or classes of applications.

7 (ii) Review any such applications, ei-  
8 ther on the initiative of the employee of the  
9 Department or upon request by a consular  
10 officer or other person charged with adju-  
11 dicating such applications.

12 (iii) Conduct investigations with re-  
13 spect to matters under the jurisdiction of  
14 the Secretary.

15 (B) PERMANENT ASSIGNMENT; PARTICIPA-  
16 TION IN TERRORIST LOOKOUT COMMITTEE.—  
17 When appropriate, employees of the Depart-  
18 ment assigned to perform functions described in  
19 subparagraph (A) may be assigned permanently  
20 to overseas diplomatic or consular posts with  
21 country-specific or regional responsibility. If the  
22 Secretary so directs, any such employee, when  
23 present at an overseas post, shall participate in  
24 the terrorist lookout committee established  
25 under section 304 of the Enhanced Border Se-

1 security and Visa Entry Reform Act of 2002 (8  
2 U.S.C. 1733).

3 (C) TRAINING AND HIRING.—

4 (i) IN GENERAL.—The Secretary shall  
5 ensure that any employees of the Depart-  
6 ment assigned to perform functions de-  
7 scribed under subparagraph (A) and, as  
8 appropriate, consular officers, shall be pro-  
9 vided all necessary training to enable them  
10 to carry out such functions, including  
11 training in foreign languages, in conditions  
12 in the particular country where each em-  
13 ployee is assigned, and in other appro-  
14 priate areas of study.

15 (ii) FOREIGN LANGUAGE PRO-  
16 FICIENCY.—Before assigning employees of  
17 the Department to perform the functions  
18 described under subparagraph (A), the  
19 Secretary shall promulgate regulations es-  
20 tablishing foreign language proficiency re-  
21 quirements for employees of the Depart-  
22 ment performing the functions described  
23 under subparagraph (A) and providing  
24 that preference shall be given to individ-  
25 uals who meet such requirements in hiring

1 employees for the performance of such  
2 functions.

3 (iii) USE OF CENTER.—The Secretary  
4 is authorized to use the National Foreign  
5 Affairs Training Center, on a reimbursable  
6 basis, to obtain the training described in  
7 clause (i).

8 (6) REPORT.—Not later than 1 year after the  
9 date of enactment of this Act, the Secretary and the  
10 Secretary of State shall submit to Congress—

11 (A) a report on the implementation of this  
12 subsection; and

13 (B) any legislative proposals necessary to  
14 further the objectives of this subsection.

15 (7) EFFECTIVE DATE.—This subsection shall  
16 take effect on the earlier of—

17 (A) the date on which the President pub-  
18 lishes notice in the Federal Register that the  
19 President has submitted a report to Congress  
20 setting forth a memorandum of understanding  
21 between the Secretary and the Secretary of  
22 State governing the implementation of this sec-  
23 tion; or

24 (B) the date occurring 1 year after the  
25 date of enactment of this Act.

1 (d) MEMBERSHIP ON THE NATIONAL SECURITY  
2 COUNCIL.—Section 101(a) of the National Security Act  
3 of 1947 (50 U.S.C. 402(a)) is amended in the fourth sen-  
4 tence by striking paragraphs (5), (6), and (7) and insert-  
5 ing the following:

6 “(5) the Secretary of Homeland Security; and

7 “(6) each Secretary or Under Secretary of such  
8 other executive department, or of a military depart-  
9 ment, as the President shall designate.”.

10 **SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.**

11 (a) IN GENERAL.—There shall be in the Department  
12 a Deputy Secretary of Homeland Security, who shall be  
13 appointed by the President, by and with the advice and  
14 consent of the Senate.

15 (b) RESPONSIBILITIES.—The Deputy Secretary of  
16 Homeland Security shall—

17 (1) assist the Secretary in the administration  
18 and operations of the Department;

19 (2) perform such responsibilities as the Sec-  
20 retary shall prescribe; and

21 (3) act as the Secretary during the absence or  
22 disability of the Secretary or in the event of a va-  
23 cancy in the office of the Secretary.

1 **SEC. 104. UNDER SECRETARY FOR MANAGEMENT.**

2 (a) IN GENERAL.—There shall be in the Department  
3 an Under Secretary for Management, who shall be ap-  
4 pointed by the President, by and with the advice and con-  
5 sent of the Senate.

6 (b) RESPONSIBILITIES.—The Under Secretary for  
7 Management shall report to the Secretary, who may assign  
8 to the Under Secretary such functions related to the man-  
9 agement and administration of the Department as the  
10 Secretary may prescribe, including—

11 (1) the budget, appropriations, expenditures of  
12 funds, accounting, and finance;

13 (2) procurement;

14 (3) human resources and personnel;

15 (4) information technology and communications  
16 systems;

17 (5) facilities, property, equipment, and other  
18 material resources;

19 (6) security for personnel, information tech-  
20 nology and communications systems, facilities, prop-  
21 erty, equipment, and other material resources; and

22 (7) identification and tracking of performance  
23 measures relating to the responsibilities of the De-  
24 partment.



1 **SEC. 105. ASSISTANT SECRETARIES.**

2 (a) IN GENERAL.—There shall be in the Department  
3 not more than 5 Assistant Secretaries, each of whom shall  
4 be appointed by the President, by and with the advice and  
5 consent of the Senate.

6 (b) RESPONSIBILITIES.—

7 (1) IN GENERAL.—Whenever the President sub-  
8 mits the name of an individual to the Senate for  
9 confirmation as an Assistant Secretary under this  
10 subsection, the President shall describe the general  
11 responsibilities that such appointee will exercise  
12 upon taking office.

13 (2) ASSIGNMENT.—Subject to paragraph (1),  
14 the Secretary shall assign to each Assistant Sec-  
15 retary such functions as the Secretary considers ap-  
16 propriate.

17 **SEC. 106. INSPECTOR GENERAL.**

18 (a) IN GENERAL.—There shall be in the Department  
19 an Inspector General. The Inspector General and the Of-  
20 fice of Inspector General shall be subject to the Inspector  
21 General Act of 1978 (5 U.S.C. App.).

22 (b) ESTABLISHMENT.—Section 11 of the Inspector  
23 General Act of 1978 (5 U.S.C. App.) is amended—

24 (1) in paragraph (1), by inserting “Homeland  
25 Security,” after “Health and Human Services,”; and

1           (2) in paragraph (2), by inserting “Homeland  
2           Security,” after “Health and Human Services,”.

3           (c) REVIEW OF THE DEPARTMENT OF HOMELAND  
4 SECURITY.—The Inspector General shall designate 1 offi-  
5 cial who shall—

6           (1) review information and receive complaints  
7           alleging abuses of civil rights and civil liberties by  
8           employees and officials of the Department;

9           (2) publicize, through the Internet, radio, tele-  
10          vision, and newspaper advertisements—

11           (A) information on the responsibilities and  
12          functions of the official; and

13           (B) instructions on how to contact the offi-  
14          cial; and

15           (3) on a semi-annual basis, submit to Congress,  
16          for referral to the appropriate committee or commit-  
17          tees, a report—

18           (A) describing the implementation of this  
19          subsection;

20           (B) detailing any civil rights abuses under  
21          paragraph (1); and

22           (C) accounting for the expenditure of  
23          funds to carry out this subsection.

24          (d) ADDITIONAL PROVISIONS WITH RESPECT TO  
25 THE INSPECTOR GENERAL OF THE DEPARTMENT OF

1 HOMELAND SECURITY.—The Inspector General Act of  
2 1978 (5 U.S.C. App.) is amended—

3 (1) by redesignating section 8I as section 8J;

4 and

5 (2) by inserting after section 8H the following:

6 SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF

7 HOMELAND SECURITY

8 “SEC. 8I. (a)(1) Notwithstanding the last 2 sentences  
9 of section 3(a), the Inspector General of the Department  
10 of Homeland Security (in this section referred to as the  
11 “Inspector General”) shall be under the authority, direc-  
12 tion, and control of the Secretary of Homeland Security  
13 (in this section referred to as the “Secretary”) with re-  
14 spect to audits or investigations, or the issuance of sub-  
15 poenas, which require access to sensitive information  
16 concerning—

17 “(A) intelligence or counterintelligence matters;

18 “(B) ongoing criminal investigations or pro-  
19 ceedings;

20 “(C) undercover operations;

21 “(D) the identity of confidential sources, includ-  
22 ing protected witnesses;

23 “(E) other matters the disclosure of which  
24 would constitute a serious threat to the protection of  
25 any person or property authorized protection by—

1                   “(i) section 3056 of title 18, United States  
2                   Code;

3                   “(ii) section 202 of title 3, United States  
4                   Code; or

5                   “(iii) any provision of the Presidential Pro-  
6                   tection Assistance Act of 1976 (18 U.S.C. 3056  
7                   note); or

8                   “(F) other matters the disclosure of which  
9                   would constitute a serious threat to national secu-  
10                  rity.

11                  “(2) With respect to the information described under  
12                  paragraph (1), the Secretary may prohibit the Inspector  
13                  General from carrying out or completing any audit or in-  
14                  vestigation, or from issuing any subpoena, after such In-  
15                  specter General has decided to initiate, carry out, or com-  
16                  plete such audit or investigation or to issue such subpoena,  
17                  if the Secretary determines that such prohibition is nec-  
18                  essary to—

19                         “(A) prevent the disclosure of any information  
20                         described under paragraph (1);

21                         “(B) preserve the national security; or

22                         “(C) prevent significant impairment to the na-  
23                         tional interests of the United States.

24                  “(3) If the Secretary exercises any power under para-  
25                  graph (1) or (2), the Secretary shall notify the Inspector

1 General in writing (appropriately classified, if necessary)  
2 within 7 calendar days stating the reasons for such exer-  
3 cise. Within 30 days after receipt of any such notice, the  
4 Inspector General shall transmit a copy of such notice, to-  
5 gether with such comments concerning the exercise of such  
6 power as the Inspector General considers appropriate,  
7 to—

8           “(A) the President of the Senate;

9           “(B) the Speaker of the House of Representa-  
10 tives;

11           “(C) the Committee on Governmental Affairs of  
12 the Senate;

13           “(D) the Committee on Government Reform of  
14 the House of Representatives; and

15           “(E) other appropriate committees or sub-  
16 committees of Congress.

17           “(b)(1) In carrying out the duties and responsibilities  
18 under this Act, the Inspector General shall have oversight  
19 responsibility for the internal investigations and audits  
20 performed by any other office performing internal inves-  
21 tigatory or audit functions in any subdivision of the De-  
22 partment of Homeland Security.

23           “(2) The head of each other office described under  
24 paragraph (1) shall promptly report to the Inspector Gen-

1 eral the significant activities being carried out by such of-  
2 fice.

3 “(3) Notwithstanding paragraphs (1) and (2), the In-  
4 spector General may initiate, conduct, and supervise such  
5 audits and investigations in the Department (including in  
6 any subdivision referred to in paragraph (1)) as the In-  
7 spector General considers appropriate.

8 “(4) If the Inspector General initiates an audit or in-  
9 vestigation under paragraph (3) concerning a subdivision  
10 referred to in paragraph (1), the Inspector General may  
11 provide the head of the other office performing internal  
12 investigatory or audit functions in the subdivision with  
13 written notice that the Inspector General has initiated  
14 such an audit or investigation. If the Inspector General  
15 issues such a notice, no other audit or investigation shall  
16 be initiated into the matter under audit or investigation  
17 by the Inspector General, and any other audit or investiga-  
18 tion of such matter shall cease.

19 “(c) Any report required to be transmitted by the  
20 Secretary to the appropriate committees or subcommittees  
21 of Congress under section 5(d) shall also be transmitted,  
22 within the 7-day period specified under that subsection,  
23 to—

24 “(1) the President of the Senate;

1           “(2) the Speaker of the House of Representa-  
2           tives;

3           “(3) the Committee on Governmental Affairs of  
4           the Senate; and

5           “(4) the Committee on Government Reform of  
6           the House of Representatives.”.

7           (e) TECHNICAL AND CONFORMING AMENDMENTS.—  
8           The Inspector General Act of 1978 (5 U.S.C. appendix)  
9           is amended—

10           (1) in section 4(b), by striking “8F” each place  
11           it appears and inserting “8G”; and

12           (2) in section 8J (as redesignated by subsection  
13           (c)(1)), by striking “or 8H” and inserting “, 8H, or  
14           8I”.”

15           **SEC. 107. CHIEF FINANCIAL OFFICER.**

16           (a) IN GENERAL.—There shall be in the Department  
17           a Chief Financial Officer, who shall be appointed or des-  
18           ignated in the manner prescribed under section 901(a)(1)  
19           of title 31, United States Code.

20           (b) ESTABLISHMENT.—Section 901(b)(1) of title 31,  
21           United States Code, is amended by adding at the end the  
22           following:

23           “(Q) The Department of Homeland Security.”

1 **SEC. 108. CHIEF INFORMATION OFFICER.**

2 (a) IN GENERAL.—There shall be in the Department  
3 a Chief Information Officer, who shall be designated in  
4 the manner prescribed under section 3506(a)(2)(A) of title  
5 44, United States Code.

6 (b) RESPONSIBILITIES.—The Chief Information Offi-  
7 cer shall assist the Secretary with Department-wide infor-  
8 mation resources management and perform those duties  
9 prescribed by law for chief information officers of agen-  
10 cies.

11 **SEC. 109. GENERAL COUNSEL.**

12 (a) IN GENERAL.—There shall be in the Department  
13 a General Counsel, who shall be appointed by the Presi-  
14 dent, by and with the advice and consent of the Senate.

15 (b) RESPONSIBILITIES.—The General Counsel  
16 shall—

17 (1) serve as the chief legal officer of the De-  
18 partment;

19 (2) provide legal assistance to the Secretary  
20 concerning the programs and policies of the Depart-  
21 ment; and

22 (3) advise and assist the Secretary in carrying  
23 out the responsibilities under section 102(b).



1 **SEC. 110. CIVIL RIGHTS OFFICER.**

2 (a) IN GENERAL.—There shall be in the Department  
3 a Civil Rights Officer, who shall be appointed by the Presi-  
4 dent, by and with the advice and consent of the Senate.

5 (b) RESPONSIBILITIES.—The Civil Rights Officer  
6 shall be responsible for—

7 (1) ensuring compliance with all civil rights and  
8 related laws and regulations applicable to Depart-  
9 ment employees and participants in Department pro-  
10 grams;

11 (2) coordinating administration of all civil  
12 rights and related laws and regulations within the  
13 Department for Department employees and partici-  
14 pants in Department programs;

15 (3) assisting the Secretary, directorates, and of-  
16 fices with the development and implementation of  
17 policies and procedures that ensure that civil rights  
18 considerations are appropriately incorporated and  
19 implemented in Department programs and activities;

20 (4) overseeing compliance with statutory and  
21 constitutional requirements related to the civil rights  
22 of individuals affected by the Department's pro-  
23 grams and activities; and

24 (5) notifying the Inspector General of any mat-  
25 ter that, in the opinion of the Civil Rights Officer,  
26 warrants further investigation.

1 **SEC. 111. PRIVACY OFFICER.**

2 (a) IN GENERAL.—There shall be in the Department  
3 a Privacy Officer, who shall be appointed by the Secretary.

4 (b) RESPONSIBILITIES.—The Privacy Officer shall—

5 (1) oversee compliance with section 552a of title  
6 5, United States Code (commonly referred to as the  
7 Privacy Act of 1974) and all other applicable laws  
8 relating to the privacy of personal information;

9 (2) assist the Secretary, directorates, and of-  
10 fices with the development and implementation of  
11 policies and procedures that ensure that—

12 (A) privacy considerations and safeguards  
13 are appropriately incorporated and implemented  
14 in Department programs and activities; and

15 (B) any information received by the De-  
16 partment is used or disclosed in a manner that  
17 minimizes the risk of harm to individuals from  
18 the inappropriate disclosure or use of such ma-  
19 terials;

20 (3) assist Department personnel with the prepa-  
21 ration of privacy impact assessments when required  
22 by law or considered appropriate by the Secretary;  
23 and

24 (4) notify the Inspector General of any matter  
25 that, in the opinion of the Privacy Officer, warrants  
26 further investigation.

1 **SEC. 112. CHIEF HUMAN CAPITAL OFFICER.**

2 (a) IN GENERAL.—The Secretary shall appoint or  
3 designate a Chief Human Capital Officer, who shall—

4 (1) advise and assist the Secretary and other  
5 officers of the Department in ensuring that the  
6 workforce of the Department has the necessary skills  
7 and training, and that the recruitment and retention  
8 policies of the Department allow the Department to  
9 attract and retain a highly qualified workforce, in  
10 accordance with all applicable laws and require-  
11 ments, to enable the Department to achieve its mis-  
12 sions;

13 (2) oversee the implementation of the laws,  
14 rules and regulations of the President and the Office  
15 of Personnel Management governing the civil service  
16 within the Department; and

17 (3) advise and assist the Secretary in planning  
18 and reporting under the Government Performance  
19 and Results Act of 1993 (including the amendments  
20 made by that Act), with respect to the human cap-  
21 ital resources and needs of the Department for  
22 achieving the plans and goals of the Department.

23 (b) FUNCTIONS.—The functions of the Chief Human  
24 Capital Officer shall include—

25 (1) setting the workforce development strategy  
26 of the Department;

1           (2) assessing workforce characteristics and fu-  
2           ture needs based on the mission and strategic plan  
3           of the Department;

4           (3) aligning the human resources policies and  
5           programs of the Department with organization mis-  
6           sion, strategic goals, and performance outcomes;

7           (4) developing and advocating a culture of con-  
8           tinuous learning to attract and retain employees  
9           with superior abilities;

10          (5) identifying best practices and benchmarking  
11          studies;

12          (6) applying methods for measuring intellectual  
13          capital and identifying links of that capital to orga-  
14          nizational performance and growth; and

15          (7) providing employee training and profes-  
16          sional development.

17 **SEC. 113. EXECUTIVE SCHEDULE POSITIONS.**

18          (a) EXECUTIVE SCHEDULE LEVEL I POSITION.—  
19 Section 5312 of title 5, United States Code, is amended  
20 by adding at the end the following:

21                 “Secretary of Homeland Security.”.

22          (b) EXECUTIVE SCHEDULE LEVEL II POSITION.—  
23 Section 5313 of title 5, United States Code, is amended  
24 by adding at the end the following:

25                 “Deputy Secretary of Homeland Security.”.

1 (c) EXECUTIVE SCHEDULE LEVEL III POSITION.—  
2 Section 5314 of title 5, United States Code, is amended  
3 by adding at the end the following:

4 “Under Secretary for Management, Department  
5 of Homeland Security.”.

6 (d) EXECUTIVE SCHEDULE LEVEL IV POSITIONS.—  
7 Section 5315 of title 5, United States Code, is amended  
8 by adding at the end the following:

9 “Assistant Secretaries of Homeland Security  
10 (5).

11 “Inspector General, Department of Homeland  
12 Security.

13 “Chief Financial Officer, Department of Home-  
14 land Security.

15 “Chief Information Officer, Department of  
16 Homeland Security.

17 “General Counsel, Department of Homeland  
18 Security.”.

19 **Subtitle B—Establishment of**  
20 **Directorates and Offices**

21 **SEC. 131. DIRECTORATE OF BORDER AND TRANSPOR-**  
22 **TATION PROTECTION.**

23 (a) ESTABLISHMENT.—

1           (1) DIRECTORATE.—There is established within  
2 the Department the Directorate of Border and  
3 Transportation Protection.

4           (2) UNDER SECRETARY.—There shall be an  
5 Under Secretary for Border and Transportation,  
6 who shall be appointed by the President, by and  
7 with the advice and consent of the Senate.

8           (b) RESPONSIBILITIES.—The Directorate of Border  
9 and Transportation Protection shall be responsible for the  
10 following:

11           (1) Securing the borders, territorial waters,  
12 ports, terminals, waterways and air, land (including  
13 rail), and sea transportation systems of the United  
14 States, including coordinating governmental activi-  
15 ties at ports of entry.

16           (2) Receiving and providing relevant intelligence  
17 on threats of terrorism and other homeland threats.

18           (3) Administering, carrying out, and promoting  
19 other established missions of the entities transferred  
20 to the Directorate.

21           (4) Receiving, assessing, and distributing infor-  
22 mation collected in the course of its duties which re-  
23 lates to border and transportation security and  
24 threats to the United States.

1           (5) Using intelligence from the Directorate of  
2 Intelligence and other Federal intelligence organiza-  
3 tions under section 131(b)(2) to establish inspection  
4 priorities to identify products, including agriculture  
5 and livestock, and other goods imported from sus-  
6 pect locations recognized by the intelligence commu-  
7 nity as having terrorist activities, unusual human  
8 health or agriculture disease outbreaks, or harboring  
9 terrorists.

10           (6) Performing such other duties assigned by  
11 the Secretary.

12           (c) TRANSFER OF AUTHORITIES, FUNCTIONS, PER-  
13 SONNEL, AND ASSETS TO THE DEPARTMENT.—Except as  
14 provided under subsection (d), the authorities, functions,  
15 personnel, and assets of the following entities are trans-  
16 ferred to the Department:

17           (1) The United States Customs Service, which  
18 shall be maintained as a distinct entity within the  
19 Department.

20           (2) The United States Coast Guard, which shall  
21 be maintained as a distinct entity within the Depart-  
22 ment.

23           (3) The Animal and Plant Health Inspection  
24 Service of the Department of Agriculture, that por-

1           tion of which administers laws relating to agricul-  
2           tural quarantine inspections at points of entry.

3           (4) The Transportation Security Administration  
4           of the Department of Transportation.

5 **SEC. 132. DIRECTORATE OF INTELLIGENCE.**

6           (a) ESTABLISHMENT.—

7           (1) DIRECTORATE.—

8           (A) IN GENERAL.—There is established a  
9           Directorate of Intelligence which shall serve as  
10          a national-level focal point for the analysis of  
11          all information available to the United States  
12          Government for the purpose of preventing, de-  
13          terring, protecting against, preparing for, and  
14          responding to threats of terrorism against the  
15          United States and other threats to homeland  
16          security.

17          (B) SUPPORT TO DIRECTORATE.—The Di-  
18          rectorate of Intelligence shall be supported by—

19                 (i) the Federal Bureau of Investiga-  
20                 tion;

21                 (ii) the intelligence community as de-  
22                 fined under section 3(4) of the National  
23                 Security Act of 1947 (50 U.S.C. 401a) in-  
24                 cluding the Office of the Director of Cen-  
25                 tral Intelligence, the National Intelligence



1 Council, the Central Intelligence Agency,  
2 the National Security Agency, the Defense  
3 Intelligence Agency, the National Imagery  
4 and Mapping Agency, the National Recon-  
5 naissance Office, and the Bureau of Intel-  
6 ligence and Research of the Department of  
7 State; and

8 (iii) other agencies or entities, includ-  
9 ing those within the Department, as deter-  
10 mined by the Secretary.

11 (2) UNDER SECRETARY.—There shall be an  
12 Under Secretary for Intelligence who shall be ap-  
13 pointed by the President, by and with the advice and  
14 consent of the Senate.

15 (b) RESPONSIBILITIES.—The Directorate of Intel-  
16 ligence shall be responsible for the following:

17 (1) Receiving and analyzing law enforcement in-  
18 formation, intelligence, and other information in  
19 order to understand the nature and scope of threats  
20 to the homeland and to detect and identify threats  
21 of terrorism against the United States and other  
22 threats to homeland security.

23 (2) Ensuring timely and efficient access by the  
24 Directorate to—

1 (A) information from agencies described  
2 under subsection (a)(1)(B), State and local gov-  
3 ernments, local law enforcement and intel-  
4 ligence agencies, private sector entities; and

5 (B) open source information.

6 (3) Working with the Director of Central Intel-  
7 ligence and the agencies described under subsection  
8 (a)(1)(B), to establish overall collection priorities  
9 and strategies for information, including law en-  
10 forcement-related information, relating to threats of  
11 terrorism against the United States and other  
12 threats to homeland security.

13 (4) Directing the agencies described under sub-  
14 section (a)(1)(B), on behalf of the Secretary and  
15 subject to disapproval by the President, on a case-  
16 by-case basis, to provide additional information re-  
17 lating to threats of terrorism against the United  
18 States and other threats to homeland security.

19 (5) Disseminating information to the Direc-  
20 torate of Critical Infrastructure Protection, the  
21 agencies described under subsection (a)(1)(B), State  
22 and local governments, local law enforcement and in-  
23 telligence agencies, and private sector entities to as-  
24 sist in the deterrence, prevention, preemption, and

1 response to threats of terrorism against the United  
2 States and other threats to homeland security.

3 (6) Establishing and utilizing, in conjunction  
4 with the Chief Information Officer of the Depart-  
5 ment, and in conjunction with the appropriate offi-  
6 cers at the agencies described under subsection  
7 (a)(1)(B), a secure communications and information  
8 technology infrastructure, including data mining and  
9 other advanced analytical tools, to permit the Direc-  
10 torate's analysts to access, receive, and analyze law  
11 enforcement, intelligence, and other information in  
12 the possession of agencies, to the extent that such  
13 information may lawfully be obtained from State  
14 and local governments, local law enforcement and in-  
15 telligence agencies, and private sector entities.

16 (7) Developing, in conjunction with the Chief  
17 Information Officer of the Department, and in con-  
18 junction with appropriate officers at the agencies de-  
19 scribed under subsection (a)(1)(B) appropriate soft-  
20 ware, hardware, and other information technology,  
21 and security and formatting protocols, to ensure  
22 that the Federal Government databases and infor-  
23 mation technology systems containing information  
24 relevant to terrorist threats, and other threats  
25 against the United States, are—

1 (A) compatible with the secure communica-  
2 tions and information technology infrastructure  
3 referred to under paragraph (6); and

4 (B) comply with Federal laws concerning  
5 privacy and the prevention of unauthorized dis-  
6 closure.

7 (8) Ensuring, in conjunction with the Director  
8 of Central Intelligence and the Attorney General,  
9 that all material received by the Department related  
10 to threats of terrorism against the United States  
11 and other threats to homeland security is protected  
12 against unauthorized disclosure and is utilized by  
13 the Department only in the course and for the pur-  
14 poses of fulfillment of official duties, and is trans-  
15 mitted, retained, handled, and disseminated con-  
16 sistent with—

17 (A) the authority of the Director of Cen-  
18 tral Intelligence to protect intelligence sources  
19 and methods from unauthorized disclosure  
20 under the National Security Act of 1947 (50  
21 U.S.C. 401 et seq.) and related procedures; or

22 (B) as appropriate, similar authorities of  
23 the Attorney General concerning sensitive law  
24 enforcement information, and the privacy inter-  
25 ests of United States persons as defined under

1 section 101 of the Foreign Intelligence Surveil-  
2 lance Act of 1978 (50 U.S.C. 1801).

3 (9) Referring, through the Secretary, to the ap-  
4 propriate law enforcement or intelligence agency, in-  
5 telligence and analysis requiring further investiga-  
6 tion or action.

7 (10) Providing training and other support as  
8 necessary to providers of information to the Depart-  
9 ment, or consumers of information from the Depart-  
10 ment, to allow such providers or consumers to iden-  
11 tify and share intelligence information revealed in  
12 their ordinary duties or utilize information received  
13 from the Department.

14 (11) Reviewing, analyzing, and making rec-  
15 ommendations through the Secretary for improve-  
16 ments in the policies and procedures governing the  
17 sharing of law enforcement, intelligence, and other  
18 information relating to threats of terrorism against  
19 the United States and other threats to homeland se-  
20 curity within the Federal government and between  
21 the Federal government and State and local govern-  
22 ments, local law enforcement and intelligence agen-  
23 cies, and private sector entities.

24 (12) Assisting and supporting the Secretary in  
25 conducting threat and vulnerability assessments and

1 risk analyses in coordination with other appropriate  
2 entities, including the Office of Risk Analysis and  
3 Assessment in the Directorate of Science and Tech-  
4 nology.

5 (13) Performing other related and appropriate  
6 duties as assigned by the Secretary.

7 (c) ACCESS TO INFORMATION.—

8 (1) IN GENERAL.—The Secretary shall have ac-  
9 cess to, and agencies described under subsection  
10 (a)(1)(B) shall provide, all law enforcement, intel-  
11 ligence, and other information in the possession of  
12 agencies described under subsection (a)(1)(B) relat-  
13 ing to threats of terrorism against the United States  
14 and other threats to homeland security, including all  
15 reports, assessments, analytical information, and  
16 unevaluated data the Secretary determines necessary  
17 in order to fulfill the responsibilities of the Sec-  
18 retary, except when the President determines other-  
19 wise in writing. If there is uncertainty to an agency  
20 possessing certain information as to the relevance of  
21 that information, that agency shall provide that in-  
22 formation to the Secretary who shall determine the  
23 relevance of the information, except when the Presi-  
24 dent determines otherwise in writing.

1           (2) OBTAINING INFORMATION.—The Secretary  
2           may obtain information described under paragraph  
3           (1) by directing agencies described under subsection  
4           (a)(1)(B) to provide such information in such form  
5           and at such intervals as the Secretary determines  
6           necessary to fulfill the responsibilities of the Sec-  
7           retary under this division. Agencies shall provide the  
8           Secretary with information through secure means,  
9           including direct access to specific databases, and  
10          through secure communications and information  
11          technology infrastructure, consistent with the protec-  
12          tion of such information from unauthorized disclo-  
13          sure.

14          (3) AGREEMENTS.—To facilitate access to in-  
15          formation under this subsection, the Secretary may  
16          enter into cooperative arrangements or memoranda  
17          of understanding with agencies described under sub-  
18          section (a)(1)(B), State and local governments, local  
19          law enforcement and intelligence agencies, and pri-  
20          vate sector entities, as the Secretary determines nec-  
21          essary and appropriate. Failure to reach an agree-  
22          ment under this paragraph with the Secretary shall  
23          not constitute grounds for an agency to withhold  
24          from the Secretary information that the Secretary

1 determines necessary for the fulfillment of the re-  
2 sponsibilities of the Secretary.

3 (d) AUTHORIZATION TO SHARE LAW ENFORCEMENT  
4 INFORMATION.—The Secretary shall be deemed to be a  
5 Federal law enforcement, intelligence, protective, national  
6 defense, or national security official for purposes of infor-  
7 mation sharing provisions of—

8 (1) section 203(d) of the USA PATRIOT Act  
9 of 2001 (Public Law 107–56);

10 (2) section 2517(6) of title 18, United States  
11 Code; and

12 (3) rule 6(e)(3)(C) of the Federal Rules of  
13 Criminal Procedure.

14 (e) ADDITIONAL RESPONSIBILITIES.—The Under  
15 Secretary for Intelligence shall also be responsible for—

16 (1) developing intelligence about the means ter-  
17 rorists are likely to use to exploit vulnerabilities in  
18 the homeland security infrastructure;

19 (2) developing and conducting experiments,  
20 tests, and inspections to test weaknesses in home-  
21 land defenses;

22 (3) developing methods to conduct counter-sur-  
23 veillance of critical infrastructure and potential tar-  
24 gets for terrorism against the United States;



1           (4) conducting risk assessments to determine  
2           the risk posed by specific kinds of terrorist attacks,  
3           the probability of successful attacks, and the feasi-  
4           bility of specific countermeasures; and

5           (5) working with the Directorate of Critical In-  
6           frastructure Protection, other offices and agencies in  
7           the Department, other agencies, State and local gov-  
8           ernments, local law enforcement and intelligence  
9           agencies, and private sector entities, to address  
10          vulnerabilities.

11          (f) MANAGEMENT AND STAFFING.—

12           (1) IN GENERAL.—The Directorate of Intel-  
13          ligence shall be staffed, in part, by analysts as re-  
14          quested by the Secretary and assigned by the agen-  
15          cies described under subsection (a)(1)(B). The ana-  
16          lysts shall be assigned by reimbursable detail for pe-  
17          riods as determined necessary by the Secretary in  
18          conjunction with the head of the assigning agency.

19           (2) EMPLOYEES ASSIGNED WITHIN THE DE-  
20          PARTMENT.—The Secretary may assign employees  
21          of the Department by reimbursable detail to the Di-  
22          rectorate.

23           (3) SERVICE AS FACTOR FOR SELECTION.—The  
24          President, or the designee of the President, shall  
25          prescribe regulations to provide that service de-

1 scribed under paragraph (1) or (2), or service by  
2 employees within the Directorate shall be considered  
3 a positive factor for selection to positions of greater  
4 authority within all supporting agencies.

5 (4) PERSONNEL SECURITY STANDARDS.—The  
6 employment of personnel in the Directorate shall be  
7 in accordance with such personnel security standards  
8 for access to classified information and intelligence  
9 as the Secretary, in conjunction with the Director of  
10 Central Intelligence, shall establish for this sub-  
11 section.

12 (5) PERFORMANCE EVALUATION.—The Sec-  
13 retary shall evaluate the performance of all per-  
14 sonnel detailed to the Directorate, or delegate such  
15 responsibility to the Under Secretary for Intel-  
16 ligence.

17 (g) INTELLIGENCE COMMUNITY.—Those portions of  
18 the Directorate of Intelligence that concern information  
19 analysis under subsection (b)(1), and the intelligence-re-  
20 lated components of agencies transferred by this division  
21 to the Department, including the United States Coast  
22 Guard, shall be—

23 (1) considered to be part of the United States  
24 intelligence community within the meaning of section

1 3 of the National Security Act of 1947 (50 U.S.C.  
2 401a); and

3 (2) for budgetary purposes, within the National  
4 Foreign Intelligence Program.

5 **SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE**  
6 **PROTECTION.**

7 (a) ESTABLISHMENT.—

8 (1) DIRECTORATE.—There is established within  
9 the Department the Directorate of Critical Infra-  
10 structure Protection.

11 (2) UNDER SECRETARY.—There shall be an  
12 Under Secretary for Critical Infrastructure Protec-  
13 tion, who shall be appointed by the President, by  
14 and with the advice and consent of the Senate.

15 (b) RESPONSIBILITIES.—The Directorate of Critical  
16 Infrastructure Protection shall be responsible for the fol-  
17 lowing:

18 (1) Receiving relevant intelligence from the Di-  
19 rectorate of Intelligence, law enforcement informa-  
20 tion, and other information in order to comprehen-  
21 sively assess the vulnerabilities of the key resources  
22 and critical infrastructures in the United States.

23 (2) Integrating relevant information, intel-  
24 ligence analysis, and vulnerability assessments  
25 (whether such information, analyses, or assessments

1 are provided by the Department or others) to iden-  
2 tify priorities and support protective measures by  
3 the Department, by other agencies, by State and  
4 local government personnel, agencies, and authori-  
5 ties, by the private sector, and by other entities, to  
6 protect the key resources and critical infrastructures  
7 in the United States.

8 (3) As part of the Strategy, developing a com-  
9 prehensive national plan for securing the key re-  
10 sources and critical infrastructure in the United  
11 States.

12 (4) Establishing specialized research and anal-  
13 ysis units for the purpose of processing intelligence  
14 to identify vulnerabilities and protective measures  
15 in—

16 (A) public health;

17 (B) food and water storage, production  
18 and distribution;

19 (C) commerce systems, including banking  
20 and finance;

21 (D) energy systems, including electric  
22 power and oil and gas production and storage;

23 (E) transportation systems, including pipe-  
24 lines;

1 (F) information and communication sys-  
2 tems;

3 (G) continuity of government services; and

4 (H) other systems or facilities the destruc-  
5 tion or disruption of which could cause substan-  
6 tial harm to health, safety, property, or the en-  
7 vironment.

8 (5) Enhancing the sharing of information re-  
9 garding cyber security and physical security of the  
10 United States, developing appropriate security  
11 standards, tracking vulnerabilities, proposing im-  
12 proved risk management policies, and delineating the  
13 roles of various Government agencies in preventing,  
14 defending, and recovering from attacks.

15 (6) Acting as the Critical Information Tech-  
16 nology, Assurance, and Security Officer of the De-  
17 partment and assuming the responsibilities carried  
18 out by the Critical Infrastructure Assurance Office  
19 and the National Infrastructure Protection Center  
20 before the effective date of this division.

21 (7) Coordinating the activities of the Informa-  
22 tion Sharing and Analysis Centers to share informa-  
23 tion, between the public and private sectors, on  
24 threats, vulnerabilities, individual incidents, and pri-

1 vacy issues regarding United States homeland secu-  
2 rity.

3 (8) Coordinating with the Federal Communica-  
4 tions Commission in helping to establish cyber secu-  
5 rity policy, standards, and enforcement mechanisms  
6 and working closely with the Federal Communica-  
7 tions Commission on cyber security issues with re-  
8 spect to international bodies.

9 (9) Establishing the necessary organizational  
10 structure within the Directorate to provide leader-  
11 ship and focus on both cyber security and physical  
12 security, and ensuring the maintenance of a nucleus  
13 of cyber security and physical security experts within  
14 the United States Government.

15 (10) Performing such other duties as assigned  
16 by the Secretary.

17 (c) TRANSFER OF AUTHORITIES, FUNCTIONS, PER-  
18 SONNEL, AND ASSETS TO THE DEPARTMENT.—The au-  
19 thorities, functions, personnel, and assets of the following  
20 entities are transferred to the Department:

21 (1) The Critical Infrastructure Assurance Of-  
22 fice of the Department of Commerce.

23 (2) The National Infrastructure Protection  
24 Center of the Federal Bureau of Investigation (other

1 than the Computer Investigations and Operations  
2 Section).

3 (3) The National Communications System of  
4 the Department of Defense.

5 (4) The Computer Security Division of the Na-  
6 tional Institute of Standards and Technology of the  
7 Department of Commerce.

8 (5) The National Infrastructure Simulation and  
9 Analysis Center of the Department of Energy.

10 (6) The Federal Computer Incident Response  
11 Center of the General Services Administration.

12 (7) The Energy Security and Assurance Pro-  
13 gram of the Department of Energy.

14 (8) The Federal Protective Service of the Gen-  
15 eral Services Administration.

16 **SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS**  
17 **AND RESPONSE.**

18 (a) ESTABLISHMENT.—

19 (1) DIRECTORATE.—There is established within  
20 the Department the Directorate of Emergency Pre-  
21 paredness and Response.

22 (2) UNDER SECRETARY.—There shall be an  
23 Under Secretary for Emergency Preparedness and  
24 Response, who shall be appointed by the President,  
25 by and with the advice and consent of the Senate.

1 (b) RESPONSIBILITIES.—The Directorate of Emer-  
2 gency Preparedness and Response shall be responsible for  
3 the following:

4 (1) Carrying out all emergency preparedness  
5 and response activities carried out by the Federal  
6 Emergency Management Agency before the effective  
7 date of this division.

8 (2) Assuming the responsibilities carried out by  
9 the National Domestic Preparedness Office before  
10 the effective date of this division.

11 (3) Organizing and training local entities to re-  
12 spond to emergencies and providing State and local  
13 authorities with equipment for detection, protection,  
14 and decontamination in an emergency involving  
15 weapons of mass destruction.

16 (4) Overseeing Federal, State, and local emer-  
17 gency preparedness training and exercise programs  
18 in keeping with intelligence estimates and providing  
19 a single staff for Federal assistance for any emer-  
20 gency (including emergencies caused by flood, earth-  
21 quake, hurricane, disease, or terrorist attack).

22 (5) Providing agency-specific training for  
23 agents and analysts within the Department, other  
24 agencies, and State and local agencies and inter-



1 national entities that have established partnerships  
2 with the Federal Law Enforcement Training Center.

3 (6) Creating a National Crisis Action Center to  
4 act as the focal point for—

5 (A) monitoring emergencies;

6 (B) notifying affected agencies and State  
7 and local governments; and

8 (C) coordinating Federal support for State  
9 and local governments and the private sector in  
10 crises.

11 (7) Coordinating and integrating operational  
12 activities of the Department of Defense, the Na-  
13 tional Guard, and other agencies into a Federal re-  
14 sponse plan.

15 (8) Coordinating activities among private sector  
16 entities, including entities within the medical com-  
17 munity, with respect to recovery, consequence man-  
18 agement, and planning for continuity of services.

19 (9) Developing and managing a single response  
20 system for national incidents in coordination with—

21 (A) the Department of Justice;

22 (B) the Federal Bureau of Investigation;

23 (C) the Department of Health and Human  
24 Services;

1 (D) the Centers for Disease Control and  
2 Prevention; and

3 (E) other appropriate agencies.

4 (10) Coordinating with other agencies necessary  
5 to carry out the functions of the Office of Emer-  
6 gency Preparedness.

7 (11) Collaborating with, and transferring funds  
8 to, the Centers for Disease Control and Prevention  
9 or other agencies for administration of the Strategic  
10 National Stockpile transferred under subsection  
11 (c)(5).

12 (12) Consulting with the Under Secretary for  
13 Science and Technology and the Director of the Cen-  
14 ters for Disease Control and Prevention in estab-  
15 lishing and updating the list of potential threat  
16 agents or toxins relating to the functions of the se-  
17 lect agent registration program transferred under  
18 subsection (c)(6).

19 (13) Developing a plan to address the interface  
20 of medical informatics and the medical response to  
21 terrorism that address—

22 (A) standards for interoperability;

23 (B) real-time data collection;

24 (C) ease of use for health care providers;

25 (D) epidemiological surveillance;

1 (E) integration of telemedicine networks  
2 and standards;

3 (F) patient confidentiality; and

4 (G) other topics pertinent to the mission of  
5 the Department.

6 (14) Performing such other duties as assigned  
7 by the Secretary.

8 (c) TRANSFER OF AUTHORITIES, FUNCTIONS, PER-  
9 SONNEL, AND ASSETS TO THE DEPARTMENT.—The au-  
10 thorities, functions, personnel, and assets of the following  
11 entities are transferred to the Department:

12 (1) The Federal Emergency Management Agen-  
13 cy, the 10 regional offices of which shall be main-  
14 tained and strengthened by the Department, which  
15 shall be maintained as a distinct entity within the  
16 Department.

17 (2) The National Office of Domestic Prepared-  
18 ness of the Federal Bureau of Investigation of the  
19 Department of Justice.

20 (3) The Office of Domestic Preparedness of the  
21 Department of Justice.

22 (4) The Office of Emergency Preparedness  
23 within the Office of the Assistant Secretary for Pub-  
24 lic Health Emergency Preparedness of the Depart-  
25 ment of Health and Human Services, including—

- 1 (A) the Noble Training Center;
- 2 (B) the Metropolitan Medical Response
- 3 System;
- 4 (C) the National Disaster Medical System;
- 5 (D) the Disaster Medical Assistance
- 6 Teams and Disaster Mortuary Operational Re-
- 7 sponse Teams;
- 8 (E) the special events response; and
- 9 (F) the citizen preparedness programs.

10 (5) The Strategic National Stockpile of the De-

11 partment of Health and Human Services including

12 all functions and assets under sections 121 and 127

13 of the Public Health Security and Bioterrorism Pre-

14 paredness and Response Act of 2002 (Public Law

15 107–188).

16 (6)(A) The functions of the Select Agent Reg-

17 istration Program of the Department of Health and

18 Human Services and the United States Department

19 of Agriculture, including all functions of the Sec-

20 retary of Health and Human Services and the Sec-

21 retary of Agriculture under sections 201 through

22 221 of the Public Health Security and Bioterrorism

23 Preparedness and Response Act of 2002 (Public

24 Law 107–188).

1           (7) The Federal Law Enforcement Training  
2           Center of the Department of the Treasury.

3           (c) APPOINTMENT AS UNDER SECRETARY AND DI-  
4           RECTOR.—

5           (1) IN GENERAL.—An individual may serve as  
6           both the Under Secretary for Emergency Prepared-  
7           ness and Response and the Director of the Federal  
8           Emergency Management Agency if appointed by the  
9           President, by and with the advice and consent of the  
10          Senate, to each office.

11          (2) PAY.—Nothing in paragraph (1) shall be  
12          construed to authorize an individual appointed to  
13          both positions to receive pay at a rate of pay in ex-  
14          cess of the rate of pay payable for the position to  
15          which the higher rate of pay applies.

16          (d) REPORT.—No later than 1 year after the date  
17          of enactment of this Act, the Under Secretary for Emer-  
18          gency Preparedness and Response shall submit a report  
19          to Congress on the status of a national medical  
20          informatics system, and the capacity of that system to  
21          meet the goals under subsection (b)(13) in responding to  
22          a terrorist attack.

23       **SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.**

24          (a) PURPOSE.—The purpose of this section is to es-  
25          tablish a Directorate of Science and Technology that will

1 support the mission of the Department and the direc-  
2 torates of the Department by—

3 (1) establishing, funding, managing, and sup-  
4 porting research, development, demonstration, test-  
5 ing, and evaluation activities to meet national home-  
6 land security needs and objectives;

7 (2) setting national research and development  
8 goals and priorities pursuant to the mission of the  
9 Department, and developing strategies and policies  
10 in furtherance of such goals and priorities;

11 (3) coordinating and collaborating with other  
12 Federal departments and agencies, and State, local,  
13 academic, and private sector entities, to advance the  
14 research and development agenda of the Depart-  
15 ment;

16 (4) advising the Secretary on all scientific and  
17 technical matters relevant to homeland security; and

18 (5) facilitating the transfer and deployment of  
19 technologies that will serve to enhance homeland se-  
20 curity goals.

21 (b) DEFINITIONS.—In this section:

22 (1) COUNCIL.—The term “Council” means the  
23 Homeland Security Science and Technology Council  
24 established under this section.

1           (2) FUND.—The term “Fund” means the Ac-  
2           celeration Fund for Research and Development of  
3           Homeland Security Technologies established under  
4           this section.

5           (3) HOMELAND SECURITY RESEARCH AND DE-  
6           VELOPMENT.—The term “homeland security re-  
7           search and development” means research and devel-  
8           opment applicable to the detection of, prevention of,  
9           protection against, response to, and recovery from  
10          homeland security threats, particularly acts of ter-  
11          rorism.

12          (4) OSTP.—The term “OSTP” means the Of-  
13          fice of Science and Technology Policy.

14          (5) SARPA.—The term “SARPA” means the  
15          Security Advanced Research Projects Agency estab-  
16          lished under this section.

17          (6) TECHNOLOGY ROADMAP.—The term “tech-  
18          nology roadmap” means a plan or framework in  
19          which goals, priorities, and milestones for desired fu-  
20          ture technological capabilities and functions are es-  
21          tablished, and research and development alternatives  
22          or means for achieving those goals, priorities, and  
23          milestones are identified and analyzed in order to  
24          guide decisions on resource allocation and invest-  
25          ments.

1           (7) UNDER SECRETARY.—The term “Under  
2     Secretary” means the Under Secretary for Science  
3     and Technology.

4     (c) DIRECTORATE OF SCIENCE AND TECHNOLOGY.—

5           (1) ESTABLISHMENT.—There is established a  
6     Directorate of Science and Technology within the  
7     Department.

8           (2) UNDER SECRETARY.—There shall be an  
9     Under Secretary for Science and Technology, who  
10    shall be appointed by the President, by and with the  
11    advice and consent of the Senate. The principal re-  
12    sponsibility of the Under Secretary shall be to effec-  
13    tively and efficiently carry out the purposes of the  
14    Directorate of Science and Technology under sub-  
15    section (a). In addition, the Under Secretary shall  
16    undertake the following activities in furtherance of  
17    such purposes:

18           (A) Coordinating with the OSTP, the Na-  
19    tional Office for Combating Terrorism, and  
20    other appropriate entities in developing and  
21    executing the research and development agenda  
22    of the Department.

23           (B) Developing a technology roadmap that  
24    shall be updated biannually for achieving tech-



1 nological goals relevant to homeland security  
2 needs.

3 (C) Instituting mechanisms to promote, fa-  
4 cilitate, and expedite the transfer and deploy-  
5 ment of technologies relevant to homeland secu-  
6 rity needs, including dual-use capabilities.

7 (D) Assisting the Secretary and the Direc-  
8 tor of OSTP to ensure that science and tech-  
9 nology priorities are clearly reflected and con-  
10 sidered in the Strategy developed under title  
11 III.

12 (E) Establishing mechanisms for the shar-  
13 ing and dissemination of key homeland security  
14 research and technology developments and op-  
15 portunities with appropriate Federal, State,  
16 local, and private sector entities.

17 (F) Establishing, in coordination with the  
18 Under Secretary for Critical Infrastructure  
19 Protection and the Under Secretary for Emer-  
20 gency Preparedness and Response and relevant  
21 programs under their direction, a National  
22 Emergency Technology Guard, comprised of  
23 teams of volunteers with expertise in relevant  
24 areas of science and technology, to assist local  
25 communities in responding to and recovering

1 from emergency contingencies requiring special-  
2 ized scientific and technical capabilities. In car-  
3 rying out this responsibility, the Under Sec-  
4 retary shall establish and manage a database of  
5 National Emergency Technology Guard volun-  
6 teers, and prescribe procedures for organizing,  
7 certifying, mobilizing, and deploying National  
8 Emergency Technology Guard teams.

9 (G) Chairing the Working Group estab-  
10 lished under section 108 of the Public Health  
11 Security and Bioterrorism Preparedness and  
12 Response Act of 2002 (Public Law 107–188).

13 (H) Assisting the Secretary in developing  
14 the Strategy for Countermeasure Research de-  
15 scribed under subsection (k).

16 (I) Assisting the Secretary and acting on  
17 behalf of the Secretary in contracting with,  
18 commissioning, or establishing federally funded  
19 research and development centers determined  
20 useful and appropriate by the Secretary for the  
21 purpose of providing the Department with inde-  
22 pendent technical analysis and support.

23 (J) Assisting the Secretary and acting on  
24 behalf of the Secretary in entering into joint  
25 sponsorship agreements with the Department of

1 Energy regarding the use of the national lab-  
2 oratories or sites.

3 (K) Other appropriate activities as directed  
4 by the Secretary.

5 (3) RESEARCH AND DEVELOPMENT-RELATED  
6 AUTHORITIES.—The Secretary shall exercise the fol-  
7 lowing authorities relating to the research and devel-  
8 opment activities of the Directorate of Science and  
9 Technology:

10 (A) With respect to research and develop-  
11 ment expenditures under this section, the au-  
12 thority (subject to the same limitations and  
13 conditions) as the Secretary of Defense may ex-  
14 ercise under section 2371 of title 10, United  
15 States Code (except for subsections (b) and (f)),  
16 for a period of 5 years beginning on the date  
17 of enactment of this Act. Competitive, merit-  
18 based selection procedures shall be used for the  
19 selection of projects and participants for trans-  
20 actions entered under the authority of this  
21 paragraph. The annual report required under  
22 subsection (h) of such section, as applied to the  
23 Secretary by this subparagraph, shall—

24 (i) be submitted to the President of  
25 the Senate, the Speaker of the House of

1                   Representatives, the Committee on Govern-  
2                   mental Affairs of the Senate Committee,  
3                   and the Committee on Government Reform  
4                   of the House of Representatives; and

5                   (ii) report on other transactions en-  
6                   tered into under subparagraph (B).

7                   (B) Authority to carry out prototype  
8                   projects in accordance with the requirements  
9                   and conditions provided for carrying out proto-  
10                  type projects under section 845 of the National  
11                  Defense Authorization Act for Fiscal Year 1994  
12                  (Public Law 103–160), for a period of 5 years  
13                  beginning on the date of enactment of this Act.  
14                  In applying the authorities of such section 845,  
15                  subsection (c) of that section shall apply with  
16                  respect to prototype projects under this para-  
17                  graph, and the Secretary shall perform the  
18                  functions of the Secretary of Defense under  
19                  subsection (d) of that section. Competitive,  
20                  merit-based selection procedures shall be used  
21                  for the selection of projects and participants for  
22                  transactions entered under the authority of this  
23                  paragraph.

24                  (C) In hiring personnel to assist in re-  
25                  search and development activities within the Di-

1 rectorate of Science and Technology, the au-  
2 thority to exercise the personnel hiring and  
3 management authorities described in section  
4 1101 of the Strom Thurmond National Defense  
5 Authorization Act for Fiscal Year 1999 (5  
6 U.S.C. 3104 note; Public Law 105-261), with  
7 the stipulation that the Secretary shall exercise  
8 such authority for a period of 7 years com-  
9 mencing on the date of enactment of this Act,  
10 that a maximum of 100 persons may be hired  
11 under such authority, and that the term of ap-  
12 pointment for employees under subsection  
13 (c)(1) of that section may not exceed 5 years  
14 before the granting of any extensions under  
15 subsection (c)(2) of that section.

16 (D) With respect to such research and de-  
17 velopment responsibilities under this title (ex-  
18 cept as provided in subparagraph (E)) as the  
19 Secretary may elect to carry out through agen-  
20 cies other than the Department (under agree-  
21 ments with their respective heads), the Sec-  
22 retary may transfer funds to such heads.

23 (E) The Secretary shall carry out the  
24 human health-related biological, biomedical, and  
25 infectious disease research and development (in-

1 including vaccine research and development) re-  
2 sponsibilities of the Secretary to the extent such  
3 responsibilities are supported by funding appro-  
4 priated to the National Institutes of Health for  
5 bioterrorism research and related facilities de-  
6 velopment, through the National Institutes of  
7 Health. This research shall be conducted under  
8 joint strategic research plan and prioritization  
9 agreements between the Secretary and the Sec-  
10 retary of the Department of Health and  
11 Human Services, except the Secretary shall re-  
12 tain the authority to establish general research  
13 priorities in these agreements. All research pro-  
14 grams established under this paragraph shall be  
15 managed and awarded by the Director of the  
16 National Institutes of Health consistent with  
17 these agreements. The Secretary may transfer  
18 funds to the Department of Health and Human  
19 Services in connection with such agreements.

20 (d) ACCELERATION FUND.—

21 (1) ESTABLISHMENT.—There is established an  
22 Acceleration Fund to support research and develop-  
23 ment of technologies relevant to homeland security.

24 (2) FUNCTION.—The Fund shall be used to  
25 stimulate and support research and development

1 projects selected by SARPA under subsection (f),  
2 and to facilitate the rapid transfer of research and  
3 technology derived from such projects.

4 (3) RECIPIENTS.—Fund monies may be made  
5 available through grants, contracts, cooperative  
6 agreements, and other transactions under subsection  
7 (c)(3) (A) and (B) to—

8 (A) public sector entities, including Fed-  
9 eral, State, or local agencies;

10 (B) private sector entities, including cor-  
11 porations, partnerships, or individuals; and

12 (C) nongovernmental organizations, includ-  
13 ing universities and other academic or research  
14 institutions.

15 (4) AUTHORIZATION OF APPROPRIATIONS.—  
16 There are authorized to be appropriated  
17 \$200,000,000 for the Fund for fiscal year 2003, and  
18 such sums as are necessary in subsequent fiscal  
19 years.

20 (e) SCIENCE AND TECHNOLOGY COUNCIL.—

21 (1) ESTABLISHMENT.—There is established the  
22 Homeland Security Science and Technology Council  
23 within the Directorate of Science and Technology.  
24 The Under Secretary shall chair the Council and  
25 have the authority to convene meetings. At the dis-

1       cretion of the Under Secretary and the Director of  
2       OSTP, the Council may be constituted as a sub-  
3       committee of the National Science and Technology  
4       Council.

5               (2) COMPOSITION.—The Council shall be com-  
6       posed of the following:

7                       (A) Senior research and development offi-  
8                       cials representing agencies engaged in research  
9                       and development relevant to homeland security  
10                      and combating terrorism needs. Each represent-  
11                      ative shall be appointed by the head of the rep-  
12                      resentative's respective agency with the advice  
13                      and consent of the Under Secretary.

14                     (B) The Director of SARPA and other ap-  
15                     propriate officials within the Directorate of  
16                     Science and Technology.

17                     (C) The Director of the OSTP.

18               (3) RESPONSIBILITIES.—The Council shall—

19                     (A) provide the Under Secretary with rec-  
20                     ommendations on priorities and strategies, in-  
21                     cluding those related to funding and portfolio  
22                     management, for homeland security research  
23                     and development;

24                     (B) facilitate effective coordination and  
25                     communication among agencies, other entities



1 of the Federal Government, and entities in the  
2 private sector and academia, with respect to the  
3 conduct of research and development related to  
4 homeland security;

5 (C) recommend specific technology areas  
6 for which the Fund and other research and de-  
7 velopment resources shall be used to rapidly  
8 transition homeland security research and de-  
9 velopment into deployed technology and reduce  
10 identified homeland security vulnerabilities;

11 (D) assist and advise the Under Secretary  
12 in developing the biannual technology roadmap  
13 referred to under subsection (c)(2)(C); and

14 (E) perform other appropriate activities as  
15 directed by the Under Secretary.

16 (4) ADVISORY PANEL.—The Under Secretary  
17 may establish an advisory panel consisting of rep-  
18 resentatives from industry, academia, and other non-  
19 Federal entities to advise and support the Council.

20 (5) WORKING GROUPS.—At the discretion of  
21 the Under Secretary, the Council may establish  
22 working groups in specific homeland security areas  
23 consisting of individuals with relevant expertise in  
24 each articulated area. Working groups established  
25 for bioterrorism and public health-related research

1 shall be fully coordinated with the Working Group  
2 established under section 108 of the Public Health  
3 Security and Bioterrorism Preparedness and Re-  
4 sponse Act of 2002 (Public Law 107–188).

5 (f) SECURITY ADVANCED RESEARCH PROJECTS  
6 AGENCY.—

7 (1) ESTABLISHMENT.—There is established the  
8 Security Advanced Research Projects Agency within  
9 the Directorate of Science and Technology.

10 (2) RESPONSIBILITIES.—SARPA shall—

11 (A) undertake and stimulate basic and ap-  
12 plied research and development, leverage exist-  
13 ing research and development, and accelerate  
14 the transition and deployment of technologies  
15 that will serve to enhance homeland defense;

16 (B) identify, fund, develop, and transition  
17 high-risk, high-payoff homeland security re-  
18 search and development opportunities that—

19 (i) may lie outside the purview or ca-  
20 pabilities of the existing Federal agencies;  
21 and

22 (ii) emphasize revolutionary rather  
23 than evolutionary or incremental advances;  
24 and

1 (C) provide selected projects with single or  
2 multiyear funding, and require such projects to  
3 provide interim progress reports, no less often  
4 than annually;

5 (D) administer the Acceleration Fund to  
6 carry out the purposes of this paragraph;

7 (E) advise the Secretary and Under Sec-  
8 retary on funding priorities under subsection  
9 (c)(3)(D); and

10 (F) perform other appropriate activities as  
11 directed by the Under Secretary.

12 (g) OFFICE OF RISK ANALYSIS AND ASSESSMENT .—

13 (1) ESTABLISHMENT.—There is established an  
14 Office of Risk Analysis and Assessment within the  
15 Directorate of Science and Technology.

16 (2) FUNCTIONS.—The Office of Risk Analysis  
17 and Assessment shall—

18 (A) assist the Under Secretary in con-  
19 ducting or commissioning studies related to  
20 threat assessment and risk analysis,  
21 including—

22 (i) analysis of responses to terrorist  
23 incidents;

24 (ii) scenario-based threat assessment  
25 exercises and simulations;

1 (iii) red teaming to predict and dis-  
2 cern the potential methods, means, and  
3 targets of terrorists; and

4 (iv) economic and policy analyses of  
5 alternative counterterrorism policies;

6 (B) coordinate with other entities engaged  
7 in threat assessment and risk analysis, includ-  
8 ing those within the Department, such as the  
9 Directorate for Intelligence;

10 (C) monitor and evaluate novel scientific  
11 findings in order to assist the Under Secretary  
12 in developing and reassessing the research and  
13 development priorities of the Department;

14 (D) design metrics to evaluate the effec-  
15 tiveness of homeland security programs;

16 (E) support the Office of Emergency Pre-  
17 paredness in designing field tests and exercises;  
18 and

19 (F) perform other appropriate activities as  
20 directed by the Under Secretary.

21 (h) OFFICE FOR TECHNOLOGY EVALUATION AND  
22 TRANSITION.—

23 (1) ESTABLISHMENT.—There is established an  
24 Office for Technology Evaluation and Transition  
25 within the Directorate of Science and Technology.

1           (2) FUNCTION.—The Office for Technology  
2 Evaluation and Transition shall, with respect to  
3 technologies relevant to homeland security needs—

4           (A) serve as the principal, national point-  
5 of-contact and clearinghouse for receiving and  
6 processing proposals or inquiries regarding such  
7 technologies;

8           (B) identify and evaluate promising new  
9 technologies;

10          (C) assist in transitioning such tech-  
11 nologies into deployable, fielded systems;

12          (D) consult with and advise agencies re-  
13 garding the development, acquisition, and de-  
14 ployment of such technologies;

15          (E) coordinate with SARPA to accelerate  
16 the transition of technologies developed by  
17 SARPA and ensure transition paths for such  
18 technologies; and

19          (F) perform other appropriate activities as  
20 directed by the Under Secretary.

21          (3) TECHNICAL SUPPORT WORKING GROUP.—  
22 The functions described under this subsection may  
23 be carried out through, in coordination with, or  
24 through an entity established by the Secretary and  
25 modeled after, the Technical Support Working

1 Group (organized under the April, 1982, National  
2 Security Decision Directive Numbered 30) that pro-  
3 vides an interagency forum to coordinate research  
4 and development of technologies for combating ter-  
5 rorism.

6 (i) OFFICE OF LABORATORY RESEARCH.—

7 (1) ESTABLISHMENT.—There is established an  
8 Office of Laboratory Research within the Direc-  
9 torate of Science and Technology.

10 (2) RESEARCH AND DEVELOPMENT FUNCTIONS  
11 TRANSFERRED.—There shall be transferred to the  
12 Department, to be administered by the Under Sec-  
13 retary, the functions, personnel, assets, and liabil-  
14 ities of the following programs and activities:

15 (A) Within the Department of Energy (but  
16 not including programs and activities relating  
17 to the strategic nuclear defense posture of the  
18 United States) the following:

19 (i) The chemical and biological na-  
20 tional security and related programs and  
21 activities supporting domestic response of  
22 the nonproliferation and verification re-  
23 search and development program.

24 (ii) The nuclear smuggling programs  
25 and activities, and other programs and ac-

1                   activities directly related to homeland secu-  
2                   rity, within the proliferation detection pro-  
3                   gram of the nonproliferation and  
4                   verification research and development pro-  
5                   gram, except that the programs and activi-  
6                   ties described in this clause may be des-  
7                   ignated by the President either for transfer  
8                   to the Department or for joint operation  
9                   by the Secretary and the Secretary of En-  
10                  ergy.

11                  (iii) The nuclear assessment program  
12                  and activities of the assessment, detection,  
13                  and cooperation program of the inter-  
14                  national materials protection and coopera-  
15                  tion program.

16                  (iv) The Environmental Measure-  
17                  ments Laboratory.

18                  (B) Within the Department of Defense,  
19                  the National Bio-weapons Defense Analysis  
20                  Center established under section 161.

21                  (3) RESPONSIBILITIES.—The Office of Labora-  
22                  tory Research shall—

23                  (A) supervise activities of the entities  
24                  transferred under this subsection;

1 (B) administer the disbursement and un-  
2 dertake oversight of research and development  
3 funds transferred from the Department to other  
4 agencies outside of the Department, including  
5 funds transferred to the Department of Health  
6 and Human Services consistent with subsection  
7 (c)(3)(E);

8 (C) establish and direct new research and  
9 development facilities as the Secretary deter-  
10 mines appropriate;

11 (D) include a science advisor to the Under  
12 Secretary on research priorities related to bio-  
13 logical and chemical weapons, with supporting  
14 scientific staff who shall advise on and support  
15 research priorities with respect to—

16 (i) research on countermeasures for  
17 biological weapons, including research on  
18 the development of drugs, devices, and bio-  
19 logics; and

20 (ii) research on biological and chem-  
21 ical threat agents; and

22 (E) other appropriate activities as directed  
23 by the Under Secretary.

24 (j) OFFICE FOR NATIONAL LABORATORIES.—



1           (1) ESTABLISHMENT.—There is established  
2 within the Directorate of Science and Technology an  
3 Office for National Laboratories, which shall be re-  
4 sponsible for the coordination and utilization of the  
5 Department of Energy national laboratories and  
6 sites in a manner to create a networked laboratory  
7 system for the purpose of supporting the missions of  
8 the Department.

9           (2) JOINT SPONSORSHIP ARRANGEMENTS.—

10           (A) NATIONAL LABORATORIES.—The De-  
11 partment may be a joint sponsor, under a mul-  
12 tiple agency sponsorship arrangement with the  
13 Department of Energy, of 1 or more Depart-  
14 ment of Energy national laboratories in the per-  
15 formance of work on behalf of the Department.

16           (B) DEPARTMENT OF ENERGY SITE.—The  
17 Department may be a joint sponsor of a De-  
18 partment of Energy site in the performance of  
19 work as if such site were a federally funded re-  
20 search and development center and the work  
21 were performed under a multiple agency spon-  
22 sorship arrangement with the Department.

23           (C) PRIMARY SPONSOR.—The Department  
24 of Energy shall be the primary sponsor under

1 a multiple agency sponsorship arrangement en-  
2 tered into under subparagraph (A) or (B).

3 (D) CONDITIONS.—A joint sponsorship ar-  
4 rangement under this subsection shall—

5 (i) provide for the direct funding and  
6 management by the Department of the  
7 work being carried out on behalf of the  
8 Department; and

9 (ii) include procedures for addressing  
10 the coordination of resources and tasks to  
11 minimize conflicts between work under-  
12 taken on behalf of either Department.

13 (E) LEAD AGENT AND FEDERAL ACQUISI-  
14 TION REGULATION.—

15 (i) LEAD AGENT.—The Secretary of  
16 Energy shall act as the lead agent in co-  
17 ordinating the formation and performance  
18 of a joint sponsorship agreement between  
19 the Department and a Department of En-  
20 ergy national laboratory or site for work on  
21 homeland security.

22 (ii) COMPLIANCE WITH FEDERAL AC-  
23 QUISSION REGULATION.—Any work per-  
24 formed by a national laboratory or site  
25 under this section shall comply with the

1 policy on the use of federally funded re-  
2 search and development centers under sec-  
3 tion 35.017 of the Federal Acquisition  
4 Regulation.

5 (F) FUNDING.—The Department shall  
6 provide funds for work at the Department of  
7 Energy national laboratories or sites, as the  
8 case may be, under this section under the same  
9 terms and conditions as apply to the primary  
10 sponsor of such national laboratory under sec-  
11 tion 303(b)(1)(C) of the Federal Property and  
12 Administrative Services Act of 1949 (41 U.S.C.  
13 253 (b)(1)(C)) or of such site to the extent  
14 such section applies to such site as a federally  
15 funded research and development center by rea-  
16 son of subparagraph (B).

17 (3) OTHER ARRANGEMENTS.—The Office for  
18 National Laboratories may enter into other arrange-  
19 ments with Department of Energy national labora-  
20 tories to carry out work to support the missions of  
21 the Department under applicable law, except that  
22 the Department of Energy may not charge or apply  
23 administrative fees for work on behalf of the Depart-  
24 ment.

1           (4) TECHNOLOGY TRANSFER.—The Office for  
2 National Laboratories may exercise the authorities  
3 in section 12 of the Stevenson-Wydler Technology  
4 Innovation Act of 1980 (15 U.S.C. 3710a) to permit  
5 the Director of a Department of Energy national  
6 laboratory to enter into cooperative research and de-  
7 velopment agreements, or to negotiate licensing  
8 agreements, pertaining to work supported by the De-  
9 partment at the Department of Energy national lab-  
10 oratory.

11           (5) ASSISTANCE IN ESTABLISHING DEPART-  
12 MENT.—At the request of the Under Secretary, the  
13 Department of Energy shall provide for the tem-  
14 porary appointment or assignment of employees of  
15 Department of Energy national laboratories or sites  
16 to the Department for purposes of assisting in the  
17 establishment or organization of the technical pro-  
18 grams of the Department through an agreement  
19 that includes provisions for minimizing conflicts be-  
20 tween work assignments of such personnel.

21 (k) STRATEGY FOR COUNTERMEASURE RESEARCH.—

22           (1) IN GENERAL.—The Secretary, acting  
23 through the Under Secretary for Science and Tech-  
24 nology, shall develop a comprehensive, long-term  
25 strategy and plan for engaging non-Federal entities,

1 particularly including private, for-profit entities, in  
2 the research, development, and production of home-  
3 land security countermeasures for biological, chem-  
4 ical, and radiological weapons.

5 (2) TIMEFRAME.—The strategy and plan under  
6 this subsection, together with recommendations for  
7 the enactment of supporting or enabling legislation,  
8 shall be submitted to the Congress within 270 days  
9 after the date of enactment of this Act.

10 (3) COORDINATION.—In developing the strategy  
11 and plan under this subsection, the Secretary shall  
12 consult with—

13 (A) other agencies with expertise in re-  
14 search, development, and production of counter-  
15 measures;

16 (B) private, for-profit entities, and entre-  
17 preneurs with appropriate expertise and tech-  
18 nology regarding countermeasures;

19 (C) investors that fund such entities;

20 (D) nonprofit research universities and in-  
21 stitutions;

22 (E) public health and other interested pri-  
23 vate sector and government entities; and

24 (F) governments allied with the United  
25 States in the war on terrorism.

1           (4) PURPOSE.—The strategy and plan under  
2 this subsection shall evaluate proposals to assure  
3 that—

4           (A) research on countermeasures by non-  
5 Federal entities leads to the expeditious devel-  
6 opment and production of countermeasures that  
7 may be procured and deployed in the homeland  
8 security interests of the United States;

9           (B) capital is available to fund the ex-  
10 penses associated with such research, develop-  
11 ment, and production, including Government  
12 grants and contracts and appropriate capital  
13 formation tax incentives that apply to non-Fed-  
14 eral entities with and without tax liability;

15           (C) the terms for procurement of such  
16 countermeasures are defined in advance so that  
17 such entities may accurately and reliably assess  
18 the potential countermeasures market and the  
19 potential rate of return;

20           (D) appropriate intellectual property, risk  
21 protection, and Government approval standards  
22 are applicable to such countermeasures;

23           (E) Government-funded research is con-  
24 ducted and prioritized so that such research  
25 complements, and does not unnecessarily dupli-

1           cate, research by non-Federal entities and that  
2           such Government-funded research is made  
3           available, transferred, and licensed on commer-  
4           cially reasonable terms to such entities for de-  
5           velopment; and

6                   (F) universities and research institutions  
7           play a vital role as partners in research and de-  
8           velopment and technology transfer, with appro-  
9           priate progress benchmarks, with such for-prof-  
10          it entities.

11           (5) REPORTING.—The Secretary shall report  
12          periodically to the Congress on the status of non-  
13          Federal entity countermeasure research, develop-  
14          ment and production and submit additional rec-  
15          ommendations for legislation as needed.

16          (1) CLASSIFICATION OF RESEARCH.—

17                   (1) IN GENERAL.—To the greatest extent prac-  
18          ticable, research conducted or supported by the De-  
19          partment shall be unclassified.

20                   (2) CLASSIFICATION AND REVIEW.—The Under  
21          Secretary shall—

22                           (A)(i) decide whether classification is ap-  
23          propriate before the award of a research grant,  
24          contract, cooperative agreement, or other trans-  
25          action by the Department; and

1           (ii) if the decision under clause (i) is one  
2 of classification, control the research results  
3 through standard classification procedures; and

4           (B) periodically review all classified re-  
5 search grants, contracts, cooperative agree-  
6 ments, or other transactions issued by the De-  
7 partment to determine whether classification is  
8 still necessary.

9           (3) RESTRICTIONS.—No restrictions shall be  
10 placed upon the conduct or reporting of federally  
11 funded fundamental research that has not received  
12 national security classification, except as provided  
13 under applicable provisions of law.

14           (m) OFFICE OF SCIENCE AND TECHNOLOGY POL-  
15 ICY.—The National Science and Technology Policy, Orga-  
16 nization, and Priorities Act is amended—

17           (1) in section 204(b)(1) (42 U.S.C.  
18 6613(b)(1)), by inserting “homeland security,” after  
19 “national security,”; and

20           (2) in section 208(a)(1) (42 U.S.C.  
21 6617(a)(1)), by inserting “the National Office for  
22 Combating Terrorism,” after “National Security  
23 Council,”.



1 **SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.**

2 The Directorate of Immigration Affairs shall be es-  
3 tablished and shall carry out all functions of that Direc-  
4 torate in accordance with subdivision B of this Act.

5 **SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT**  
6 **COORDINATION.**

7 (a) **ESTABLISHMENT.**—There is established within  
8 the Office of the Secretary the Office for State and Local  
9 Government Coordination, to oversee and coordinate de-  
10 partmental programs for and relationships with State and  
11 local governments.

12 (b) **RESPONSIBILITIES.**—The Office established  
13 under subsection (a) shall—

14 (1) coordinate the activities of the Department  
15 relating to State and local government;

16 (2) assess, and advocate for, the resources  
17 needed by State and local government to implement  
18 the national strategy for combating terrorism;

19 (3) provide State and local government with  
20 regular information, research, and technical support  
21 to assist local efforts at securing the homeland; and

22 (4) develop a process for receiving meaningful  
23 input from State and local government to assist the  
24 development of the national strategy for combating  
25 terrorism and other homeland security activities.

1 **SEC. 138. UNITED STATES SECRET SERVICE.**

2 There are transferred to the Department the authori-  
3 ties, functions, personnel, and assets of the United States  
4 Secret Service, which shall be maintained as a distinct en-  
5 tity within the Department.

6 **SEC. 139. BORDER COORDINATION WORKING GROUP.**

7 (a) DEFINITIONS.—In this section:

8 (1) BORDER SECURITY FUNCTIONS.—The term  
9 “border security functions” means the securing of  
10 the borders, territorial waters, ports, terminals, wa-  
11 terways, and air, land, and sea transportation sys-  
12 tems of the United States.

13 (2) RELEVANT AGENCIES.—The term “relevant  
14 agencies” means any department or agency of the  
15 United States that the President determines to be  
16 relevant to performing border security functions.

17 (b) ESTABLISHMENT.—The Secretary shall establish  
18 a border security working group (in this section referred  
19 to as the “Working Group”), composed of the Secretary  
20 or the designee of the Secretary, the Under Secretary for  
21 Border and Transportation Security, and the Under Sec-  
22 retary for Immigration Affairs.

23 (c) FUNCTIONS.—The Working Group shall meet at  
24 least quarterly and shall—

25 (1) with respect to border security functions,  
26 develop coordinated budget requests, allocations of

1 appropriations, staffing requirements, communica-  
2 tion, use of equipment, transportation, facilities, and  
3 other infrastructure;

4 (2) coordinate joint and cross-training pro-  
5 grams for personnel performing border security  
6 functions;

7 (3) monitor, evaluate and make improvements  
8 in the coverage and geographic distribution of bor-  
9 der security programs and personnel;

10 (4) develop and implement policies and tech-  
11 nologies to ensure the speedy, orderly, and efficient  
12 flow of lawful traffic, travel and commerce, and en-  
13 hanced scrutiny for high-risk traffic, travel and com-  
14 merce; and

15 (5) identify systemic problems in coordination  
16 encountered by border security agencies and pro-  
17 grams and propose administrative, regulatory, or  
18 statutory changes to mitigate such problems.

19 (c) RELEVANT AGENCIES.—The Secretary shall con-  
20 sult representatives of relevant agencies with respect to  
21 deliberations under subsection (b)(1), and may include  
22 representatives of such agencies in Working Group delib-  
23 erations, as appropriate.

1 **SEC. 140. EXECUTIVE SCHEDULE POSITIONS.**

2 Section 5312 of title 5, United States Code, is  
3 amended by adding at the end the following:

4 “Under Secretary for Border and Transpor-  
5 tation, Department of Homeland Security.

6 “Under Secretary for Critical Infrastructure  
7 Protection, Department of Homeland Security.

8 “Under Secretary for Emergency Preparedness  
9 and Response, Department of Homeland Security.

10 “Under Secretary for Immigration, Department  
11 of Homeland Security.

12 “Under Secretary for Intelligence, Department  
13 of Homeland Security.

14 “Under Secretary for Science and Technology,  
15 Department of Homeland Security.”.

16 **Subtitle C—National Emergency**  
17 **Preparedness Enhancement**

18 **SEC. 151. SHORT TITLE.**

19 This subtitle may be cited as the “National Emer-  
20 gency Preparedness Enhancement Act of 2002”.

21 **SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.**

22 (a) ESTABLISHMENT OF CLEARINGHOUSE.—There is  
23 established in the Department a National Clearinghouse  
24 on Emergency Preparedness (referred to in this section  
25 as the “Clearinghouse”). The Clearinghouse shall be head-  
26 ed by a Director.

1 (b) CONSULTATION.—The Clearinghouse shall con-  
2 sult with such heads of Federal agencies, such task forces  
3 appointed by Federal officers or employees, and such rep-  
4 resentatives of the private sector, as appropriate, to collect  
5 information on emergency preparedness, including infor-  
6 mation relevant to the Strategy.

7 (c) DUTIES.—

8 (1) DISSEMINATION OF INFORMATION.—The  
9 Clearinghouse shall ensure efficient dissemination of  
10 accurate emergency preparedness information.

11 (2) CENTER.—The Clearinghouse shall estab-  
12 lish a one-stop center for emergency preparedness  
13 information, which shall include a website, with links  
14 to other relevant Federal websites, a telephone num-  
15 ber, and staff, through which information shall be  
16 made available on—

17 (A) ways in which States, political subdivi-  
18 sions, and private entities can access Federal  
19 grants;

20 (B) emergency preparedness education and  
21 awareness tools that businesses, schools, and  
22 the general public can use; and

23 (C) other information as appropriate.

24 (3) PUBLIC AWARENESS CAMPAIGN.—The  
25 Clearinghouse shall develop a public awareness cam-

1       paign. The campaign shall be ongoing, and shall in-  
2       clude an annual theme to be implemented during the  
3       National Emergency Preparedness Week established  
4       under section 154. The Clearinghouse shall work  
5       with heads of Federal agencies to coordinate public  
6       service announcements and other information-shar-  
7       ing tools utilizing a wide range of media.

8               (4) BEST PRACTICES INFORMATION.—The  
9       Clearinghouse shall compile and disseminate infor-  
10      mation on best practices for emergency preparedness  
11      identified by the Secretary and the heads of other  
12      Federal agencies.

13   **SEC. 153. PILOT PROGRAM.**

14      (a) EMERGENCY PREPAREDNESS ENHANCEMENT  
15      PILOT PROGRAM.—The Department shall award grants to  
16      private entities to pay for the Federal share of the cost  
17      of improving emergency preparedness and educating em-  
18      ployees and other individuals using the entities' facilities  
19      about emergency preparedness.

20      (b) USE OF FUNDS.—An entity that receives a grant  
21      under this subsection may use the funds made available  
22      through the grant to—

23               (1) develop evacuation plans and drills;



1 (b) FEDERAL AGENCY ACTIVITIES.—In conjunction  
2 with National Emergency Preparedness Week, the head  
3 of each Federal agency, as appropriate, shall coordinate  
4 with the Department to inform and educate the private  
5 sector and the general public about emergency prepared-  
6 ness activities, resources, and tools, giving a high priority  
7 to emergency preparedness efforts designed to address ter-  
8 rorist attacks.

9 **Subtitle D—Miscellaneous**  
10 **Provisions**

11 **SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS**

12 **CENTER.**

13 (a) ESTABLISHMENT.—There is established within  
14 the Department of Defense a National Bio-Weapons De-  
15 fense Analysis Center (in this section referred to as the  
16 “Center”).

17 (b) MISSION.—The mission of the Center is to de-  
18 velop countermeasures to potential attacks by terrorists  
19 using biological or chemical weapons that are weapons of  
20 mass destruction (as defined under section 1403 of the  
21 Defense Against Weapons of Mass Destruction Act of  
22 1996 (50 U.S.C. 2302(1))).

23 **SEC. 162. REVIEW OF FOOD SAFETY.**

24 (a) REVIEW OF FOOD SAFETY LAWS AND FOOD  
25 SAFETY ORGANIZATIONAL STRUCTURE.—The Secretary



1 shall enter into an agreement with and provide funding  
2 to the National Academy of Sciences to conduct a detailed,  
3 comprehensive study which shall—

4           (1) review all Federal statutes and regulations  
5 affecting the safety and security of the food supply  
6 to determine the effectiveness of the statutes and  
7 regulations at protecting the food supply from delib-  
8 erate contamination; and

9           (2) review the organizational structure of Fed-  
10 eral food safety oversight to determine the efficiency  
11 and effectiveness of the organizational structure at  
12 protecting the food supply from deliberate contami-  
13 nation.

14 (b) REPORT.—

15           (1) IN GENERAL.—Not later than 1 year after  
16 the date of enactment of this Act, the National  
17 Academy of Sciences shall prepare and submit to the  
18 President, the Secretary, and Congress a com-  
19 prehensive report containing—

20                   (A) the findings and conclusions derived  
21 from the reviews conducted under subsection  
22 (a); and

23                   (B) specific recommendations for  
24 improving—

1 (i) the effectiveness and efficiency of  
2 Federal food safety and security statutes  
3 and regulations; and

4 (ii) the organizational structure of  
5 Federal food safety oversight.

6 (2) CONTENTS.—In conjunction with the rec-  
7 ommendations under paragraph (1), the report  
8 under paragraph (1) shall address—

9 (A) the effectiveness with which Federal  
10 food safety statutes and regulations protect  
11 public health and ensure the food supply re-  
12 mains free from contamination;

13 (B) the shortfalls, redundancies, and in-  
14 consistencies in Federal food safety statutes  
15 and regulations;

16 (C) the application of resources among  
17 Federal food safety oversight agencies;

18 (D) the effectiveness and efficiency of the  
19 organizational structure of Federal food safety  
20 oversight;

21 (E) the shortfalls, redundancies, and in-  
22 consistencies of the organizational structure of  
23 Federal food safety oversight; and

1 (F) the merits of a unified, central organi-  
2 zational structure of Federal food safety over-  
3 sight.

4 (c) RESPONSE OF THE SECRETARY.—Not later than  
5 90 days after the date on which the report under this sec-  
6 tion is submitted to the Secretary, the Secretary shall pro-  
7 vide to the President and Congress the response of the  
8 Department to the recommendations of the report and rec-  
9 ommendations of the Department to further protect the  
10 food supply from contamination.

11 **SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES**  
12 **AND STATE OR LOCAL GOVERNMENTS.**

13 (a) FINDINGS.—Congress finds that—

14 (1) information sharing between Federal, State,  
15 and local agencies is vital to securing the homeland  
16 against terrorist attacks;

17 (2) Federal, State, and local employees working  
18 cooperatively can learn from one another and resolve  
19 complex issues;

20 (3) Federal, State, and local employees have  
21 specialized knowledge that should be consistently  
22 shared between and among agencies at all levels of  
23 government; and

24 (4) providing training and other support, such  
25 as staffing, to the appropriate Federal, State, and

1 local agencies can enhance the ability of an agency  
2 to analyze and assess threats against the homeland,  
3 develop appropriate responses, and inform the  
4 United States public.

5 (b) EXCHANGE OF EMPLOYEES.—

6 (1) IN GENERAL.—The Secretary may provide  
7 for the exchange of employees of the Department  
8 and State and local agencies in accordance with sub-  
9 chapter VI of chapter 33 of title 5, United States  
10 Code.

11 (2) CONDITIONS.—With respect to exchanges  
12 described under this subsection, the Secretary shall  
13 ensure that—

14 (A) any assigned employee shall have ap-  
15 propriate training or experience to perform the  
16 work required by the assignment; and

17 (B) any assignment occurs under condi-  
18 tions that appropriately safeguard classified  
19 and other sensitive information.

## 20 **Subtitle E—Transition Provisions**

### 21 **SEC. 171. DEFINITIONS.**

22 In this subtitle:

23 (1) AGENCY.—The term “agency” includes any  
24 entity, organizational unit, or function transferred or  
25 to be transferred under this title.

1           (2) TRANSITION PERIOD.—The term “transi-  
2           tion period” means the 1-year period beginning on  
3           the effective date of this division.

4 **SEC. 172. TRANSFER OF AGENCIES.**

5           The transfer of an agency to the Department, as au-  
6           thorized by this title, shall occur when the President so  
7           directs, but in no event later than the end of the transition  
8           period.

9 **SEC. 173. TRANSITIONAL AUTHORITIES.**

10          (a) PROVISION OF ASSISTANCE BY OFFICIALS.—  
11          Until an agency is transferred to the Department, any of-  
12          ficial having authority over, or functions relating to, the  
13          agency immediately before the effective date of this divi-  
14          sion shall provide to the Secretary such assistance, includ-  
15          ing the use of personnel and assets, as the Secretary may  
16          reasonably request in preparing for the transfer and inte-  
17          gration of the agency into the Department.

18          (b) SERVICES AND PERSONNEL.—During the transi-  
19          tion period, upon the request of the Secretary, the head  
20          of any agency (as defined under section 2) may, on a reim-  
21          bursable basis, provide services and detail personnel to as-  
22          sist with the transition.

23          (c) ACTING OFFICIALS.—

24                  (1) DESIGNATION.—During the transition pe-  
25          riod, pending the nomination and advice and consent

1 of the Senate to the appointment of an officer re-  
2 quired by this division to be appointed by and with  
3 such advice and consent, the President may des-  
4 ignate any officer whose appointment was required  
5 to be made by and with such advice and consent,  
6 and who continues as such an officer, to act in such  
7 office until the office is filled as provided in this di-  
8 vision.

9 (2) COMPENSATION.—While serving as an act-  
10 ing officer under paragraph (1), the officer shall re-  
11 ceive compensation at the higher of the rate  
12 provided—

13 (A) by this division for the office in which  
14 that officer acts; or

15 (B) for the office held at the time of des-  
16 ignation.

17 (3) PERIOD OF SERVICE.—The person serving  
18 as an acting officer under paragraph (1) may serve  
19 in the office for the periods described under section  
20 3346 of title 5, United States Code, as if the office  
21 became vacant on the effective date of this division.

22 **SEC. 174. INCIDENTAL TRANSFERS.**

23 (a) IN GENERAL.—The Director of the Office of  
24 Management and Budget, in consultation with the Sec-  
25 retary, shall make such additional incidental dispositions

1 of personnel, assets, and liabilities held, used, arising  
2 from, available, or to be made available, in connection with  
3 the functions transferred by this title, as the Director de-  
4 termines necessary to accomplish the purposes of this title.

5 (b) ADJUDICATORY OR REVIEW FUNCTIONS.—

6 (1) IN GENERAL.—At the time an agency is  
7 transferred to the Department, the President may  
8 also transfer to the Department any agency estab-  
9 lished to carry out or support adjudicatory or review  
10 functions in relation to the transferred agency.

11 (2) EXCEPTION.—The President may not trans-  
12 fer the Executive Office of Immigration Review of  
13 the Department of Justice under this subsection.

14 **SEC. 175. IMPLEMENTATION PROGRESS REPORTS AND LEG-**  
15 **ISLATIVE RECOMMENDATIONS.**

16 (a) IN GENERAL.—In consultation with the President  
17 and in accordance with this section, the Secretary shall  
18 prepare implementation progress reports and submit such  
19 reports to—

20 (1) the President of the Senate and the Speaker  
21 of the House of Representatives for referral to the  
22 appropriate committees; and

23 (2) the Comptroller General of the United  
24 States.

25 (b) REPORT FREQUENCY.—

1           (1) INITIAL REPORT.—As soon as practicable,  
2           and not later than 6 months after the date of enact-  
3           ment of this Act, the Secretary shall submit the first  
4           implementation progress report.

5           (2) SEMIANNUAL REPORTS.—Following the  
6           submission of the report under paragraph (1), the  
7           Secretary shall submit additional implementation  
8           progress reports not less frequently than once every  
9           6 months until all transfers to the Department  
10          under this title have been completed.

11          (3) FINAL REPORT.—Not later than 6 months  
12          after all transfers to the Department under this title  
13          have been completed, the Secretary shall submit a  
14          final implementation progress report.

15          (c) CONTENTS.—

16          (1) IN GENERAL.—Each implementation  
17          progress report shall report on the progress made in  
18          implementing this division, including fulfillment of  
19          the functions transferred under this title, and shall  
20          include all of the information specified under para-  
21          graph (2) that the Secretary has gathered as of the  
22          date of submission. Information contained in an ear-  
23          lier report may be referenced, rather than set out in  
24          full, in a subsequent report. The final implementa-





1 about which elements of the various agen-  
2 cies will be located at headquarters;

3 (vi) unexpended funds and assets, li-  
4 abilities, and personnel that will be trans-  
5 ferred, and the proposed allocations and  
6 disposition within the Department; and

7 (vii) the costs of implementing the  
8 transition;

9 (B) with respect to human capital  
10 planning—

11 (i) a description of the workforce  
12 planning undertaken for the Department,  
13 including the preparation of an inventory  
14 of skills and competencies available to the  
15 Department, to identify any gaps, and to  
16 plan for the training, recruitment, and re-  
17 tention policies necessary to attract and re-  
18 tain a workforce to meet the needs of the  
19 Department;

20 (ii) the past and anticipated future  
21 record of the Department with respect to  
22 recruitment and retention of personnel;

23 (iii) plans or progress reports on the  
24 utilization by the Department of existing  
25 personnel flexibility, provided by law or

1 through regulations of the President and  
2 the Office of Personnel Management, to  
3 achieve the human capital needs of the De-  
4 partment;

5 (iv) any inequitable disparities in pay  
6 or other terms and conditions of employ-  
7 ment among employees within the Depart-  
8 ment resulting from the consolidation  
9 under this division of functions, entities,  
10 and personnel previously covered by dis-  
11 parate personnel systems; and

12 (v) efforts to address the disparities  
13 under clause (iv) using existing personnel  
14 flexibility;

15 (C) with respect to information  
16 technology—

17 (i) an assessment of the existing and  
18 planned information systems of the De-  
19 partment; and

20 (ii) a report on the development and  
21 implementation of enterprise architecture  
22 and of the plan to achieve interoperability;

23 (D) with respect to programmatic  
24 implementation—

1 (i) the progress in implementing the  
2 programmatic responsibilities of this divi-  
3 sion;

4 (ii) the progress in implementing the  
5 mission of each entity transferred to the  
6 Department;

7 (iii) recommendations of other govern-  
8 mental functions or elements that need to  
9 be incorporated into the Department in  
10 order for the Department to function effec-  
11 tively; and

12 (iv) recommendations of any functions  
13 not related to homeland security trans-  
14 ferred to the Department that need to be  
15 transferred from the Department or termi-  
16 nated for the Department to function ef-  
17 fectively.

18 (d) LEGISLATIVE RECOMMENDATIONS.—

19 (1) INCLUSION IN REPORT.—The Secretary,  
20 after consultation with the appropriate committees  
21 of Congress, shall include in the report under this  
22 section, recommendations for legislation that the  
23 Secretary determines is necessary to—

24 (A) facilitate the integration of transferred  
25 entities and functions into the Department;

1 (B) reorganize agencies, executive posi-  
2 tions, and the assignment of functions within  
3 the Department;

4 (C) address any inequitable disparities in  
5 pay or other terms and conditions of employ-  
6 ment among employees within the Department  
7 resulting from the consolidation of agencies,  
8 functions, and personnel previously covered by  
9 disparate personnel systems;

10 (D) enable the Secretary to engage in pro-  
11 curement essential to the mission of the De-  
12 partment;

13 (E) otherwise help further the mission of  
14 the Department; and

15 (F) make technical and conforming amend-  
16 ments to existing law to reflect the changes  
17 made by this division.

18 (2) SEPARATE SUBMISSION OF PROPOSED LEG-  
19 ISLATION.—The Secretary may submit the proposed  
20 legislation under paragraph (1) to Congress before  
21 submitting the balance of the report under this sec-  
22 tion.

23 **SEC. 176. TRANSFER AND ALLOCATION.**

24 Except as otherwise provided in this title, the per-  
25 sonnel employed in connection with, and the assets, liabil-

1 ities, contracts, property, records, and unexpended balance  
2 of appropriations, authorizations, allocations, and other  
3 funds employed, held, used, arising from, available to, or  
4 to be made available in connection with the functions and  
5 entities transferred by this title, shall be transferred to  
6 the Secretary for appropriate allocation, subject to the ap-  
7 proval of the Director of the Office of Management and  
8 Budget and to section 1531 of title 31, United States  
9 Code. Unexpended funds transferred under this subsection  
10 shall be used only for the purposes for which the funds  
11 were originally authorized and appropriated.

12 **SEC. 177. SAVINGS PROVISIONS.**

13 (a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—  
14 All orders, determinations, rules, regulations, permits,  
15 agreements, grants, contracts, recognitions of labor orga-  
16 nizations, collective bargaining agreements, certificates, li-  
17 censes, registrations, privileges, and other administrative  
18 actions—

19 (1) which have been issued, made, granted, or  
20 allowed to become effective by the President, any  
21 Federal agency or official thereof, or by a court of  
22 competent jurisdiction, in the performance of func-  
23 tions which are transferred under this title; and

24 (2) which are in effect at the time this division  
25 takes effect, or were final before the effective date

1 of this division and are to become effective on or  
2 after the effective date of this division,  
3 shall, to the extent related to such functions, continue in  
4 effect according to their terms until modified, terminated,  
5 superseded, set aside, or revoked in accordance with law  
6 by the President, the Secretary or other authorized offi-  
7 cial, a court of competent jurisdiction, or by operation of  
8 law.

9 (b) PROCEEDINGS NOT AFFECTED.—The provisions  
10 of this title shall not affect any proceedings, including no-  
11 tices of proposed rulemaking, or any application for any  
12 license, permit, certificate, or financial assistance pending  
13 before an agency at the time this title takes effect, with  
14 respect to functions transferred by this title but such pro-  
15 ceedings and applications shall continue. Orders shall be  
16 issued in such proceedings, appeals shall be taken there-  
17 from, and payments shall be made pursuant to such or-  
18 ders, as if this title had not been enacted, and orders  
19 issued in any such proceedings shall continue in effect  
20 until modified, terminated, superseded, or revoked by a  
21 duly authorized official, by a court of competent jurisdic-  
22 tion, or by operation of law. Nothing in this subsection  
23 shall be deemed to prohibit the discontinuance or modi-  
24 fication of any such proceeding under the same terms and  
25 conditions and to the same extent that such proceeding

1 could have been discontinued or modified if this title had  
2 not been enacted.

3 (c) SUITS NOT AFFECTED.—The provisions of this  
4 title shall not affect suits commenced before the effective  
5 date of this division, and in all such suits, proceedings  
6 shall be had, appeals taken, and judgments rendered in  
7 the same manner and with the same effect as if this title  
8 had not been enacted.

9 (d) NONABATEMENT OF ACTIONS.—No suit, action,  
10 or other proceeding commenced by or against an agency,  
11 or by or against any individual in the official capacity of  
12 such individual as an officer of an agency, shall abate by  
13 reason of the enactment of this title.

14 (e) ADMINISTRATIVE ACTIONS RELATING TO PRO-  
15 MULGATION OF REGULATIONS.—Any administrative ac-  
16 tion relating to the preparation or promulgation of a regu-  
17 lation by an agency relating to a function transferred  
18 under this title may be continued by the Department with  
19 the same effect as if this title had not been enacted.

20 (f) EMPLOYMENT AND PERSONNEL.—

21 (1) INTERIM AUTHORITY FOR APPOINTMENT  
22 AND COMPENSATION.—Funds available to any offi-  
23 cial or component of any entity the functions of  
24 which are transferred to the Department, may with  
25 the approval of the Director of the Office of Man-



1           agement and Budget, be used to pay the compensa-  
2           tion and expenses of any officer or employee under  
3           this title until such time as funds for that purpose  
4           are otherwise available.

5           (2) EMPLOYEE RIGHTS.—

6           (A) TRANSFERRED AGENCIES.—The De-  
7           partment, or a subdivision of the Department,  
8           that includes an agency, or subdivision thereof,  
9           transferred under this title, or performs func-  
10          tions transferred under this title shall not be  
11          excluded from coverage of chapter 71 of title 5,  
12          United States Code, as a result of any order  
13          issued under section 7103(b)(1) of title 5,  
14          United States Code, after July 19, 2002.

15          (B) TRANSFERRED EMPLOYEES.—An em-  
16          ployee transferred to the Department under  
17          this division, who was in an appropriate unit  
18          under section 7112 of title 5, United States  
19          Code, prior to the transfer, shall not be ex-  
20          cluded from a unit under subsection (b)(6) of  
21          that section unless—

22                  (i) the primary job duty of the em-  
23                  ployee is materially changed after the  
24                  transfer; and

1           (ii) the primary job duty of the em-  
2           ployee after such change consists of intel-  
3           ligence, counterintelligence, or investigative  
4           duties directly related to the investigation  
5           of terrorism, if it is clearly demonstrated  
6           that membership in a unit and coverage  
7           under chapter 71 of title 5, United States  
8           Code, cannot be applied in a manner that  
9           would not have a substantial adverse effect  
10          on national security.

11          (C) TRANSFERRED FUNCTIONS.—An em-  
12          ployee of the Department who is primarily en-  
13          gaged in carrying out a function transferred to  
14          the Department under this division or a func-  
15          tion substantially similar to a function so trans-  
16          ferred shall not be excluded from a unit under  
17          section 7112(b)(6) of title 5, United States  
18          Code, unless the function prior to the transfer  
19          was performed by an employee excluded from a  
20          unit under that section.

21          (D) OTHER AGENCIES, EMPLOYEES, AND  
22          FUNCTIONS.—

23                 (i) Subject to paragraph (A), a sub-  
24                 division of the Department shall not be ex-  
25                 cluded from coverage under chapter 71 of

1 title 5, United States Code, under section  
2 7103(b)(1) of that title unless—

3 (I) the subdivision has, as a pri-  
4 mary function, intelligence, counter-  
5 intelligence, or investigative duties di-  
6 rectly related to terrorism investiga-  
7 tion; and

8 (II) the provisions of that chap-  
9 ter cannot be applied to that subdivi-  
10 sion in a manner consistent with na-  
11 tional security requirements and con-  
12 siderations.

13 (ii) Subject to subparagraphs (B) and  
14 (C), an employee of the Department shall  
15 not be excluded from a unit under section  
16 7112(b)(6) of title 5, United States Code,  
17 unless the primary job duty of the em-  
18 ployee consists of intelligence, counterintel-  
19 ligence, or investigative duties directly re-  
20 lated to terrorism investigation, if it is  
21 clearly demonstrated that membership in a  
22 unit and coverage under chapter 71 of title  
23 5, United States Code, cannot be applied  
24 in a manner that would not have a sub-  
25 stantial adverse effect on national security.

1           (E) EXCLUSION.—Paragraphs (A) through  
2           (D) shall not apply to any agency, or subdivi-  
3           sion of an agency, transferred to the Depart-  
4           ment under this title that, on July 19, 2002,  
5           was excluded from coverage under chapter 71  
6           of title 5, United States Code, under section  
7           7103(b)(1) of that title.

8           (3) TERMS AND CONDITIONS OF EMPLOY-  
9           MENT.—The transfer of an employee to the Depart-  
10          ment under this title shall not alter the terms and  
11          conditions of employment, including compensation,  
12          of any employee so transferred.

13          (4) CONDITIONS AND CRITERIA FOR APPOINT-  
14          MENT.—Any qualifications, conditions, or criteria re-  
15          quired by law for appointments to a position in an  
16          agency, or subdivision thereof, transferred to the De-  
17          partment under this title, including a requirement  
18          that an appointment be made by the President, by  
19          and with the advice and consent of the Senate, shall  
20          continue to apply with respect to any appointment to  
21          the position made after such transfer to the Depart-  
22          ment has occurred.

23          (g) NO EFFECT ON INTELLIGENCE AUTHORITIES.—  
24          The transfer of authorities, functions, personnel, and as-  
25          sets of elements of the United States Government under

1 this title, or the assumption of authorities and functions,  
2 by the Department of Homeland Security under this title,  
3 shall not be construed, in cases where such authorities,  
4 functions, personnel, and assets, are engaged in intel-  
5 ligence activities as defined in the National Security Act  
6 of 1947, as affecting the authorities of the Director of  
7 Central Intelligence, the Secretary of Defense, or the  
8 heads of departments and agencies within the intelligence  
9 community.

10 **SEC. 178. TRANSFER OF RELATED FUNCTIONS.**

11 (a) IN GENERAL.—The transfer, under this title, of  
12 an agency that is a subdivision of a department before  
13 such transfer, shall include the transfer to the Secretary  
14 of any function relating to such agency that, on the date  
15 before the transfer, was exercised by the head of the de-  
16 partment from which such agency is transferred.

17 (b) REFERENCES.—A reference in any other Federal  
18 law, Executive order, rule, regulation, delegation of au-  
19 thority, or other document pertaining to an agency trans-  
20 ferred under this title that refers to the head of the de-  
21 partment from which such agency is transferred is deemed  
22 to refer to the Secretary.

1                   **Subtitle F—Administrative**  
2                   **Provisions**

3 **SEC. 191. REORGANIZATIONS AND DELEGATIONS.**

4           (a) REORGANIZATION AUTHORITY.—

5                   (1) IN GENERAL.—The Secretary may, as nec-  
6           essary and appropriate—

7                           (A) allocate, or reallocate, functions among  
8                   officers of the Department; and

9                           (B) establish, consolidate, alter, or dis-  
10                   continue organizational entities within the De-  
11                   partment.

12                   (2) LIMITATION.—Paragraph (1) does not  
13           apply to—

14                           (A) any office, bureau, unit, or other entity  
15                   established by law and transferred to the De-  
16                   partment;

17                           (B) any function vested by law in an entity  
18                   referred to in subparagraph (A) or vested by  
19                   law in an officer of such an entity; or

20                           (C) the alteration of the assignment or del-  
21                   egation of functions assigned by this division to  
22                   any officer or organizational entity of the De-  
23                   partment.

24           (b) DELEGATION AUTHORITY.—

25                   (1) SECRETARY.—The Secretary may—

1 (A) delegate any of the functions of the  
2 Secretary;

3 (B) authorize successive redelegations of  
4 functions of the Secretary to other officers and  
5 employees of the Department; and

6 (C) procure the temporary or intermittent  
7 services of experts or consultants under section  
8 3109(b) of title 5, United States Code.

9 (2) OFFICERS.—An officer of the Department  
10 may—

11 (A) delegate any function assigned to the  
12 officer by law; and

13 (B) authorize successive redelegations of  
14 functions assigned to the officer by law to other  
15 officers and employees of the Department.

16 (3) LIMITATIONS.—

17 (A) INTERUNIT DELEGATION.—Any func-  
18 tion assigned by this title to an organizational  
19 unit of the Department or to the head of an or-  
20 ganizational unit of the Department may not be  
21 delegated to an officer or employee outside of  
22 that unit.

23 (B) FUNCTIONS.—Any function vested by  
24 law in an entity established by law and trans-  
25 ferred to the Department or vested by law in an

1 officer of such an entity may not be delegated  
2 to an officer or employee outside of that entity.

3 **SEC. 192. REPORTING REQUIREMENTS.**

4 (a) ANNUAL EVALUATIONS.—The Comptroller Gen-  
5 eral of the United States shall monitor and evaluate the  
6 implementation of this division. Not later than 15 months  
7 after the effective date of this division, and every year  
8 thereafter for the succeeding 5 years, the Comptroller  
9 General of the United States shall submit a report to Con-  
10 gress containing—

11 (1) an evaluation of the progress reports sub-  
12 mitted to Congress by the Secretary under section  
13 175;

14 (2) the findings and conclusions of the Comp-  
15 troller General of the United States resulting from  
16 the monitoring and evaluation conducted under this  
17 subsection, including evaluations of how successfully  
18 the Department is meeting—

19 (A) the homeland security missions of the  
20 Department; and

21 (B) the other missions of the Department;  
22 and

23 (3) any recommendations for legislation or ad-  
24 ministrative action the Comptroller General of the  
25 United States considers appropriate.



1 (b) BIENNIAL REPORTS.—Every 2 years the Sec-  
2 retary shall submit to Congress—

3 (1) a report assessing the resources and re-  
4 quirements of executive agencies relating to border  
5 security and emergency preparedness issues; and

6 (2) a report certifying the preparedness of the  
7 United States to prevent, protect against, and re-  
8 spond to natural disasters, cyber attacks, and inci-  
9 dents involving weapons of mass destruction.

10 (c) POINT OF ENTRY MANAGEMENT REPORT.—Not  
11 later than 1 year after the effective date of this division,  
12 the Secretary shall submit to Congress a report outlining  
13 proposed steps to consolidate management authority for  
14 Federal operations at key points of entry into the United  
15 States.

16 (d) COMBATING TERRORISM AND HOMELAND SECUR-  
17 ITY.—Not later than 270 days after the date of enact-  
18 ment of this Act, the Secretary and the Director shall—

19 (1) in consultation with the head of each de-  
20 partment or agency affected by this division, develop  
21 definitions of the terms “combating terrorism” and  
22 “homeland security” for purposes of this division  
23 and shall consider such definitions in determining  
24 the mission of the Department and Office; and

1           (2) submit a report to Congress on such defini-  
2           tions.

3           (e) RESULTS-BASED MANAGEMENT.—

4           (1) STRATEGIC PLAN.—

5           (A) IN GENERAL.—Not later than Sep-  
6           tember 30, 2003, consistent with the require-  
7           ments of section 306 of title 5, United States  
8           Code, the Secretary, in consultation with Con-  
9           gress, shall prepare and submit to the Director  
10          of the Office of Management and Budget and  
11          to Congress a strategic plan for the program  
12          activities of the Department.

13          (B) PERIOD; REVISIONS.—The strategic  
14          plan shall cover a period of not less than 5  
15          years from the fiscal year in which it is sub-  
16          mitted and it shall be updated and revised at  
17          least every 3 years.

18          (C) SCOPE.—The strategic plan shall de-  
19          scribe the planned results for the non-homeland  
20          security related activities of the Department as  
21          well as the homeland security related activities  
22          of the Department.

23          (2) PERFORMANCE PLAN.—

24          (A) IN GENERAL.—In accordance with sec-  
25          tion 1115 of title 31, United States Code, the

1 Secretary shall prepare an annual performance  
2 plan covering each program activity set forth in  
3 the budget of the Department.

4 (B) CONTENTS.—The performance plan  
5 shall include—

6 (i) the goals to be achieved during the  
7 year;

8 (ii) strategies and resources required  
9 to meet the goals; and

10 (iii) the means used to verify and vali-  
11 date measured values.

12 (C) SCOPE.—The performance plan should  
13 describe the planned results for the non-home-  
14 land security related activities of the Depart-  
15 ment as well as the homeland security related  
16 activities of the Department.

17 (3) PERFORMANCE REPORT.—

18 (A) IN GENERAL.—In accordance with sec-  
19 tion 1116 of title 31, United States Code, the  
20 Secretary shall prepare and submit to the  
21 President and Congress an annual report on  
22 program performance for the previous fiscal  
23 year.

24 (B) CONTENTS.—The performance report  
25 shall include the actual results achieved during

1           the year compared to the goals expressed in the  
2           performance plan for that year.

3 **SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND**  
4           **HEALTH REQUIREMENTS.**

5       The Secretary shall—

- 6           (1) ensure that the Department complies with  
7       all applicable environmental, safety, and health stat-  
8       utes and requirements; and  
9           (2) develop procedures for meeting such re-  
10      quirements.

11 **SEC. 194. LABOR STANDARDS.**

12       (a) IN GENERAL.—All laborers and mechanics em-  
13      ployed by contractors or subcontractors in the perform-  
14      ance of construction work financed in whole or in part  
15      with assistance received under this division shall be paid  
16      wages a rates not less than those prevailing on similar con-  
17      struction in the locality as determined by the Secretary  
18      of Labor in accordance with the Davis-Bacon Act (40  
19      U.S.C. 276a et seq.).

20       (b) SECRETARY OF LABOR.—The Secretary of Labor  
21      shall have, with respect to the enforcement of labor stand-  
22      ards under subsection (a), the authority and functions set  
23      forth in Reorganization Plan Number 14 of 1950 (5  
24      U.S.C. App.) and section 2 of the Act of June 13, 1934  
25      (48 Stat. 948, chapter 482; 40 U.S.C. 276c).

1 **SEC. 195. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums  
3 as may be necessary to—

4 (1) enable the Secretary to administer and  
5 manage the Department; and

6 (2) carry out the functions of the Department  
7 other than those transferred to the Department  
8 under this title.

9 **TITLE II—NATIONAL OFFICE**  
10 **FOR COMBATING TERRORISM**

11 **SEC. 201. NATIONAL OFFICE FOR COMBATING TERRORISM.**

12 (a) ESTABLISHMENT.—There is established within  
13 the Executive Office of the President the National Office  
14 for Combating Terrorism.

15 (b) OFFICERS.—

16 (1) DIRECTOR.—The head of the Office shall be  
17 the Director of the National Office for Combating  
18 Terrorism, who shall be appointed by the President,  
19 by and with the advice and consent of the Senate.

20 (2) EXECUTIVE SCHEDULE LEVEL I POSI-  
21 TION.—Section 5312 of title 5, United States Code,  
22 is amended by adding at the end the following:

23 “Director of the National Office for Combating  
24 Terrorism.”.

25 (3) OTHER OFFICERS.—The President shall as-  
26 sign to the Office such other officers as the Presi-

1       dent, in consultation with the Director, considers ap-  
2       propriate to discharge the responsibilities of the Of-  
3       fice.

4       (c) RESPONSIBILITIES.—Subject to the direction and  
5       control of the President, the responsibilities of the Office  
6       shall include the following:

7               (1) To develop national objectives and policies  
8       for combating terrorism.

9               (2) To direct and review the development of a  
10       comprehensive national assessment of terrorist  
11       threats and vulnerabilities to those threats, which  
12       shall be—

13                       (A) conducted by the heads of relevant  
14       Federal agencies the National Security Advisor,  
15       the Director of the Office of Science and Tech-  
16       nology Policy, and other involved White House  
17       entities; and

18                       (B) used in preparation of the Strategy.

19               (3) To develop with the Secretary of Homeland  
20       Security, the Strategy under title III.

21               (4) To coordinate, oversee, and evaluate the im-  
22       plementation and execution of the Strategy by agen-  
23       cies of the Federal Government with responsibilities  
24       for combating terrorism under the Strategy, particu-  
25       larly those involving military, intelligence, law en-

1       forcement, diplomatic, and scientific and technological  
2       assets.

3               (5) To work with agencies of the Federal Gov-  
4       ernment, including the Environmental Protection  
5       Agency, to ensure that appropriate actions are taken  
6       to address vulnerabilities identified by the Depart-  
7       ment of Homeland Security Directorate of Critical  
8       Infrastructure Protection.

9               (6)(A) To coordinate, with the advice of the  
10      Secretary, the development of a comprehensive an-  
11      nual budget for the programs and activities under  
12      the Strategy, including the budgets of the military  
13      departments and agencies within the National For-  
14      eign Intelligence Program relating to international  
15      terrorism, but excluding military programs, projects,  
16      or activities relating to force protection.

17              (B) To have the lead responsibility for budget  
18      recommendations relating to military, intelligence,  
19      law enforcement, diplomatic, and scientific and tech-  
20      nological assets in support of the Strategy.

21              (7) To exercise funding authority for Federal  
22      terrorism prevention and response agencies in ac-  
23      cordance with section 202.

24              (8) To serve as an advisor to the National Se-  
25      curity Council.

1           (9) To work with the Director of the Federal  
2 Bureau of Investigation to ensure that—

3           (A) the Director of the National Office for  
4 Combating Terrorism receives the relevant in-  
5 formation from the Federal Bureau of Inves-  
6 tigation related to terrorism; and

7           (B) such information is made available to  
8 the appropriate agencies and to State and local  
9 law enforcement officials.

10       (d) RESOURCES.—In consultation with the Director,  
11 the President shall assign or allocate to the Office such  
12 resources, including funds, personnel, and other resources,  
13 as the President considers appropriate in order to facili-  
14 tate the discharge of the responsibilities of the Office.

15       (e) OVERSIGHT BY CONGRESS.—The establishment  
16 of the Office within the Executive Office of the President  
17 shall not be construed as affecting access by Congress, or  
18 any committee of Congress, to—

19           (1) any information, document, record, or paper  
20 in the possession of the Office or any study con-  
21 ducted by or at the direction of the Director; or

22           (2) any personnel of the Office.



1 **SEC. 202. FUNDING FOR STRATEGY PROGRAMS AND AC-**  
2 **TIVITIES.**

3 (a) BUDGET REVIEW.—In consultation with the Di-  
4 rector of the Office of Management and Budget, the Sec-  
5 retary, and the heads of other agencies, the National Secu-  
6 rity Advisor, the Director of the Office of Science and  
7 Technology Policy, and other involved White House enti-  
8 ties, the Director shall—

9 (1) identify programs that contribute to the  
10 Strategy; and

11 (2) in the development of the budget submitted  
12 by the President to Congress under section 1105 of  
13 title 31, United States Code, review and provide ad-  
14 vice to the heads of executive departments and agen-  
15 cies on the amount and use of funding for programs  
16 identified under paragraph (1).

17 (b) SUBMITTAL OF PROPOSED BUDGETS TO THE DI-  
18 RECTOR.—

19 (1) IN GENERAL.—The head of each Federal  
20 terrorism prevention and response agency shall sub-  
21 mit to the Director each year the proposed budget  
22 of that agency for the fiscal year beginning in that  
23 year for programs and activities of that agency  
24 under the Strategy during that fiscal year.

1           (2) DATE FOR SUBMISSION.—The proposed  
2 budget of an agency for a fiscal year under para-  
3 graph (1) shall be submitted to the Director—

4           (A) not later than the date on which the  
5 agency completes the collection of information  
6 for purposes of the submission by the President  
7 of a budget to Congress for that fiscal year  
8 under section 1105 of title 31, United States  
9 Code; and

10           (B) before that information is submitted to  
11 the Director of the Office of Management and  
12 Budget for such purposes.

13           (3) FORMAT.—In consultation with the Director  
14 of the Office of Management and Budget, the Direc-  
15 tor shall specify the format for the submittal of pro-  
16 posed budgets under paragraph (1).

17           (c) REVIEW OF PROPOSED BUDGETS.—

18           (1) IN GENERAL.—The Director shall review  
19 each proposed budget submitted to the Director  
20 under subsection (b).

21           (2) INADEQUATE FUNDING DETERMINATION.—  
22 If the Director determines under paragraph (1) that  
23 the proposed budget of an agency for a fiscal year  
24 under subsection (b) is inadequate, in whole or in  
25 part, to permit the implementation by the agency

1 during the fiscal year of the goals of the Strategy  
2 applicable to the agency during the fiscal year, the  
3 Director shall submit to the head of the agency—

4 (A) a notice in writing of the determina-  
5 tion; and

6 (B) a statement of the proposed funding,  
7 and any specific initiatives, that would (as de-  
8 termined by the Director) permit the implemen-  
9 tation by the agency during the fiscal year of  
10 the goals of the Strategy applicable to the agen-  
11 cy during the fiscal year.

12 (3) ADEQUATE FUNDING DETERMINATION.—If  
13 the Director determines under paragraph (1) that  
14 the proposed budget of an agency for a fiscal year  
15 under subsection (b) is adequate to permit the im-  
16 plementation by the agency during the fiscal year of  
17 the goals of the Strategy applicable to the agency  
18 during the fiscal year, the Director shall submit to  
19 the head of the agency a notice in writing of that  
20 determination.

21 (4) MAINTENANCE OF RECORDS.—The Director  
22 shall maintain a record of—

23 (A) each notice submitted under paragraph  
24 (2), including any statement accompanying  
25 such notice; and

1 (B) each notice submitted under paragraph  
2 (3).

3 (d) AGENCY RESPONSE TO REVIEW OF PROPOSED  
4 BUDGETS.—

5 (1) INCORPORATION OF PROPOSED FUNDING.—

6 The head of a Federal terrorism prevention and re-  
7 sponse agency that receives a notice under sub-  
8 section (c)(2) with respect to the proposed budget of  
9 the agency for a fiscal year shall incorporate the  
10 proposed funding, and any initiatives, set forth in  
11 the statement accompanying the notice into the in-  
12 formation submitted to the Office of Management  
13 and Budget in support of the proposed budget for  
14 the agency for the fiscal year under section 1105 of  
15 title 31, United States Code.

16 (2) ADDITIONAL INFORMATION.—The head of  
17 each agency described under paragraph (1) for a fis-  
18 cal year shall include as an appendix to the informa-  
19 tion submitted to the Office of Management and  
20 Budget under that paragraph for the fiscal year the  
21 following:

22 (A) A summary of any modifications in the  
23 proposed budget of such agency for the fiscal  
24 year under that paragraph.

1           (B) An assessment of the effect of such  
2           modifications on the capacity of such agency to  
3           perform its responsibilities during the fiscal  
4           year other than its responsibilities under the  
5           Strategy.

6           (3) SUBMISSION TO CONGRESS.—

7           (A) IN GENERAL.—Subject to subpara-  
8           graph (B), the head of each agency described  
9           under paragraph (1) for a fiscal year shall sub-  
10          mit to Congress a copy of the appendix sub-  
11          mitted to the Office of Management and Budg-  
12          et for the fiscal year under paragraph (2) at  
13          the same time the budget of the President for  
14          the fiscal year is submitted to Congress under  
15          section 1105 of title 31, United States Code.

16          (B) ELEMENTS WITHIN INTELLIGENCE  
17          PROGRAMS.—In the submission of the copy of  
18          the appendix to Congress under subparagraph  
19          (A), those elements of the appendix which are  
20          within the National Foreign Intelligence Pro-  
21          gram shall be submitted to—

22                  (i) the Select Committee on Intel-  
23                  ligence of the Senate; and

1                   (ii) the Permanent Select Committee  
2                   on Intelligence of the House of Represent-  
3                   atives.

4           (e) SUBMITTAL OF REVISED PROPOSED BUDGETS.—

5               (1) IN GENERAL.—At the same time the head  
6               of a Federal terrorism prevention and response  
7               agency submits its proposed budget for a fiscal year  
8               to the Office of Management and Budget for pur-  
9               poses of the submission by the President of a budget  
10              to Congress for the fiscal year under section 1105  
11              of title 31, United States Code, the head of the  
12              agency shall submit a copy of the proposed budget  
13              to the Director.

14              (2) REVIEW AND DECERTIFICATION AUTHOR-  
15              ITY.—The Director of the National Office for Com-  
16              bating Terrorism—

17                   (A) shall review each proposed budget sub-  
18                   mitted under paragraph (1); and

19                   (B) in the case of a proposed budget for a  
20                   fiscal year to which subsection (c)(2) applies in  
21                   the fiscal year, if the Director determines as a  
22                   result of the review that the proposed budget  
23                   does not include the proposed funding, and any  
24                   initiatives, set forth in the notice under that

1 subsection with respect to the proposed  
2 budget—

3 (i) may decertify the proposed budget;

4 and

5 (ii) with respect to any proposed  
6 budget so decertified, shall submit to

7 Congress—

8 (I) a notice of the decertification;

9 (II) a copy of the notice sub-  
10 mitted to the agency concerned for  
11 the fiscal year under subsection  
12 (c)(2)(B); and

13 (III) the budget recommenda-  
14 tions made under this section.

15 (f) NATIONAL TERRORISM PREVENTION AND RE-  
16 SPONSE PROGRAM BUDGET.—

17 (1) IN GENERAL.—For each fiscal year, fol-  
18 lowing the submittal of proposed budgets to the Di-  
19 rector under subsection (b), the Director shall, in  
20 consultation with the Secretary and the head of each  
21 Federal terrorism prevention and response agency  
22 concerned—

23 (A) develop a consolidated proposed budget  
24 for such fiscal year for all programs and activi-  
25 ties under the Strategy for such fiscal year; and

1 (B) subject to paragraph (2), submit the  
2 consolidated proposed budget to the President  
3 and to Congress.

4 (2) ELEMENTS WITHIN INTELLIGENCE PRO-  
5 GRAMS.—In the submission of the consolidated pro-  
6 posed budget to Congress under paragraph (1)(B),  
7 those elements of the budget which are within the  
8 National Foreign Intelligence Program shall be sub-  
9 mitted to—

10 (A) the Select Committee on Intelligence of  
11 the Senate; and

12 (B) the Permanent Select Committee on  
13 Intelligence of the House of Representatives.

14 (3) DESIGNATION OF CONSOLIDATED PRO-  
15 POSED BUDGET.—The consolidated proposed budget  
16 for a fiscal year under this subsection shall be  
17 known as the National Terrorism Prevention and  
18 Response Program Budget for the fiscal year.

19 (g) REPROGRAMMING AND TRANSFER REQUESTS.—

20 (1) APPROVAL BY THE DIRECTOR.—The head  
21 of a Federal terrorism prevention and response  
22 agency may not submit to Congress a request for  
23 the reprogramming or transfer of any funds speci-  
24 fied in the National Terrorism Prevention and Re-  
25 sponse Program Budget for programs or activities of



1 the agency under the Strategy for a fiscal year in  
2 excess of \$5,000,000 without the approval of the Di-  
3 rector.

4 (2) APPROVAL BY THE PRESIDENT.—The  
5 President may, upon the request of the head of the  
6 agency concerned, permit the submittal to Congress  
7 of a request previously disapproved by the Director  
8 under paragraph (1) if the President determines  
9 that the submittal of the request to Congress will  
10 further the purposes of the Strategy.

11 **TITLE III—NATIONAL STRATEGY**  
12 **FOR COMBATING TERRORISM**  
13 **AND THE HOMELAND SECU-**  
14 **RITY RESPONSE**

15 **SEC. 301. STRATEGY.**

16 (a) DEVELOPMENT.—The Secretary and the Director  
17 shall develop the National Strategy for Combating Ter-  
18 rorism and Homeland Security Response for detection,  
19 prevention, protection, response, and recovery to counter  
20 terrorist threats, including threat, vulnerability, and risk  
21 assessment and analysis, and the plans, policies, training,  
22 exercises, evaluation, and interagency cooperation that ad-  
23 dress each such action relating to such threats.

24 (b) RESPONSIBILITIES.—

1           (1) RESPONSIBILITIES OF THE SECRETARY.—

2           The Secretary shall have responsibility for portions  
3           of the Strategy addressing border security, critical  
4           infrastructure protection, emergency preparation  
5           and response, and integrating State and local efforts  
6           with activities of the Federal Government.

7           (2) RESPONSIBILITIES OF THE DIRECTOR.—

8           The Director shall have overall responsibility for de-  
9           velopment of the Strategy, and particularly for those  
10          portions of the Strategy addressing intelligence, mili-  
11          tary assets, law enforcement, and diplomacy.

12          (c) CONTENTS.—The contents of the Strategy shall  
13          include—

14               (1) a comprehensive statement of mission,  
15               goals, objectives, desired end-state, priorities and re-  
16               sponsibilities;

17               (2) policies and procedures to maximize the col-  
18               lection, translation, analysis, exploitation, and dis-  
19               semination of information relating to combating ter-  
20               rorism and the homeland security response through-  
21               out the Federal Government and with State and  
22               local authorities;

23               (3) plans for countering chemical, biological, ra-  
24               diological, nuclear and explosives, and cyber threats;

1           (4) plans for integrating the capabilities and as-  
2           sets of the United States military into all aspects of  
3           the Strategy;

4           (5) plans for improving the resources of, coordi-  
5           nation among, and effectiveness of health and med-  
6           ical sectors for detecting and responding to terrorist  
7           attacks on the homeland;

8           (6) specific measures to enhance cooperative ef-  
9           forts between the public and private sectors in pro-  
10          tecting against terrorist attacks;

11          (7) a review of measures needed to enhance  
12          transportation security with respect to potential ter-  
13          rorist attacks;

14          (8) plans for identifying, prioritizing, and meet-  
15          ing research and development objectives to support  
16          homeland security needs; and

17          (9) other critical areas.

18          (d) COOPERATION.—At the request of the Secretary  
19          or Director, departments and agencies shall provide nec-  
20          essary information or planning documents relating to the  
21          Strategy.

22          (e) INTERAGENCY COUNCIL.—

23                  (1) ESTABLISHMENT.—There is established the  
24          National Combating Terrorism and Homeland Secu-

1        rity Response Council to assist with preparation and  
2        implementation of the Strategy.

3            (2) MEMBERSHIP.—The members of the Coun-  
4        cil shall be the heads of the Federal terrorism pre-  
5        vention and response agencies or their designees.  
6        The Secretary and Director shall designate such  
7        agencies.

8            (3) CO-CHAIRS AND MEETINGS.—The Secretary  
9        and Director shall co-chair the Council, which shall  
10       meet at their direction.

11        (f) SUBMISSION TO CONGRESS.—Not later than De-  
12       cember 1, 2003, and each year thereafter in which a Presi-  
13       dent is inaugurated, the Secretary and the Director shall  
14       submit the Strategy to Congress.

15        (g) UPDATING.—Not later than December 1, 2005,  
16       and on December 1, of every 2 years thereafter, the Sec-  
17       retary and the Director shall submit to Congress an up-  
18       dated version of the Strategy.

19        (h) PROGRESS REPORTS.—Not later than December  
20       1, 2004, and on December 1, of each year thereafter, the  
21       Secretary and the Director may submit to Congress a re-  
22       port that—

23            (1) describes the progress on implementation of  
24        the Strategy; and

1           (2) provides recommendations for improvement  
2           of the Strategy and the implementation of the Strat-  
3           egy.

4 **SEC. 302. MANAGEMENT GUIDANCE FOR STRATEGY IMPLE-**  
5 **MENTATION.**

6           (a) IN GENERAL.—In consultation with the Director  
7 and the Secretary, the Director of the Office of Manage-  
8 ment and Budget shall provide management guidance for  
9 Federal agencies to successfully implement and execute  
10 the Strategy.

11          (b) OFFICE OF MANAGEMENT AND BUDGET RE-  
12 PORT.—Not later than 180 days after the date of the sub-  
13 mission of the Strategy referred to under section 301, the  
14 Director of the Office of Management and Budget shall—

15           (1) submit to Congress a report describing  
16 agency progress under subsection (a); and

17           (2) provide a copy of the report to the Comp-  
18 troller General of the United States.

19          (c) GENERAL ACCOUNTING OFFICE REPORT.—Not  
20 later than 90 days after the receipt of the report required  
21 under subsection (b), the Comptroller General of the  
22 United States shall submit a report to the Governmental  
23 Affairs Committee of the Senate and the Government Re-  
24 form Committee of the House of Representatives  
25 evaluating—

1           (1) the management guidance identified under  
2 subsection (a); and

3           (2) Federal agency performance in imple-  
4 menting and executing the Strategy.

5 **SEC. 303. NATIONAL COMBATING TERRORISM STRATEGY**

6                           **PANEL.**

7           (a) **ESTABLISHMENT.**—The Secretary and the Direc-  
8 tor shall establish a nonpartisan, independent panel to be  
9 known as the National Combating Terrorism Strategy  
10 Panel (in this section referred to as the “Panel”).

11           (b) **MEMBERSHIP.**—

12           (1) **APPOINTMENT.**—The Panel shall be com-  
13 posed of a chairperson and 8 other individuals ap-  
14 pointed by the Secretary and the Director, in con-  
15 sultation with the chairman and ranking member of  
16 the Committee on Governmental Affairs of the Sen-  
17 ate and the chairman and ranking member of the  
18 Committee on Government Reform of the House of  
19 Representatives, from among individuals in the pri-  
20 vate sector who are recognized experts in matters re-  
21 lating to the homeland security of the United States.

22           (2) **TERMS.**—

23           (A) **IN GENERAL.**—An individual shall be  
24 appointed to the Panel for an 18-month term.

1           (B) TERM PERIODS.—Terms on the Panel  
2           shall not be continuous. All terms shall be for  
3           the 18-month period which begins 12 months  
4           before each date a report is required to be sub-  
5           mitted under subsection (1)(2)(A).

6           (C) MULTIPLE TERMS.—An individual may  
7           serve more than 1 term.

8           (e) DUTIES.—The Panel shall—

9           (1) conduct and submit to the Secretary the as-  
10          sessment of the Strategy; and

11          (2) conduct the independent, alternative assess-  
12          ment of homeland security measures required under  
13          this section.

14          (d) ALTERNATIVE ASSESSMENT.—The Panel shall  
15          submit to the Secretary an independent assessment of the  
16          optimal policies and programs to combat terrorism, includ-  
17          ing homeland security measures. As part of the assess-  
18          ment, the Panel shall, to the extent practicable, estimate  
19          the funding required by fiscal year to achieve these opti-  
20          mal approaches.

21          (e) INFORMATION FROM FEDERAL AGENCIES.—

22          (1) IN GENERAL.—Subject to paragraph (2),  
23          the Panel may secure directly from any Federal de-  
24          partment or agency such information as the Panel  
25          considers necessary to carry out this section. Upon

1 request of the Chairperson, the head of such depart-  
2 ment or agency shall furnish such information to the  
3 Panel.

4 (2) INTELLIGENCE INFORMATION.—The provi-  
5 sion of information under this paragraph related to  
6 intelligence shall be provided in accordance with pro-  
7 cedures established by the Director of Central Intel-  
8 ligence and in accordance with section 103(d)(3) of  
9 the National Security Act of 1947 (50 U.S.C. 403–  
10 3(d)(3)).

11 (f) COMPENSATION OF MEMBERS.—Each member of  
12 the Panel shall be compensated at a rate equal to the daily  
13 equivalent of the annual rate of basic pay prescribed for  
14 level IV of the Executive Schedule under section 5315 of  
15 title 5, United States Code, for each day (including travel  
16 time) during which such member is engaged in the per-  
17 formance of the duties of the Panel.

18 (g) TRAVEL EXPENSES.—The members of the Panel  
19 shall be allowed travel expenses, including per diem in lieu  
20 of subsistence, at rates authorized for employees of agen-  
21 cies under subchapter I of chapter 57 of title 5, United  
22 States Code, while away from their homes or regular  
23 places of business in the performance of services for the  
24 Panel.

25 (h) STAFF.—



1           (1) IN GENERAL.—The Chairperson of the  
2 Panel may, without regard to the civil service laws  
3 and regulations, appoint and terminate an executive  
4 director and such other additional personnel as may  
5 be necessary to enable the Panel to perform its du-  
6 ties. The employment of an executive director shall  
7 be subject to confirmation by the Panel.

8           (2) COMPENSATION.—The Chairperson of the  
9 Panel may fix the compensation of the executive di-  
10 rector and other personnel without regard to chapter  
11 51 and subchapter III of chapter 53 of title 5,  
12 United States Code, relating to classification of posi-  
13 tions and General Schedule pay rates, except that  
14 the rate of pay for the executive director and other  
15 personnel may not exceed the rate payable for level  
16 V of the Executive Schedule under section 5316 of  
17 such title.

18           (3) PERSONNEL AS FEDERAL EMPLOYEES.—

19           (A) IN GENERAL.—The executive director  
20 and any personnel of the Panel who are employ-  
21 ees shall be employees under section 2105 of  
22 title 5, United States Code, for purposes of  
23 chapters 63, 81, 83, 84, 85, 87, 89, and 90 of  
24 that title.

1 (B) MEMBERS OF PANEL.—Subparagraph  
2 (A) shall not be construed to apply to members  
3 of the Panel.

4 (4) REDUCTION OF STAFF.—During periods  
5 that members are not serving terms on the Panel,  
6 the executive director shall reduce the number and  
7 hours of employees to the minimum necessary to—

8 (A) provide effective continuity of the  
9 Panel; and

10 (B) minimize personnel costs of the Panel.

11 (i) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
12 Federal Government employee may be detailed to the  
13 Panel without reimbursement, and such detail shall be  
14 without interruption or loss of civil service status or privi-  
15 lege.

16 (j) ADMINISTRATIVE PROVISIONS.—

17 (1) USE OF MAIL AND PRINTING.—The Panel  
18 may use the United States mails and obtain printing  
19 and binding services in the same manner and under  
20 the same conditions as other departments and agen-  
21 cies of the Federal Government.

22 (2) SUPPORT SERVICES.—The Secretary shall  
23 furnish the Panel any administrative and support  
24 services requested by the Panel.

1           (3) GIFTS.—The Panel may accept, use, and  
2           dispose of gifts or donations of services or property.

3           (k) PAYMENT OF PANEL EXPENSES.—The com-  
4           pensation, travel expenses, and per diem allowances of  
5           members and employees of the Panel shall be paid out of  
6           funds available to the Department for the payment of  
7           compensation, travel allowances, and per diem allowances,  
8           respectively, of civilian employees of the Department. The  
9           other expenses of the Panel shall be paid out of funds  
10          available to the Department for the payment of similar  
11          expenses incurred by the Department.

12          (l) REPORTS.—

13           (1) PRELIMINARY REPORT.—

14           (A) REPORT TO SECRETARY.—Not later  
15           than July 1, 2004, the Panel shall submit to  
16           the Secretary and the Director a preliminary  
17           report setting forth the activities and the find-  
18           ings and recommendations of the Panel under  
19           subsection (d), including any recommendations  
20           for legislation that the Panel considers appro-  
21           priate.

22           (B) REPORT TO CONGRESS.—Not later  
23           than 30 days after the submission of the report  
24           under subparagraph (A), the Secretary and the  
25           Director shall submit to the committees re-

1           ferred to under subsection (b) a copy of that re-  
2           port with the comments of the Secretary on the  
3           report.

4           (2) QUADRENNIAL REPORTS.—

5                   (A) REPORTS TO SECRETARY.—Not later  
6           than December 1, 2004, and not later than De-  
7           cember 1 every 4 years thereafter, the Panel  
8           shall submit to the Secretary and the Director  
9           a report setting forth the activities and the  
10          findings and recommendations of the Panel  
11          under subsection (d), including any rec-  
12          ommendations for legislation that the Panel  
13          considers appropriate.

14                   (B) REPORTS TO CONGRESS.—Not later  
15          than 60 days after each report is submitted  
16          under subparagraph (A), the Secretary shall  
17          submit to the committees referred to under sub-  
18          section (b) a copy of the report with the com-  
19          ments of the Secretary and the Director on the  
20          report.

1 **TITLE IV—LAW ENFORCEMENT**  
2 **POWERS OF INSPECTOR GEN-**  
3 **ERAL AGENTS**

4 **SEC. 401. LAW ENFORCEMENT POWERS OF INSPECTOR**  
5 **GENERAL AGENTS.**

6 (a) IN GENERAL.—Section 6 of the Inspector General  
7 Act of 1978 (5 U.S.C. App.) is amended by adding at the  
8 end the following:

9 “(e)(1) In addition to the authority otherwise pro-  
10 vided by this Act, each Inspector General appointed under  
11 section 3, any Assistant Inspector General for Investiga-  
12 tions under such an Inspector General, and any special  
13 agent supervised by such an Assistant Inspector General  
14 may be authorized by the Attorney General to—

15 “(A) carry a firearm while engaged in official  
16 duties as authorized under this Act or other statute,  
17 or as expressly authorized by the Attorney General;

18 “(B) make an arrest without a warrant while  
19 engaged in official duties as authorized under this  
20 Act or other statute, or as expressly authorized by  
21 the Attorney General, for any offense against the  
22 United States committed in the presence of such In-  
23 spector General, Assistant Inspector General, or  
24 agent, or for any felony cognizable under the laws  
25 of the United States if such Inspector General, As-

1       sistant Inspector General, or agent has reasonable  
2       grounds to believe that the person to be arrested has  
3       committed or is committing such felony; and

4             “(C) seek and execute warrants for arrest,  
5       search of a premises, or seizure of evidence issued  
6       under the authority of the United States upon prob-  
7       able cause to believe that a violation has been com-  
8       mitted.

9       “(2) The Attorney General may authorize exercise of  
10      the powers under this subsection only upon an initial de-  
11      termination that—

12            “(A) the affected Office of Inspector General is  
13      significantly hampered in the performance of respon-  
14      sibilities established by this Act as a result of the  
15      lack of such powers;

16            “(B) available assistance from other law en-  
17      forcement agencies is insufficient to meet the need  
18      for such powers; and

19            “(C) adequate internal safeguards and manage-  
20      ment procedures exist to ensure proper exercise of  
21      such powers.

22       “(3) The Inspector General offices of the Department  
23      of Commerce, Department of Education, Department of  
24      Energy, Department of Health and Human Services, De-  
25      partment of Homeland Security, Department of Housing

1 and Urban Development, Department of the Interior, De-  
2 partment of Justice, Department of Labor, Department  
3 of State, Department of Transportation, Department of  
4 the Treasury, Department of Veterans Affairs, Agency for  
5 International Development, Environmental Protection  
6 Agency, Federal Deposit Insurance Corporation, Federal  
7 Emergency Management Agency, General Services Admin-  
8 istration, National Aeronautics and Space Administration,  
9 Nuclear Regulatory Commission, Office of Personnel Man-  
10 agement, Railroad Retirement Board, Small Business Ad-  
11 ministration, Social Security Administration, and the Ten-  
12 nessee Valley Authority are exempt from the requirement  
13 of paragraph (2) of an initial determination of eligibility  
14 by the Attorney General.

15       “(4) The Attorney General shall promulgate, and re-  
16 vise as appropriate, guidelines which shall govern the exer-  
17 cise of the law enforcement powers established under para-  
18 graph (1).

19       “(5) Powers authorized for an Office of Inspector  
20 General under paragraph (1) shall be rescinded or sus-  
21 pended upon a determination by the Attorney General that  
22 any of the requirements under paragraph (2) is no longer  
23 satisfied or that the exercise of authorized powers by that  
24 Office of Inspector General has not complied with the

1 guidelines promulgated by the Attorney General under  
2 paragraph (4).

3 “(6) A determination by the Attorney General under  
4 paragraph (2) or (5) shall not be reviewable in or by any  
5 court.

6 “(7) To ensure the proper exercise of the law enforce-  
7 ment powers authorized by this subsection, the Offices of  
8 Inspector General described under paragraph (3) shall,  
9 not later than 180 days after the date of enactment of  
10 this subsection, collectively enter into a memorandum of  
11 understanding to establish an external review process for  
12 ensuring that adequate internal safeguards and manage-  
13 ment procedures continue to exist within each Office and  
14 within any Office that later receives an authorization  
15 under paragraph (2). The review process shall be estab-  
16 lished in consultation with the Attorney General, who shall  
17 be provided with a copy of the memorandum of under-  
18 standing that establishes the review process. Under the  
19 review process, the exercise of the law enforcement powers  
20 by each Office of Inspector General shall be reviewed peri-  
21 odically by another Office of Inspector General or by a  
22 committee of Inspectors General. The results of each re-  
23 view shall be communicated in writing to the applicable  
24 Inspector General and to the Attorney General.



1       “(8) No provision of this subsection shall limit the  
2 exercise of law enforcement powers established under any  
3 other statutory authority, including United States Mar-  
4 shals Service special deputation.”.

5       (b) PROMULGATION OF INITIAL GUIDELINES.—

6           (1) DEFINITION.—In this subsection, the term  
7 “memoranda of understanding” means the agree-  
8 ments between the Department of Justice and the  
9 Inspector General offices described under section  
10 6(e)(3) of the Inspector General Act of 1978 (5  
11 U.S.C. App) (as added by subsection (a) of this sec-  
12 tion) that—

13           (A) are in effect on the date of enactment  
14 of this Act; and

15           (B) authorize such offices to exercise au-  
16 thority that is the same or similar to the au-  
17 thority under section 6(e)(1) of such Act.

18       (2) IN GENERAL.—Not later than 180 days  
19 after the date of enactment of this Act, the Attorney  
20 General shall promulgate guidelines under section  
21 6(e)(4) of the Inspector General Act of 1978 (5  
22 U.S.C. App) (as added by subsection (a) of this sec-  
23 tion) applicable to the Inspector General offices de-  
24 scribed under section 6(e)(3) of that Act.

1           (3) MINIMUM REQUIREMENTS.—The guidelines  
2 promulgated under this subsection shall include, at  
3 a minimum, the operational and training require-  
4 ments in the memoranda of understanding.

5           (4) NO LAPSE OF AUTHORITY.—The memo-  
6 randa of understanding in effect on the date of en-  
7 actment of this Act shall remain in effect until the  
8 guidelines promulgated under this subsection take  
9 effect.

10       (c) EFFECTIVE DATES.—

11           (1) IN GENERAL.—Subsection (a) shall take ef-  
12 fect 180 days after the date of enactment of this  
13 Act.

14           (2) INITIAL GUIDELINES.—Subsection (b) shall  
15 take effect on the date of enactment of this Act.

## 16       **TITLE V—EFFECTIVE DATE**

### 17       **SEC. 501. EFFECTIVE DATE.**

18       This division shall take effect 30 days after the date  
19 of enactment of this Act or, if enacted within 30 days be-  
20 fore January 1, 2003, on January 1, 2003.

1 **DIVISION B—IMMIGRATION RE-**  
2 **FORM, ACCOUNTABILITY,**  
3 **AND SECURITY ENHANCE-**  
4 **MENT ACT OF 2002**

5 **SEC. 1001. SHORT TITLE.**

6 This division may be cited as the “Immigration Re-  
7 form, Accountability, and Security Enhancement Act of  
8 2002”.

9 **SEC. 1002. DEFINITIONS.**

10 In this division:

11 (1) **ENFORCEMENT BUREAU.**—The term “En-  
12 forcement Bureau” means the Bureau of Enforce-  
13 ment and Border Affairs established in section 114  
14 of the Immigration and Nationality Act, as added by  
15 section 1105 of this Act.

16 (2) **FUNCTION.**—The term “function” includes  
17 any duty, obligation, power, authority, responsibility,  
18 right, privilege, activity, or program.

19 (3) **IMMIGRATION ENFORCEMENT FUNC-**  
20 **TIONS.**—The term “immigration enforcement func-  
21 tions” has the meaning given the term in section  
22 114(b)(2) of the Immigration and Nationality Act,  
23 as added by section 1105 of this Act.

24 (4) **IMMIGRATION LAWS OF THE UNITED**  
25 **STATES.**—The term “immigration laws of the United

1 States” has the meaning given the term in section  
2 111(e) of the Immigration and Nationality Act, as  
3 added by section 1102 of this Act.

4 (5) IMMIGRATION POLICY, ADMINISTRATION,  
5 AND INSPECTION FUNCTIONS.—The term “immigra-  
6 tion policy, administration, and inspection func-  
7 tions” has the meaning given the term in section  
8 112(b)(3) of the Immigration and Nationality Act,  
9 as added by section 1103 of this Act.

10 (6) IMMIGRATION SERVICE FUNCTIONS.—The  
11 term “immigration service functions” has the mean-  
12 ing given the term in section 113(b)(2) of the Immi-  
13 gration and Nationality Act, as added by section  
14 1104 of this Act.

15 (7) OFFICE.—The term “office” includes any  
16 office, administration, agency, bureau, institute,  
17 council, unit, organizational entity, or component  
18 thereof.

19 (8) SECRETARY.—The term “Secretary” means  
20 the Secretary of Homeland Security.

21 (9) SERVICE BUREAU.—The term “Service Bu-  
22 reau” means the Bureau of Immigration Services es-  
23 tablished in section 113 of the Immigration and Na-  
24 tionality Act, as added by section 1104 of this Act.

1           (10) UNDER SECRETARY.—The term “Under  
2       Secretary” means the Under Secretary of Homeland  
3       Security for Immigration Affairs appointed under  
4       section 112 of the Immigration and Nationality Act,  
5       as added by section 1103 of this Act.

6           **TITLE XI—DIRECTORATE OF**  
7           **IMMIGRATION AFFAIRS**  
8           **Subtitle A—Organization**

9       **SEC. 1101. ABOLITION OF INS.**

10       (a) IN GENERAL.—The Immigration and Naturaliza-  
11       tion Service is abolished.

12       (b) REPEAL.—Section 4 of the Act of February 14,  
13       1903, as amended (32 Stat. 826; relating to the establish-  
14       ment of the Immigration and Naturalization Service), is  
15       repealed.

16       **SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMI-**  
17       **GRATION AFFAIRS.**

18       (a) ESTABLISHMENT.—Title I of the Immigration  
19       and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

20           (1) by inserting “**CHAPTER 1—DEFINITIONS**  
21       **AND GENERAL AUTHORITIES**” after “**TITLE**  
22       **I—GENERAL**”; and

23           (2) by adding at the end the following:

1                   **“CHAPTER 2—DIRECTORATE OF**  
2                                   **IMMIGRATION AFFAIRS**

3   **“SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRA-**  
4                                   **TION AFFAIRS.**

5           “(a) ESTABLISHMENT.—There is established within  
6 the Department of Homeland Security the Directorate of  
7 Immigration Affairs.

8           “(b) PRINCIPAL OFFICERS.—The principal officers of  
9 the Directorate are the following:

10                   “(1) The Under Secretary of Homeland Secu-  
11 rity for Immigration Affairs appointed under section  
12 112.

13                   “(2) The Assistant Secretary of Homeland Se-  
14 curity for Immigration Services appointed under sec-  
15 tion 113.

16                   “(3) The Assistant Secretary of Homeland Se-  
17 curity for Enforcement and Border Affairs ap-  
18 pointed under section 114.

19           “(c) FUNCTIONS.—Under the authority of the Sec-  
20 retary of Homeland Security, the Directorate shall per-  
21 form the following functions:

22                   “(1) Immigration policy, administration, and  
23 inspection functions, as defined in section 112(b).

24                   “(2) Immigration service and adjudication func-  
25 tions, as defined in section 113(b).

1           “(3) Immigration enforcement functions, as de-  
2 fined in section 114(b).

3           “(d) AUTHORIZATION OF APPROPRIATIONS.—

4           “(1) IN GENERAL.—There are authorized to be  
5 appropriated to the Department of Homeland Secu-  
6 rity such sums as may be necessary to carry out the  
7 functions of the Directorate.

8           “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
9 propriated pursuant to paragraph (1) are authorized  
10 to remain available until expended.

11          “(e) IMMIGRATION LAWS OF THE UNITED STATES  
12 DEFINED.—In this chapter, the term ‘immigration laws  
13 of the United States’ means the following:

14           “(1) This Act.

15           “(2) Such other statutes, Executive orders, reg-  
16 ulations, or directives, treaties, or other international  
17 agreements to which the United States is a party,  
18 insofar as they relate to the admission to, detention  
19 in, or removal from the United States of aliens, inso-  
20 far as they relate to the naturalization of aliens, or  
21 insofar as they otherwise relate to the status of  
22 aliens.”.

23          (b) CONFORMING AMENDMENTS.—(1) The Immigra-  
24 tion and Nationality Act (8 U.S.C. 1101 et seq.) is  
25 amended—

1 (A) by striking section 101(a)(34) (8 U.S.C.  
2 1101(a)(34)) and inserting the following:

3 “(34) The term ‘Directorate’ means the Directorate  
4 of Immigration Affairs established by section 111.”;

5 (B) by adding at the end of section 101(a) the  
6 following new paragraphs:

7 “(51) The term ‘Secretary’ means the Secretary of  
8 Homeland Security.

9 “(52) The term ‘Department’ means the Department  
10 of Homeland Security.”;

11 (C) by striking “Attorney General” and “De-  
12 partment of Justice” each place it appears and in-  
13 serting “Secretary” and “Department”, respectively;

14 (D) in section 101(a)(17) (8 U.S.C.  
15 1101(a)(17)), by striking “The” and inserting “Ex-  
16 cept as otherwise provided in section 111(e), the;  
17 and

18 (E) by striking “Immigration and Naturaliza-  
19 tion Service”, “Service”, and “Service’s” each place  
20 they appear and inserting “Directorate of Immigra-  
21 tion Affairs”, “Directorate”, and “Directorate’s”,  
22 respectively.

23 (2) Section 6 of the Act entitled “An Act to authorize  
24 certain administrative expenses for the Department of



1 Justice, and for other purposes”, approved July 28, 1950  
2 (64 Stat. 380), is amended—

3 (A) by striking “Immigration and Naturaliza-  
4 tion Service” and inserting “Directorate of Immigra-  
5 tion Affairs”;

6 (B) by striking clause (a); and

7 (C) by redesignating clauses (b), (c), (d), and  
8 (e) as clauses (a), (b), (c), and (d), respectively.

9 (c) REFERENCES.—Any reference in any statute, re-  
10 organization plan, Executive order, regulation, agreement,  
11 determination, or other official document or proceeding to  
12 the Immigration and Naturalization Service shall be  
13 deemed to refer to the Directorate of Immigration Affairs  
14 of the Department of Homeland Security, and any ref-  
15 erence in the immigration laws of the United States (as  
16 defined in section 111(e) of the Immigration and Nation-  
17 ality Act, as added by this section) to the Attorney Gen-  
18 eral shall be deemed to refer to the Secretary of Homeland  
19 Security, acting through the Under Secretary of Home-  
20 land Security for Immigration Affairs.

21 **SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY**  
22 **FOR IMMIGRATION AFFAIRS.**

23 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
24 gration and Nationality Act, as added by section 1102 of  
25 this Act, is amended by adding at the end the following:

1 **“SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY**  
2 **FOR IMMIGRATION AFFAIRS.**

3 “(a) UNDER SECRETARY OF IMMIGRATION AF-  
4 FAIRS.—the Directorate shall be headed by an Under Sec-  
5 retary of Homeland Security for Immigration Affairs who  
6 shall be appointed in accordance with section 103(c) of  
7 the Immigration and Nationality Act.

8 “(b) RESPONSIBILITIES OF THE UNDER SEC-  
9 RETARY.—

10 “(1) IN GENERAL.—The Under Secretary shall  
11 be charged with any and all responsibilities and au-  
12 thority in the administration of the Directorate and  
13 of this Act which are conferred upon the Secretary  
14 as may be delegated to the Under Secretary by the  
15 Secretary or which may be prescribed by the Sec-  
16 retary.

17 “(2) DUTIES.—Subject to the authority of the  
18 Secretary under paragraph (1), the Under Secretary  
19 shall have the following duties:

20 “(A) IMMIGRATION POLICY.—The Under  
21 Secretary shall develop and implement policy  
22 under the immigration laws of the United  
23 States. The Under Secretary shall propose, pro-  
24 mulgate, and issue rules, regulations, and state-  
25 ments of policy with respect to any function  
26 within the jurisdiction of the Directorate.

1                   “(B) ADMINISTRATION.—The Under Sec-  
2                   retary shall have responsibility for—

3                   “ (i) the administration and enforce-  
4                   ment of the functions conferred upon the  
5                   Directorate under section 1111(e) of this  
6                   Act; and

7                   “ (ii) the administration of the Direc-  
8                   torate, including the direction, supervision,  
9                   and coordination of the Bureau of Immi-  
10                  gration Services and the Bureau of En-  
11                  forcement and Border Affairs.

12                  “(C) INSPECTIONS.—The Under Secretary  
13                  shall be directly responsible for the administra-  
14                  tion and enforcement of the functions of the Di-  
15                  rectorate under the immigration laws of the  
16                  United States with respect to the inspection of  
17                  aliens arriving at ports of entry of the United  
18                  States.

19                  “(3) ACTIVITIES.—As part of the duties de-  
20                  scribed in paragraph (2), the Under Secretary shall  
21                  do the following:

22                  “(A) RESOURCES AND PERSONNEL MAN-  
23                  AGEMENT.—The Under Secretary shall manage  
24                  the resources, personnel, and other support re-  
25                  quirements of the Directorate.

1           “(B) INFORMATION RESOURCES MANAGE-  
2           MENT.—Under the direction of the Secretary,  
3           the Under Secretary shall manage the informa-  
4           tion resources of the Directorate, including the  
5           maintenance of records and databases and the  
6           coordination of records and other information  
7           within the Directorate, and shall ensure that  
8           the Directorate obtains and maintains adequate  
9           information technology systems to carry out its  
10          functions.

11          “(C) COORDINATION OF RESPONSE TO  
12          CIVIL RIGHTS VIOLATIONS.—The Under Sec-  
13          retary shall coordinate, with the Civil Rights  
14          Officer of the Department of Homeland Secu-  
15          rity or other officials, as appropriate, the reso-  
16          lution of immigration issues that involve civil  
17          rights violations.

18          “(3) DEFINITION.—In this chapter, the term  
19          “immigration policy, administration, and inspection  
20          functions” means the duties, activities, and powers  
21          described in this subsection.

22          “(c) GENERAL COUNSEL.—

23                 “(1) IN GENERAL.—There shall be within the  
24          Directorate a General Counsel, who shall be ap-

1 pointed by the Secretary of Homeland Security, in  
2 consultation with the Under Secretary.

3 “(2) FUNCTION.—The General Counsel shall—

4 “(A) serve as the chief legal officer for the  
5 Directorate; and

6 “(B) be responsible for providing special-  
7 ized legal advice, opinions, determinations, reg-  
8 ulations, and any other assistance to the Under  
9 Secretary with respect to legal matters affecting  
10 the Directorate, and any of its components.

11 “(d) FINANCIAL OFFICERS FOR THE DIRECTORATE  
12 OF IMMIGRATION AFFAIRS.—

13 “(1) CHIEF FINANCIAL OFFICER.—

14 “(A) IN GENERAL.—There shall be within  
15 the Directorate a Chief Financial Officer. The  
16 position of Chief Financial Officer shall be a ca-  
17 reer reserved position in the Senior Executive  
18 Service and shall have the authorities and func-  
19 tions described in section 902 of title 31,  
20 United States Code, in relation to financial ac-  
21 tivities of the Directorate. For purposes of sec-  
22 tion 902(a)(1) of such title, the Under Sec-  
23 retary shall be deemed to be an agency head.

24 “(B) FUNCTIONS.—The Chief Financial  
25 Officer shall be responsible for directing, super-

1           vising, and coordinating all budget formulas  
2           and execution for the Directorate.

3           “(2) DEPUTY CHIEF FINANCIAL OFFICER.—The  
4           Directorate shall be deemed to be an agency for pur-  
5           poses of section 903 of such title (relating to Deputy  
6           Chief Financial Officers).

7           “(e) CHIEF OF POLICY.—

8           “(1) IN GENERAL.—There shall be within the  
9           Directorate a Chief of Policy. Under the authority of  
10          the Under Secretary, the Chief of Policy shall be re-  
11          sponsible for—

12                   “(A) establishing national immigration pol-  
13                   icy and priorities;

14                   “(B) performing policy research and anal-  
15                   ysis on issues arising under the immigration  
16                   laws of the United States; and

17                   “(C) coordinating immigration policy be-  
18                   tween the Directorate, the Service Bureau, and  
19                   the Enforcement Bureau.

20           “(2) WITHIN THE SENIOR EXECUTIVE SERV-  
21           ICE.—The position of Chief of Policy shall be a Sen-  
22           ior Executive Service position under section 5382 of  
23           title 5, United States Code.

24           “(f) CHIEF OF CONGRESSIONAL, INTERGOVERN-  
25           MENTAL, AND PUBLIC AFFAIRS.—

1           “(1) IN GENERAL.—There shall be within the  
2 Directorate a Chief of Congressional, Intergovern-  
3 mental, and Public Affairs. Under the authority of  
4 the Under Secretary, the Chief of Congressional,  
5 Intergovernmental, and Public Affairs shall be re-  
6 sponsible for—

7           “(A) providing to Congress information re-  
8 lating to issues arising under the immigration  
9 laws of the United States, including information  
10 on specific cases;

11           “(B) serving as a liaison with other Fed-  
12 eral agencies on immigration issues; and

13           “(C) responding to inquiries from, and  
14 providing information to, the media on immi-  
15 gration issues.

16           “(2) WITHIN THE SENIOR EXECUTIVE SERV-  
17 ICE.—The position of Chief of Congressional, Inter-  
18 governmental, and Public Affairs shall be a Senior  
19 Executive Service position under section 5382 of  
20 title 5, United States Code.”.

21           (b) COMPENSATION OF THE UNDER SECRETARY.—  
22 Section 5314 of title 5, United States Code, is amended  
23 by adding at the end the following:

24           “Under Secretary of Immigration Affairs, De-  
25 partment of Justice.”.

1 (c) COMPENSATION OF GENERAL COUNSEL AND  
2 CHIEF FINANCIAL OFFICER.—Section 5316 of title 5,  
3 United States Code, is amended by adding at the end the  
4 following:

5 “General Counsel, Directorate of Immigration  
6 Affairs, Department of Homeland Security.

7 “Chief Financial Officer, Directorate of Immi-  
8 gration Affairs, Department of Homeland Secu-  
9 rity.”.

10 (d) REPEALS.—The following provisions of law are  
11 repealed:

12 (1) Section 7 of the Act of March 3, 1891, as  
13 amended (26 Stat. 1085; relating to the establish-  
14 ment of the office of the Commissioner of Immigra-  
15 tion and Naturalization).

16 (2) Section 201 of the Act of June 20, 1956  
17 (70 Stat. 307; relating to the compensation of as-  
18 sistant commissioners and district directors).

19 (3) Section 1 of the Act of March 2, 1895 (28  
20 Stat. 780; relating to special immigrant inspectors).

21 (e) CONFORMING AMENDMENTS.—(1)(A) Section  
22 101(a)(8) of the Immigration and Nationality Act (8  
23 U.S.C. 1101(a)(8)) is amended to read as follows:



1           “(8) The term ‘Under Secretary’ means the  
2           Under Secretary of Homeland Security for Immigra-  
3           tion Affairs who is appointed under section 103(c).”.

4           (B) Except as provided in subparagraph (C), the Im-  
5           migration and Nationality Act (8 U.S.C. 1101 et seq.) is  
6           amended by striking “Commissioner of Immigration and  
7           Naturalization” and “Commissioner” each place they ap-  
8           pear and inserting “Under Secretary of Homeland Secu-  
9           rity for Immigration Affairs” and “Under Secretary”, re-  
10          spectively.

11          (C) The amendments made by subparagraph (B) do  
12          not apply to references to the “Commissioner of Social Se-  
13          curity” in section 290(c) of the Immigration and Nation-  
14          ality Act (8 U.S.C. 1360(c)).

15          (2) Section 103 of the Immigration and Nationality  
16          Act (8 U.S.C. 1103) is amended—

17                 (A) in subsection (c), by striking “Commis-  
18                 sioner” and inserting “Under Secretary”;

19                 (B) in the section heading, by striking “COM-  
20                 MISSIONER” and inserting “UNDER SECRETARY”;

21                 (C) in subsection (d), by striking “Commis-  
22                 sioner” and inserting “Under Secretary”; and

23                 (D) in subsection (e), by striking “Commis-  
24                 sioner” and inserting “Under Secretary”.

1           (3) Sections 104 and 105 of the Immigration and Na-  
2 tionality Act (8 U.S.C. 1104, 1105) are amended by strik-  
3 ing “Director” each place it appears and inserting “As-  
4 sistant Secretary of State for Consular Affairs”.

5           (4) Section 104(c) of the Immigration and Nation-  
6 ality Act (8 U.S.C. 1104(c)) is amended—

7           (A) in the first sentence, by striking “Passport  
8 Office, a Visa Office,” and inserting “a Passport  
9 Services office, a Visa Services office, an Overseas  
10 Citizen Services office,”; and

11           (B) in the second sentence, by striking “the  
12 Passport Office and the Visa Office” and inserting  
13 “the Passport Services office and the Visa Services  
14 office”.

15           (5) Section 5315 of title 5, United States Code, is  
16 amended by striking the following:

17           “Commissioner of Immigration and Naturaliza-  
18 tion, Department of Justice.”.

19           (f) REFERENCES.—Any reference in any statute, re-  
20 organization plan, Executive order, regulation, agreement,  
21 determination, or other official document or proceeding to  
22 the Commissioner of Immigration and Naturalization shall  
23 be deemed to refer to the Under Secretary of Homeland  
24 Security for Immigration Affairs.

1 **SEC. 1104. BUREAU OF IMMIGRATION SERVICES.**

2 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
3 gration and Nationality Act, as added by section 1102 and  
4 amended by section 1103, is further amended by adding  
5 at the end the following:

6 **“SEC. 113. BUREAU OF IMMIGRATION SERVICES.**

7 “(a) ESTABLISHMENT OF BUREAU.—

8 “(1) IN GENERAL.—There is established within  
9 the Directorate a bureau to be known as the Bureau  
10 of Immigration Services (in this chapter referred to  
11 as the ‘Service Bureau’).

12 “(2) ASSISTANT SECRETARY.—The head of the  
13 Service Bureau shall be the Assistant Secretary of  
14 Homeland Security for Immigration Services (in this  
15 chapter referred to as the ‘Assistant Secretary for  
16 Immigration Services’), who—

17 “(A) shall be appointed by the Secretary of  
18 Homeland Security, in consultation with the  
19 Under Secretary; and

20 “(B) shall report directly to the Under  
21 Secretary.

22 “(b) RESPONSIBILITIES OF THE ASSISTANT SEC-  
23 RETARY.—

24 “(1) IN GENERAL.—Subject to the authority of  
25 the Secretary and the Under Secretary, the Assist-  
26 ant Secretary for Immigration Services shall admin-

1       ister the immigration service functions of the Direc-  
2       torate.

3               “(2) IMMIGRATION SERVICE FUNCTIONS DE-  
4       FINED.—In this chapter, the term ‘immigration  
5       service functions’ means the following functions  
6       under the immigration laws of the United States (as  
7       defined in section 111(e)):

8               “(A) Adjudications of petitions for classi-  
9       fication of nonimmigrant and immigrant status.

10              “(B) Adjudications of applications for ad-  
11       justment of status and change of status.

12              “(C) Adjudications of naturalization appli-  
13       cations.

14              “(D) Adjudications of asylum and refugee  
15       applications.

16              “(E) Adjudications performed at Service  
17       centers.

18              “(F) Determinations concerning custody  
19       and parole of asylum seekers who do not have  
20       prior nonpolitical criminal records and who  
21       have been found to have a credible fear of per-  
22       secution, including determinations under section  
23       236B.

1                   “(G) All other adjudications under the im-  
2 migration laws of the United States (as defined  
3 in section 111(e)).

4           “(c) CHIEF BUDGET OFFICER OF THE SERVICE BU-  
5 REAU.—There shall be within the Service Bureau a Chief  
6 Budget Officer. Under the authority of the Chief Finan-  
7 cial Officer of the Directorate, the Chief Budget Officer  
8 of the Service Bureau shall be responsible for monitoring  
9 and supervising all financial activities of the Service Bu-  
10 reau.

11           “(d) QUALITY ASSURANCE.—There shall be within  
12 the Service Bureau an Office of Quality Assurance that  
13 shall develop procedures and conduct audits to—

14                   “(1) ensure that the Directorate’s policies with  
15 respect to the immigration service functions of the  
16 Directorate are properly implemented; and

17                   “(2) ensure that Service Bureau policies or  
18 practices result in sound records management and  
19 efficient and accurate service.

20           “(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—  
21 There shall be within the Service Bureau an Office of Pro-  
22 fessional Responsibility that shall have the responsibility  
23 for ensuring the professionalism of the Service Bureau  
24 and for receiving and investigating charges of misconduct  
25 or ill treatment made by the public.

1           “(f) TRAINING OF PERSONNEL.—The Assistant Sec-  
2 retary for Immigration Services, in consultation with the  
3 Under Secretary, shall have responsibility for determining  
4 the training for all personnel of the Service Bureau.”.

5           (b) COMPENSATION OF ASSISTANT SECRETARY OF  
6 SERVICE BUREAU.—Section 5315 of title 5, United States  
7 Code, is amended by adding at the end the following:

8                   “Assistant Secretary of Homeland Security for  
9 Immigration Services, Directorate of Immigration  
10 Affairs, Department of Homeland Security.”.

11           (c) SERVICE BUREAU OFFICES.—

12                   (1) IN GENERAL.—Under the direction of the  
13 Secretary, the Under Secretary, acting through the  
14 Assistant Secretary for Immigration Services, shall  
15 establish Service Bureau offices, including suboffices  
16 and satellite offices, in appropriate municipalities  
17 and locations in the United States. In the selection  
18 of sites for the Service Bureau offices, the Under  
19 Secretary shall consider the location’s proximity and  
20 accessibility to the community served, the workload  
21 for which that office shall be responsible, whether  
22 the location would significantly reduce the backlog of  
23 cases in that given geographic area, whether the lo-  
24 cation will improve customer service, and whether  
25 the location is in a geographic area with an increase

1 in the population to be served. The Under Secretary  
2 shall conduct periodic reviews to assess whether the  
3 location and size of the respective Service Bureau of-  
4 fices adequately serve customer service needs.

5 (2) TRANSITION PROVISION.—In determining  
6 the location of Service Bureau offices, including sub-  
7 offices and satellite offices, the Under Secretary  
8 shall first consider maintaining and upgrading of-  
9 fices in existing geographic locations that satisfy the  
10 provisions of paragraph (1). The Under Secretary  
11 shall also explore the feasibility and desirability of  
12 establishing new Service Bureau offices, including  
13 suboffices and satellite offices, in new geographic lo-  
14 cations where there is a demonstrated need.

15 **SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AF-**  
16 **FAIRS.**

17 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
18 gration and Nationality Act, as added by section 1102 and  
19 amended by sections 1103 and 1104, is further amended  
20 by adding at the end the following:

21 **“SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AF-**  
22 **FAIRS.**

23 “(a) ESTABLISHMENT OF BUREAU.—

24 “(1) IN GENERAL.—There is established within  
25 the Directorate a bureau to be known as the Bureau

1 of Enforcement and Border Affairs (in this chapter  
2 referred to as the ‘Enforcement Bureau’).

3 “(2) ASSISTANT SECRETARY.—The head of the  
4 Enforcement Bureau shall be the Assistant Sec-  
5 retary of Homeland Security for Enforcement and  
6 Border Affairs (in this chapter referred to as the  
7 ‘Assistant Secretary for Immigration Enforcement’),  
8 who—

9 “(A) shall be appointed by the Secretary of  
10 Homeland Security, in consultation with the  
11 Under Secretary; and

12 “(B) shall report directly to the Under  
13 Secretary.

14 “(b) RESPONSIBILITIES OF THE ASSISTANT SEC-  
15 RETARY.—

16 “(1) IN GENERAL.—Subject to the authority of  
17 the Secretary and the Under Secretary, the Assist-  
18 ant Secretary for Immigration Enforcement shall  
19 administer the immigration enforcement functions of  
20 the Directorate.

21 “(2) IMMIGRATION ENFORCEMENT FUNCTIONS  
22 DEFINED.—In this chapter, the term ‘immigration  
23 enforcement functions’ means the following functions  
24 under the immigration laws of the United States (as  
25 defined in section 111(e)):



1                   “(A) The border patrol function.

2                   “(B) The detention function, except as  
3 specified in section 113(b)(2)(F).

4                   “(C) The removal function.

5                   “(D) The intelligence function.

6                   “(E) The investigations function.

7           “(c) CHIEF BUDGET OFFICER OF THE ENFORCE-  
8 MENT BUREAU.—There shall be within the Enforcement  
9 Bureau a Chief Budget Officer. Under the authority of  
10 the Chief Financial Officer of the Directorate, the Chief  
11 Budget Officer of the Enforcement Bureau shall be re-  
12 sponsible for monitoring and supervising all financial ac-  
13 tivities of the Enforcement Bureau.

14           “(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—  
15 There shall be within the Enforcement Bureau an Office  
16 of Professional Responsibility that shall have the responsi-  
17 bility for ensuring the professionalism of the Enforcement  
18 Bureau and receiving charges of misconduct or ill treat-  
19 ment made by the public and investigating the charges.

20           “(e) OFFICE OF QUALITY ASSURANCE.—There shall  
21 be within the Enforcement Bureau an Office of Quality  
22 Assurance that shall develop procedures and conduct au-  
23 dits to—

1           “(1) ensure that the Directorate’s policies with  
2           respect to immigration enforcement functions are  
3           properly implemented; and

4           “(2) ensure that Enforcement Bureau policies  
5           or practices result in sound record management and  
6           efficient and accurate recordkeeping.

7           “(f) TRAINING OF PERSONNEL.—The Assistant Sec-  
8           retary for Immigration Enforcement, in consultation with  
9           the Under Secretary, shall have responsibility for deter-  
10          mining the training for all personnel of the Enforcement  
11          Bureau.”.

12          (b) COMPENSATION OF ASSISTANT SECRETARY OF  
13          ENFORCEMENT BUREAU.—Section 5315 of title 5, United  
14          States Code, is amended by adding at the end the fol-  
15          lowing:

16                 “Assistant Secretary of Homeland Security for  
17                 Enforcement and Border Affairs, Directorate of Im-  
18                 migration Affairs, Department of Homeland Secu-  
19                 rity.”.

20          (c) ENFORCEMENT BUREAU OFFICES.—

21                 (1) IN GENERAL.—Under the direction of the  
22                 Secretary, the Under Secretary, acting through the  
23                 Assistant Secretary for Immigration Enforcement,  
24                 shall establish Enforcement Bureau offices, includ-  
25                 ing suboffices and satellite offices, in appropriate

1 municipalities and locations in the United States. In  
2 the selection of sites for the Enforcement Bureau of-  
3 fices, the Under Secretary shall make selections ac-  
4 cording to trends in unlawful entry and unlawful  
5 presence, alien smuggling, national security con-  
6 cerns, the number of Federal prosecutions of immi-  
7 gration-related offenses in a given geographic area,  
8 and other enforcement considerations. The Under  
9 Secretary shall conduct periodic reviews to assess  
10 whether the location and size of the respective En-  
11 forcement Bureau offices adequately serve enforce-  
12 ment needs.

13 (2) TRANSITION PROVISION.—In determining  
14 the location of Enforcement Bureau offices, includ-  
15 ing suboffices and satellite offices, the Under Sec-  
16 retary shall first consider maintaining and upgrad-  
17 ing offices in existing geographic locations that sat-  
18 isfy the provisions of paragraph (1). The Under Sec-  
19 retary shall also explore the feasibility and desir-  
20 ability of establishing new Enforcement Bureau of-  
21 fices, including suboffices and satellite offices, in  
22 new geographic locations where there is a dem-  
23 onstrated need.

1 **SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DI-**  
2 **RECTORATE.**

3 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
4 gration and Nationality Act, as added by section 1102 and  
5 amended by sections 1103, 1104, and 1105, is further  
6 amended by adding at the end the following:

7 **“SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION**  
8 **AFFAIRS WITHIN THE DIRECTORATE.**

9 “(a) IN GENERAL.—There is established within the  
10 Directorate the Office of the Ombudsman for Immigration  
11 Affairs, which shall be headed by the Ombudsman.

12 “(b) OMBUDSMAN.—

13 “(1) APPOINTMENT.—The Ombudsman shall be  
14 appointed by the Secretary of Homeland Security, in  
15 consultation with the Under Secretary. The Om-  
16 budsman shall report directly to the Under Sec-  
17 retary.

18 “(2) COMPENSATION.—The Ombudsman shall  
19 be entitled to compensation at the same rate as the  
20 highest rate of basic pay established for the Senior  
21 Executive Service under section 5382 of title 5,  
22 United States Code, or, if the Secretary of Home-  
23 land Security so determines, at a rate fixed under  
24 section 9503 of such title.

1           “(c) FUNCTIONS OF OFFICE.—The functions of the  
2 Office of the Ombudsman for Immigration Affairs shall  
3 include—

4           “(1) to assist individuals in resolving problems  
5 with the Directorate or any component thereof;

6           “(2) to identify systemic problems encountered  
7 by the public in dealings with the Directorate or any  
8 component thereof;

9           “(3) to propose changes in the administrative  
10 practices or regulations of the Directorate, or any  
11 component thereof, to mitigate problems identified  
12 under paragraph (2);

13           “(4) to identify potential changes in statutory  
14 law that may be required to mitigate such problems;  
15 and

16           “(5) to monitor the coverage and geographic  
17 distribution of local offices of the Directorate.

18           “(d) PERSONNEL ACTIONS.—The Ombudsman shall  
19 have the responsibility and authority to appoint local or  
20 regional representatives of the Ombudsman’s Office as in  
21 the Ombudsman’s judgment may be necessary to address  
22 and rectify problems.

23           “(e) ANNUAL REPORT.—Not later than December 31  
24 of each year, the Ombudsman shall submit a report to the  
25 Committee on the Judiciary of the House of Representa-

1 tives and the Committee on the Judiciary of the Senate  
2 on the activities of the Ombudsman during the fiscal year  
3 ending in that calendar year. Each report shall contain  
4 a full and substantive analysis, in addition to statistical  
5 information, and shall contain—

6           “(1) a description of the initiatives that the Of-  
7           fice of the Ombudsman has taken on improving the  
8           responsiveness of the Directorate;

9           “(2) a summary of serious or systemic problems  
10          encountered by the public, including a description of  
11          the nature of such problems;

12          “(3) an accounting of the items described in  
13          paragraphs (1) and (2) for which action has been  
14          taken, and the result of such action;

15          “(4) an accounting of the items described in  
16          paragraphs (1) and (2) for which action remains to  
17          be completed;

18          “(5) an accounting of the items described in  
19          paragraphs (1) and (2) for which no action has been  
20          taken, the reasons for the inaction, and identify any  
21          Agency official who is responsible for such inaction;

22          “(6) recommendations as may be appropriate to  
23          resolve problems encountered by the public;

24          “(7) recommendations as may be appropriate to  
25          resolve problems encountered by the public, includ-

1 ing problems created by backlogs in the adjudication  
2 and processing of petitions and applications;

3 “(8) recommendations to resolve problems  
4 caused by inadequate funding or staffing; and

5 “(9) such other information as the Ombudsman  
6 may deem advisable.

7 “(f) AUTHORIZATION OF APPROPRIATIONS.—

8 “(1) IN GENERAL.—There are authorized to be  
9 appropriated to the Office of the Ombudsman such  
10 sums as may be necessary to carry out its functions.

11 “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
12 propriated pursuant to paragraph (1) are authorized  
13 to remain available until expended.”.

14 **SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN**  
15 **THE DIRECTORATE.**

16 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
17 gration and Nationality Act, as added by section 1102 and  
18 amended by sections 1103, 1104, and 1105, is further  
19 amended by adding at the end the following:

20 **“SEC. 116. OFFICE OF IMMIGRATION STATISTICS.**

21 “(a) ESTABLISHMENT.—There is established within  
22 the Directorate an Office of Immigration Statistics (in this  
23 section referred to as the ‘Office’), which shall be headed  
24 by a Director who shall be appointed by the Secretary of  
25 Homeland Security, in consultation with the Under Sec-

1 retary. The Office shall collect, maintain, compile, analyze,  
2 publish, and disseminate information and statistics about  
3 immigration in the United States, including information  
4 and statistics involving the functions of the Directorate  
5 and the Executive Office for Immigration Review (or its  
6 successor entity).

7 “(b) RESPONSIBILITIES OF DIRECTOR.—The Direc-  
8 tor of the Office shall be responsible for the following:

9 “(1) STATISTICAL INFORMATION.—Maintenance  
10 of all immigration statistical information of the Di-  
11 rectorate of Immigration Affairs.

12 “(2) STANDARDS OF RELIABILITY AND VALID-  
13 ITY.—Establishment of standards of reliability and  
14 validity for immigration statistics collected by the  
15 Bureau of Immigration Services, the Bureau of En-  
16 forcement, and the Executive Office for Immigration  
17 Review (or its successor entity).

18 “(c) RELATION TO THE DIRECTORATE OF IMMIGRA-  
19 TION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMI-  
20 GRATION REVIEW.—

21 “(1) OTHER AUTHORITIES.—The Directorate  
22 and the Executive Office for Immigration Review  
23 shall provide statistical information to the Office  
24 from the operational data systems controlled by the  
25 Directorate and the Executive Office for Immigra-



1       tion Review (or its successor entity), respectively, as  
2       requested by the Office, for the purpose of meeting  
3       the responsibilities of the Director of the Office.

4               “(2) DATABASES.—The Director of the Office,  
5       under the direction of the Secretary, shall ensure the  
6       interoperability of the databases of the Directorate,  
7       the Bureau of Immigration Services, the Bureau of  
8       Enforcement, and the Executive Office for Immigra-  
9       tion Review (or its successor entity) to permit the  
10      Director of the Office to perform the duties of such  
11      office.”.

12      (b) TRANSFER OF FUNCTIONS.—There are trans-  
13      ferred to Directorate of Immigration Affairs for exercise  
14      by the Under Secretary through the Office of Immigration  
15      Statistics established by section 116 of the Immigration  
16      and Nationality Act, as added by subsection (a), the func-  
17      tions performed by the Statistics Branch of the Office of  
18      Policy and Planning of the Immigration and Naturaliza-  
19      tion Service, and the statistical functions performed by the  
20      Executive Office for Immigration Review (or its successor  
21      entity), on the day before the effective date of this title.

22      **SEC. 1108. CLERICAL AMENDMENTS.**

23              The table of contents of the Immigration and Nation-  
24      ality Act is amended—

1           (1) by inserting after the item relating to the  
2 heading for title I the following:

“CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES”;

3           (2) by striking the item relating to section 103  
4 and inserting the following:

“Sec. 103. Powers and duties of the Secretary of Homeland Security and the  
Under Secretary of Homeland Security for Immigration Af-  
fairs.”;

5 and

6           (3) by inserting after the item relating to sec-  
7 tion 106 the following:

“CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

“Sec. 111. Establishment of Directorate of Immigration Affairs.

“Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.

“Sec. 113. Bureau of Immigration Services.

“Sec. 114. Bureau of Enforcement and Border Affairs.

“Sec. 115. Office of the Ombudsman for Immigration Affairs within the Direc-  
torate.

“Sec. 116. Office of Immigration Statistics.”.

## 8 **Subtitle B—Transition Provisions**

### 9 **SEC. 1111. TRANSFER OF FUNCTIONS.**

10 (a) IN GENERAL.—

11           (1) FUNCTIONS OF THE ATTORNEY GEN-  
12 ERAL.—All functions under the immigration laws of  
13 the United States vested by statute in, or exercised  
14 by, the Attorney General, immediately prior to the  
15 effective date of this title, are transferred to the Sec-  
16 retary on such effective date for exercise by the Sec-  
17 retary through the Under Secretary in accordance

1 with section 112(b) of the Immigration and Nation-  
2 ality Act, as added by section 1103 of this Act.

3 (2) FUNCTIONS OF THE COMMISSIONER OR THE  
4 INS.—All functions under the immigration laws of  
5 the United States vested by statute in, or exercised  
6 by, the Commissioner of Immigration and Natu-  
7 ralization or the Immigration and Naturalization  
8 Service (or any officer, employee, or component  
9 thereof), immediately prior to the effective date of  
10 this title, are transferred to the Directorate of Immi-  
11 gration Affairs on such effective date for exercise by  
12 the Under Secretary in accordance with section  
13 112(b) of the Immigration and Nationality Act, as  
14 added by section 1103 of this Act.

15 (b) EXERCISE OF AUTHORITIES.—Except as other-  
16 wise provided by law, the Under Secretary may, for pur-  
17 poses of performing any function transferred to the Direc-  
18 torate of Immigration Affairs under subsection (a), exer-  
19 cise all authorities under any other provision of law that  
20 were available with respect to the performance of that  
21 function to the official responsible for the performance of  
22 the function immediately before the effective date of the  
23 transfer of the function pursuant to this title.

1 **SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RE-**  
2 **SOURCES.**

3 Subject to section 1531 of title 31, United States  
4 Code, upon the effective date of this title, there are trans-  
5 ferred to the Under Secretary for appropriate allocation  
6 in accordance with section 1115—

7 (1) the personnel of the Department of Justice  
8 employed in connection with the functions trans-  
9 ferred pursuant to this title; and

10 (2) the assets, liabilities, contracts, property,  
11 records, and unexpended balance of appropriations,  
12 authorizations, allocations, and other funds em-  
13 ployed, held, used, arising from, available to, or to  
14 be made available to the Immigration and Natu-  
15 ralization Service in connection with the functions  
16 transferred pursuant to this title.

17 **SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNC-**  
18 **TIONS AND RESOURCES.**

19 Under the direction of the Secretary, the Under Sec-  
20 retary shall determine, in accordance with the cor-  
21 responding criteria set forth in sections 1112(b), 1113(b),  
22 and 1114(b) of the Immigration and Nationality Act (as  
23 added by this division)—

24 (1) which of the functions transferred under  
25 section 1111 are—

1 (A) immigration policy, administration,  
2 and inspection functions;

3 (B) immigration service functions; and

4 (C) immigration enforcement functions;  
5 and

6 (2) which of the personnel, assets, liabilities,  
7 grants, contracts, property, records, and unexpended  
8 balances of appropriations, authorizations, alloca-  
9 tions, and other funds transferred under section  
10 1112 were held or used, arose from, were available  
11 to, or were made available, in connection with the  
12 performance of the respective functions specified in  
13 paragraph (1) immediately prior to the effective date  
14 of this title.

15 **SEC. 1114. DELEGATION AND RESERVATION OF FUNC-**  
16 **TIONS.**

17 (a) IN GENERAL.—

18 (1) DELEGATION TO THE BUREAUS.—Under  
19 the direction of the Secretary, and subject to section  
20 112(b)(1) of the Immigration and Nationality Act  
21 (as added by section 1103 of this Act), the Under  
22 Secretary shall delegate—

23 (A) immigration service functions to the  
24 Assistant Secretary for Immigration Services;  
25 and

1 (B) immigration enforcement functions to  
2 the Assistant Secretary for Immigration En-  
3 forcement.

4 (2) RESERVATION OF FUNCTIONS.—Subject to  
5 section 112(b)(1) of the Immigration and Nation-  
6 ality Act (as added by section 1103 of this Act), im-  
7 migration policy, administration, and inspection  
8 functions shall be reserved for exercise by the Under  
9 Secretary.

10 (b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—  
11 Delegations made under subsection (a) may be on a non-  
12 exclusive basis as the Director may determine may be nec-  
13 essary to ensure the faithful execution of the Director's  
14 responsibilities and duties under law.

15 (c) EFFECT OF DELEGATIONS.—Except as otherwise  
16 expressly prohibited by law or otherwise provided in this  
17 title, the Under Secretary may make delegations under  
18 this subsection to such officers and employees of the office  
19 of the Under Secretary, the Service Bureau, and the En-  
20 forcement Bureau, respectively, as the Under Secretary  
21 may designate, and may authorize successive redelegations  
22 of such functions as may be necessary or appropriate. No  
23 delegation of functions under this subsection or under any  
24 other provision of this title shall relieve the official to

1 whom a function is transferred pursuant to this title of  
2 responsibility for the administration of the function.

3 (d) STATUTORY CONSTRUCTION.—Nothing in this di-  
4 vision may be construed to limit the authority of the  
5 Under Secretary, acting directly or by delegation under  
6 the Secretary, to establish such offices or positions within  
7 the Directorate of Immigration Affairs, in addition to  
8 those specified by this division, as the Under Secretary  
9 may determine to be necessary to carry out the functions  
10 of the Directorate.

11 **SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RE-**  
12 **SOURCES.**

13 (a) AUTHORITY OF THE UNDER SECRETARY.—

14 (1) IN GENERAL.—Subject to paragraph (2)  
15 and section 1114(b), the Under Secretary shall  
16 make allocations of personnel, assets, liabilities,  
17 grants, contracts, property, records, and unexpended  
18 balances of appropriations, authorizations, alloca-  
19 tions, and other funds held, used, arising from,  
20 available to, or to be made available in connection  
21 with the performance of the respective functions, as  
22 determined under section 1113, in accordance with  
23 the delegation of functions and the reservation of  
24 functions made under section 1114.

1           (2) LIMITATION.—Unexpended funds trans-  
2           ferred pursuant to section 1112 shall be used only  
3           for the purposes for which the funds were originally  
4           authorized and appropriated.

5           (b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—  
6           The Attorney General in consultation with the Secretary,  
7           shall provide for the termination of the affairs of the Im-  
8           migration and Naturalization Service and such further  
9           measures and dispositions as may be necessary to effec-  
10          tuate the purposes of this division.

11          (c) TREATMENT OF SHARED RESOURCES.—The  
12          Under Secretary is authorized to provide for an appro-  
13          priate allocation, or coordination, or both, of resources in-  
14          volved in supporting shared support functions for the of-  
15          fice of the Under Secretary, the Service Bureau, and the  
16          Enforcement Bureau. The Under Secretary shall maintain  
17          oversight and control over the shared computer databases  
18          and systems and records management.

19          **SEC. 1116. SAVINGS PROVISIONS.**

20          (a) LEGAL DOCUMENTS.—All orders, determinations,  
21          rules, regulations, permits, grants, loans, contracts, rec-  
22          ognition of labor organizations, agreements, including col-  
23          lective bargaining agreements, certificates, licenses, and  
24          privileges—



1           (1) that have been issued, made, granted, or al-  
2           lowed to become effective by the President, the At-  
3           torney General, the Commissioner of the Immigra-  
4           tion and Naturalization Service, their delegates, or  
5           any other Government official, or by a court of com-  
6           petent jurisdiction, in the performance of any func-  
7           tion that is transferred pursuant to this title; and

8           (2) that are in effect on the effective date of  
9           such transfer (or become effective after such date  
10          pursuant to their terms as in effect on such effective  
11          date);

12 shall continue in effect according to their terms until  
13 modified, terminated, superseded, set aside, or revoked in  
14 accordance with law by the President, any other author-  
15 ized official, a court of competent jurisdiction, or operation  
16 of law, except that any collective bargaining agreement  
17 shall remain in effect until the date of termination speci-  
18 fied in the agreement.

19          (b) PROCEEDINGS.—

20           (1) PENDING.—Sections 111 through 116 of  
21          the Immigration and Nationality Act, as added by  
22          subtitle A of this title, shall not affect any pro-  
23          ceeding or any application for any benefit, service, li-  
24          cense, permit, certificate, or financial assistance  
25          pending on the effective date of this title before an

1 office whose functions are transferred pursuant to  
2 this title, but such proceedings and applications shall  
3 be continued.

4 (2) ORDERS.—Orders shall be issued in such  
5 proceedings, appeals shall be taken therefrom, and  
6 payments shall be made pursuant to such orders, as  
7 if this Act had not been enacted, and orders issued  
8 in any such proceeding shall continue in effect until  
9 modified, terminated, superseded, or revoked by a  
10 duly authorized official, by a court of competent ju-  
11 risdiction, or by operation of law.

12 (3) DISCONTINUANCE OR MODIFICATION.—  
13 Nothing in this section shall be considered to pro-  
14 hibit the discontinuance or modification of any such  
15 proceeding under the same terms and conditions and  
16 to the same extent that such proceeding could have  
17 been discontinued or modified if this section had not  
18 been enacted.

19 (c) SUITS.—This title, and the amendments made by  
20 this title, shall not affect suits commenced before the ef-  
21 fective date of this title, and in all such suits, proceeding  
22 shall be had, appeals taken, and judgments rendered in  
23 the same manner and with the same effect as if this title,  
24 and the amendments made by this title, had not been en-  
25 acted.

1           (d) NONABATEMENT OF ACTIONS.—No suit, action,  
2 or other proceeding commenced by or against the Depart-  
3 ment of Justice or the Immigration and Naturalization  
4 Service, or by or against any individual in the official ca-  
5 pacity of such individual as an officer or employee in con-  
6 nection with a function transferred pursuant to this sec-  
7 tion, shall abate by reason of the enactment of this Act.

8           (e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
9 PARTIES.—If any Government officer in the official capac-  
10 ity of such officer is party to a suit with respect to a func-  
11 tion of the officer, and pursuant to this title such function  
12 is transferred to any other officer or office, then such suit  
13 shall be continued with the other officer or the head of  
14 such other office, as applicable, substituted or added as  
15 a party.

16           (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
17 VIEW.—Except as otherwise provided by this title, any  
18 statutory requirements relating to notice, hearings, action  
19 upon the record, or administrative or judicial review that  
20 apply to any function transferred pursuant to any provi-  
21 sion of this title shall apply to the exercise of such function  
22 by the head of the office, and other officers of the office,  
23 to which such function is transferred pursuant to such  
24 provision.

1 **SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF**  
2 **IMMIGRATION AND NATURALIZATION.**

3 The individual serving as the Commissioner of Immi-  
4 gration and Naturalization on the day before the effective  
5 date of this title may serve as Under Secretary until the  
6 date on which an Under Secretary is appointed under sec-  
7 tion 112 of the Immigration and Nationality Act, as added  
8 by section 1103 of this Act.

9 **SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
10 **AUTHORITIES NOT AFFECTED.**

11 Nothing in this title, or any amendment made by this  
12 title, may be construed to authorize or require the transfer  
13 or delegation of any function vested in, or exercised by  
14 the Executive Office for Immigration Review of the De-  
15 partment of Justice (or its successor entity), or any offi-  
16 cer, employee, or component thereof immediately prior to  
17 the effective date of this title.

18 **SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.**

19 Nothing in this title, or any amendment made by this  
20 title, may be construed to authorize or require the transfer  
21 or delegation of any function vested in, or exercised by—

22 (1) the Secretary of State under the State De-  
23 partment Basic Authorities Act of 1956, or under  
24 the immigration laws of the United States, imme-  
25 diately prior to the effective date of this title, with

1 respect to the issuance and use of passports and  
2 visas;

3 (2) the Secretary of Labor or any official of the  
4 Department of Labor immediately prior to the effec-  
5 tive date of this title, with respect to labor certifi-  
6 cations or any other authority under the immigra-  
7 tion laws of the United States; or

8 (3) except as otherwise specifically provided in  
9 this division, any other official of the Federal Gov-  
10 ernment under the immigration laws of the United  
11 States immediately prior to the effective date of this  
12 title.

13 **SEC. 1120. TRANSITION FUNDING.**

14 (a) AUTHORIZATION OF APPROPRIATIONS FOR TRAN-  
15 SITION.—

16 (1) IN GENERAL.—There are authorized to be  
17 appropriated to the Department of Homeland Secu-  
18 rity such sums as may be necessary—

19 (A) to effect—

20 (i) the abolition of the Immigration  
21 and Naturalization Service;

22 (ii) the establishment of the Direc-  
23 torate of Immigration Affairs and its com-  
24 ponents, the Bureau of Immigration Serv-

1                   ices, and the Bureau of Enforcement and  
2                   Border Affairs; and

3                   (iii) the transfer of functions required  
4                   to be made under this division; and

5                   (B) to carry out any other duty that is  
6                   made necessary by this division, or any amend-  
7                   ment made by this division.

8                   (2) ACTIVITIES SUPPORTED.—Activities sup-  
9                   ported under paragraph (1) include—

10                   (A) planning for the transfer of functions  
11                   from the Immigration and Naturalization Serv-  
12                   ice to the Directorate of Immigration Affairs,  
13                   including the preparation of any reports and  
14                   implementation plans necessary for such trans-  
15                   fer;

16                   (B) the division, acquisition, and disposi-  
17                   tion of—

18                   (i) buildings and facilities;

19                   (ii) support and infrastructure re-  
20                   sources; and

21                   (iii) computer hardware, software, and  
22                   related documentation;

23                   (C) other capital expenditures necessary to  
24                   effect the transfer of functions described in this  
25                   paragraph;

1 (D) revision of forms, stationery, logos,  
2 and signage;

3 (E) expenses incurred in connection with  
4 the transfer and training of existing personnel  
5 and hiring of new personnel; and

6 (F) such other expenses necessary to effect  
7 the transfers, as determined by the Secretary.

8 (b) AVAILABILITY OF FUNDS.—Amounts appro-  
9 priated pursuant to subsection (a) are authorized to re-  
10 main available until expended.

11 (c) TRANSITION ACCOUNT.—

12 (1) ESTABLISHMENT.—There is established in  
13 the general fund of the Treasury of the United  
14 States a separate account, which shall be known as  
15 the “Directorate of Immigration Affairs Transition  
16 Account” (in this section referred to as the “Ac-  
17 count”).

18 (2) USE OF ACCOUNT.—There shall be depos-  
19 ited into the Account all amounts appropriated  
20 under subsection (a) and amounts reprogrammed for  
21 the purposes described in subsection (a).

22 (d) REPORT TO CONGRESS ON TRANSITION.—Begin-  
23 ning not later than 90 days after the effective date of divi-  
24 sion A of this Act, and at the end of each fiscal year in  
25 which appropriations are made pursuant to subsection (c),

1 the Secretary of Homeland Security shall submit a report  
2 to Congress concerning the availability of funds to cover  
3 transition costs, including—

4 (1) any unobligated balances available for such  
5 purposes; and

6 (2) a calculation of the amount of appropria-  
7 tions that would be necessary to fully fund the ac-  
8 tivities described in subsection (a).

9 (e) EFFECTIVE DATE.—This section shall take effect  
10 one year after the effective date of division A of this Act.

11 **Subtitle C—Miscellaneous**  
12 **Provisions**

13 **SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION**  
14 **SERVICES.**

15 (a) LEVEL OF FEES.—Section 286(m) of the Immi-  
16 gration and Nationality Act (8 U.S.C. 1356(m)) is amend-  
17 ed by striking “services, including the costs of similar  
18 services provided without charge to asylum applicants or  
19 other immigrants” and inserting “services”.

20 (b) USE OF FEES.—

21 (1) IN GENERAL.—Each fee collected for the  
22 provision of an adjudication or naturalization service  
23 shall be used only to fund adjudication or natu-  
24 ralization services or, subject to the availability of  
25 funds provided pursuant to subsection (c), costs of



1 similar services provided without charge to asylum  
2 and refugee applicants.

3 (2) PROHIBITION.—No fee may be used to fund  
4 adjudication- or naturalization-related audits that  
5 are not regularly conducted in the normal course of  
6 operation.

7 (c) REFUGEE AND ASYLUM ADJUDICATION SERV-  
8 ICES.—

9 (1) AUTHORIZATION OF APPROPRIATIONS.—In  
10 addition to such sums as may be otherwise available  
11 for such purposes, there are authorized to be appro-  
12 priated such sums as may be necessary to carry out  
13 the provisions of sections 207 through 209 of the  
14 Immigration and Nationality Act.

15 (2) AVAILABILITY OF FUNDS.—Funds appro-  
16 priated pursuant to paragraph (1) are authorized to  
17 remain available until expended.

18 (d) SEPARATION OF FUNDING.—

19 (1) IN GENERAL.—There shall be established  
20 separate accounts in the Treasury of the United  
21 States for appropriated funds and other collections  
22 available for the Bureau of Immigration Services  
23 and the Bureau of Enforcement and Border Affairs.

24 (2) FEES.—Fees imposed for a particular serv-  
25 ice, application, or benefit shall be deposited into the

1 account established under paragraph (1) that is for  
2 the bureau with jurisdiction over the function to  
3 which the fee relates.

4 (3) FEES NOT TRANSFERABLE.—No fee may be  
5 transferred between the Bureau of Immigration  
6 Services and the Bureau of Enforcement and Border  
7 Affairs for purposes not authorized by section 286  
8 of the Immigration and Nationality Act, as amended  
9 by subsection (a).

10 (e) AUTHORIZATION OF APPROPRIATIONS FOR BACK-  
11 LOG REDUCTION.—

12 (1) IN GENERAL.—There are authorized to be  
13 appropriated such sums as may be necessary for  
14 each of the fiscal years 2003 through 2006 to carry  
15 out the Immigration Services and Infrastructure Im-  
16 provement Act of 2000 (title II of Public Law 106-  
17 313).

18 (2) AVAILABILITY OF FUNDS.—Amounts appro-  
19 priated under paragraph (1) are authorized to re-  
20 main available until expended.

21 (3) INFRASTRUCTURE IMPROVEMENT AC-  
22 COUNT.—Amounts appropriated under paragraph  
23 (1) shall be deposited into the Immigration Services  
24 and Infrastructure Improvements Account estab-

1 lished by section 204(a)(2) of title II of Public Law  
2 106–313.

3 **SEC. 1122. APPLICATION OF INTERNET-BASED TECH-**  
4 **NOLOGIES.**

5 (a) ESTABLISHMENT OF ON-LINE DATABASE.—

6 (1) IN GENERAL.—Not later than two years  
7 after the effective date of division A of this Act, the  
8 Secretary, in consultation with the Under Secretary  
9 and the Technology Advisory Committee, shall es-  
10 tablish an Internet-based system that will permit an  
11 immigrant, nonimmigrant, employer, or other person  
12 who files any application, petition, or other request  
13 for any benefit under the immigration laws of the  
14 United States access to on-line information about  
15 the processing status of the application, petition, or  
16 other request.

17 (2) PRIVACY CONSIDERATIONS.—The Under  
18 Secretary shall consider all applicable privacy issues  
19 in the establishment of the Internet system de-  
20 scribed in paragraph (1). No personally identifying  
21 information shall be accessible to unauthorized per-  
22 sons.

23 (3) MEANS OF ACCESS.—The on-line informa-  
24 tion under the Internet system described in para-  
25 graph (1) shall be accessible to other persons de-



1 (ii) include an estimate of the time-  
2 frame and costs of implementing on-line  
3 filing of such documents; and

4 (iii) consider other factors in imple-  
5 menting such a filing system, including the  
6 feasibility of the payment of fees on-line.

7 (2) REPORT.—Not later than two years after  
8 the effective date of division A of this Act, the  
9 Under Secretary shall submit to the Committees on  
10 the Judiciary of the Senate and the House of Rep-  
11 resentatives a report on the findings of the study  
12 conducted under this subsection.

13 (c) TECHNOLOGY ADVISORY COMMITTEE.—

14 (1) ESTABLISHMENT.—Not later than one year  
15 after the effective date of division A of this Act, the  
16 Under Secretary shall establish, after consultation  
17 with the Committees on the Judiciary of the Senate  
18 and the House of Representatives, an advisory com-  
19 mittee (in this section referred to as the “Tech-  
20 nology Advisory Committee”) to assist the Under  
21 Secretary in—

22 (A) establishing the tracking system under  
23 subsection (a); and

24 (B) conducting the study under subsection  
25 (b).

1           (2) COMPOSITION.—The Technology Advisory  
2       Committee shall be composed of—

3           (A) experts from the public and private  
4       sector capable of establishing and implementing  
5       the system in an expeditious manner; and

6           (B) representatives of persons or entities  
7       who may use the tracking system described in  
8       subsection (a) and the on-line filing system de-  
9       scribed in subsection (b)(1).

10 **SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM**  
11 **SEEKERS.**

12       (a) ASSIGNMENTS OF ASYLUM OFFICERS.—The  
13 Under Secretary shall assign asylum officers to major  
14 ports of entry in the United States to assist in the inspec-  
15 tion of asylum seekers. For other ports of entry, the Under  
16 Secretary shall take steps to ensure that asylum officers  
17 participate in the inspections process.

18       (b) AMENDMENT OF THE IMMIGRATION AND NA-  
19 TIONALITY ACT.—Chapter 4 of title II of the Immigration  
20 and Nationality Act (8 U.S.C. 1221 et seq.) is amended  
21 by inserting after section 236A the following new section:

22 **“SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM**  
23 **SEEKERS.**

24       “(a) DEVELOPMENT OF ALTERNATIVES TO DETEN-  
25 TION.—The Under Secretary shall—

1           “(1) authorize and promote the utilization of al-  
2           ternatives to the detention of asylum seekers who do  
3           not have nonpolitical criminal records; and

4           “(2) establish conditions for the detention of  
5           asylum seekers that ensure a safe and humane envi-  
6           ronment.

7           “(b) SPECIFIC ALTERNATIVES FOR CONSIDER-  
8           ATION.—The Under Secretary shall consider the following  
9           specific alternatives to the detention of asylum seekers de-  
10          scribed in subsection (a):

11           “(1) Parole from detention.

12           “(2) For individuals not otherwise qualified for  
13           parole under paragraph (1), parole with appearance  
14           assistance provided by private nonprofit voluntary  
15           agencies with expertise in the legal and social needs  
16           of asylum seekers.

17           “(3) For individuals not otherwise qualified for  
18           parole under paragraph (1) or (2), non-secure shel-  
19           ter care or group homes operated by private non-  
20           profit voluntary agencies with expertise in the legal  
21           and social needs of asylum seekers.

22           “(4) Noninstitutional settings for minors such  
23           as foster care or group homes operated by private  
24           nonprofit voluntary agencies with expertise in the  
25           legal and social needs of asylum seekers.

1           “(c) REGULATIONS.—The Under Secretary shall pro-  
2 mulgate such regulations as may be necessary to carry out  
3 this section.

4           “(d) DEFINITION.—In this section, the term ‘asylum  
5 seeker’ means any applicant for asylum under section 208  
6 or any alien who indicates an intention to apply for asylum  
7 under that section.”.

8           (b) CLERICAL AMENDMENT.—The table of contents  
9 of the Immigration and Nationality Act is amended by in-  
10 serting after the item relating to section 236A the fol-  
11 lowing new item:

          “Sec. 236B. Alternatives to detention of asylum seekers.”.

## 12           **Subtitle D—Effective Date**

### 13       **SEC. 1131. EFFECTIVE DATE.**

14           This title, and the amendments made by this title,  
15 shall take effect one year after the effective date of divi-  
16 sion A of this Act.

## 17           **TITLE XII—IMMIGRATION** 18           **PERSONNEL**

### 19       **SEC. 1201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.**

20           (a) IN GENERAL.—Part III of title 5, United States  
21 Code, is amended by adding at the end the following new  
22 subpart:



1                   **“Subpart J—Immigration Personnel**  
2                   **“CHAPTER 96—PERSONNEL**  
3                   **FLEXIBILITIES**

“Sec.

“9601. Immigration personnel flexibilities.

“9602. Pay authority for critical positions.

“9603. Streamlined critical pay authority.

“9604. Recruitment, retention, relocation incentives, and relocation expenses.

4   **“§ 9601. Immigration personnel flexibilities**

5           “(a) Any flexibilities provided by sections 9602  
6 through 9604 of this chapter shall be exercised in a man-  
7 ner consistent with—

8                   “(1) chapter 23 (relating to merit system prin-  
9 ciples and prohibited personnel practices);

10                   “(2) provisions relating to preference eligibles;

11                   “(3) except as otherwise specifically provided,  
12 section 5307 (relating to the aggregate limitation on  
13 pay);

14                   “(4) except as otherwise specifically provided,  
15 chapter 71 (relating to labor-management relations);  
16 and

17                   “(5) subject to subsections (b) and (c) of sec-  
18 tion 1104, as though such authorities were delegated  
19 to the Attorney General or, upon the effective date  
20 of title XI of the Immigration Reform, Account-  
21 ability, and Security Enhancement Act of 2002, the  
22 Secretary of Homeland Security, under section  
23 1104(a)(2).

1       “(b) The Attorney General or, upon such effective  
2 date, the Secretary of Homeland Security, shall provide  
3 the Office of Personnel Management with any information  
4 that Office requires in carrying out its responsibilities  
5 under this section.

6       **“§ 9602. Pay authority for critical positions**

7       “(a) When the Attorney General or, upon the effec-  
8 tive date of title XI of the Immigration Reform, Account-  
9 ability, and Security Enhancement Act of 2002, the Sec-  
10 retary of Homeland Security, seeks a grant of authority  
11 under section 5377 for critical pay for 1 or more positions  
12 at the Immigration and Naturalization Service or, upon  
13 such effective date, the Directorate of Immigration Af-  
14 fairs, the Office of Management and Budget may fix the  
15 rate of basic pay, notwithstanding sections 5377(d)(2) and  
16 5307, at any rate up to the salary set in accordance with  
17 section 104 of title 3.

18       “(b) Notwithstanding section 5307, no allowance, dif-  
19 ferential, bonus, award, or similar cash payment may be  
20 paid to any employee receiving critical pay at a rate fixed  
21 under subsection (a), in any calendar year if, or to the  
22 extent that, the employee’s total annual compensation will  
23 exceed the maximum amount of total annual compensation  
24 payable at the salary set in accordance with section 104  
25 of title 3.

1 **“§ 9603. Streamlined critical pay authority**

2       “(a) Notwithstanding section 9602, and without re-  
3 gard to the provisions of this title governing appointments  
4 in the competitive service or the Senior Executive Service  
5 and chapters 51 and 53 (relating to classification and pay  
6 rates), the Attorney General or, upon the effective date  
7 of title XI of the Immigration Reform, Accountability, and  
8 Security Enhancement Act of 2002, the Secretary of  
9 Homeland Security, may, for a period of 10 years after  
10 the date of enactment of that Act, establish, fix the com-  
11 pensation of, and appoint individuals to, designated crit-  
12 ical administrative, technical, and professional positions  
13 needed to carry out the functions of the Directorate of  
14 Immigration Affairs, if—

15               “(1) the positions—

16                       “(A) require expertise of an extremely high  
17 level in an administrative, technical, or profes-  
18 sional field; and

19                       “(B) are critical to the successful accom-  
20 plishment of an important mission by the Immi-  
21 gration and Naturalization Service or the Direc-  
22 torate of Immigration Affairs, as the case may  
23 be;

24               “(2) exercise of the authority is necessary to re-  
25 cruit or retain an individual exceptionally well quali-  
26 fied for the position;



1 curity Enhancement Act of 2002, and subject to approval  
2 by the Office of Personnel Management, the Attorney  
3 General or, upon the effective date of title XI of the Immi-  
4 gration Reform, Accountability, and Security Enhance-  
5 ment Act of 2002, the Secretary of Homeland Security,  
6 may provide for variations from sections 5753 and 5754  
7 governing payment of recruitment, relocation, and reten-  
8 tion incentives with respect to employees of the Immigra-  
9 tion and Naturalization Service or, upon such effective  
10 date, the Directorate of Immigration Affairs.

11 “(b) For a period of 10 years after the date of enact-  
12 ment of the Immigration Reform, Accountability, and Se-  
13 curity Enhancement Act of 2002, and subject to approval  
14 by the Office of Personnel Management, the Attorney  
15 General or, upon the effective date of that Act, the Sec-  
16 retary of Homeland Security, may pay from appropria-  
17 tions made to the Immigration and Naturalization Service  
18 or the Directorate of Immigration Affairs, as appropriate,  
19 allowable relocation expenses under section 5724a for em-  
20 ployees transferred or reemployed and allowable travel and  
21 transportation expenses under section 5723 for new ap-  
22 pointees, for any new appointee appointed to a position  
23 for which pay is fixed under section 9602 or 9603 after  
24 such effective date.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters  
2 for part III of title 5, United States Code, is amended  
3 by adding at the end the following new items:

“SUBPART J—IMMIGRATION PERSONNEL

**“96. Personnel flexibilities ..... 9601.”.**

4 **SEC. 1202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS**  
5 **FOR INS EMPLOYEES.**

6 (a) DEFINITION.—In this section, the term “em-  
7 ployee” means an employee (as defined by section 2105  
8 of title 5, United States Code) who is employed by the  
9 Immigration and Naturalization Service serving under an  
10 appointment without time limitation, and has been cur-  
11 rently employed for a continuous period of at least 3 years,  
12 but does not include—

13 (1) a reemployed annuitant under subchapter  
14 III of chapter 83 or chapter 84 of title 5, United  
15 States Code, or another retirement system;

16 (2) an employee having a disability on the basis  
17 of which such employee is or would be eligible for  
18 disability retirement under the applicable retirement  
19 system referred to in paragraph (1);

20 (3) an employee who is in receipt of a specific  
21 notice of involuntary separation for misconduct or  
22 unacceptable performance;

23 (4) an employee who, upon completing an addi-  
24 tional period of service as referred to in section

1 3(b)(2)(B)(ii) of the Federal Workforce Restruc-  
2 turing Act of 1994 (5 U.S.C. 5597 note), would  
3 qualify for a voluntary separation incentive payment  
4 under section 3 of such Act;

5 (5) an employee who has previously received  
6 any voluntary separation incentive payment by the  
7 Federal Government under this section or any other  
8 authority and has not repaid such payment;

9 (6) an employee covered by statutory reemploy-  
10 ment rights who is on transfer to another organiza-  
11 tion; or

12 (7) any employee who, during the 24-month pe-  
13 riod preceding the date of separation, has received a  
14 recruitment or relocation bonus under section 5753  
15 of title 5, United States Code, or who, within the  
16 12-month period preceding the date of separation,  
17 received a retention allowance under section 5754 of  
18 title 5, United States Code.

19 (b) AUTHORITY TO PROVIDE VOLUNTARY SEPARA-  
20 TION INCENTIVE PAYMENTS.—

21 (1) IN GENERAL.—The Attorney General may  
22 pay voluntary separation incentive payments under  
23 this section to any employee to the extent necessary  
24 to carry out the plan to establish the Directorate of  
25 Immigration Affairs under title XI.

1           (2) AMOUNT AND TREATMENT OF PAYMENTS.—

2           A voluntary separation incentive payment—

3                   (A) shall be paid in a lump sum after the  
4                   employee's separation;

5                   (B) shall be paid from appropriations or  
6                   funds available for the payment of the basic pay  
7                   of the employees;

8                   (C) shall be equal to the lesser of—

9                           (i) an amount equal to the amount  
10                           the employee would be entitled to receive  
11                           under section 5595(c) of title 5, United  
12                           States Code; or

13                           (ii) an amount determined by an  
14                           agency head not to exceed \$25,000;

15                   (D) may not be made except in the case of  
16                   any qualifying employee who voluntarily sepa-  
17                   rates (whether by retirement or resignation) be-  
18                   fore January 1, 2006;

19                   (E) shall not be a basis for payment, and  
20                   shall not be included in the computation, of any  
21                   other type of Government benefit; and

22                   (F) shall not be taken into account in de-  
23                   termining the amount of any severance pay to  
24                   which the employee may be entitled under sec-



1           tion 5595 of title 5, United States Code, based  
2           on any other separation.

3           (c) ADDITIONAL IMMIGRATION AND NATURALIZA-  
4 TION SERVICE CONTRIBUTIONS TO THE RETIREMENT  
5 FUND.—

6           (1) IN GENERAL.—In addition to any other  
7           payments which it is required to make under sub-  
8           chapter III of chapter 83 of title 5, United States  
9           Code, the Immigration and Naturalization Service  
10          shall remit to the Office of Personnel Management  
11          for deposit in the Treasury of the United States to  
12          the credit of the Civil Service Retirement and Dis-  
13          ability Fund an amount equal to 15 percent of the  
14          final basic pay of each employee who is covered  
15          under subchapter III of chapter 83 or chapter 84 of  
16          title 5, United States Code, to whom a voluntary  
17          separation incentive has been paid under this sec-  
18          tion.

19          (2) DEFINITION.—In paragraph (1), the term  
20          “final basic pay”, with respect to an employee,  
21          means the total amount of basic pay which would be  
22          payable for a year of service by such employee, com-  
23          puted using the employee’s final rate of basic pay,  
24          and, if last serving on other than a full-time basis,  
25          with appropriate adjustment therefore.

1 (d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH  
2 THE GOVERNMENT.—An individual who has received a  
3 voluntary separation incentive payment under this section  
4 and accepts any employment for compensation with the  
5 Government of the United States, or who works for any  
6 agency of the United States Government through a per-  
7 sonal services contract, within 5 years after the date of  
8 the separation on which the payment is based, shall be  
9 required to pay, prior to the individual's first day of em-  
10 ployment, the entire amount of the incentive payment to  
11 the Immigration and Naturalization Service or, in the case  
12 of employment or work occurring after the effective date  
13 of title XI, the Directorate of Immigration Affairs.

14 (e) USE OF VOLUNTARY SEPARATIONS.—The Immi-  
15 gration and Naturalization Service may redeploy or use  
16 the full-time equivalent positions vacated by voluntary sep-  
17 arations under this section to make other positions avail-  
18 able to more critical locations or more critical occupations.

19 **SEC. 1203. VOLUNTARY SEPARATION INCENTIVE PAYMENTS**  
20 **FOR EMPLOYEES OF THE DIRECTORATE OF**  
21 **IMMIGRATION AFFAIRS.**

22 (a) DEFINITION.—In this section, the term “em-  
23 ployee” means an employee (as defined by section 2105  
24 of title 5, United States Code) who is employed by the  
25 Directorate of Immigration Affairs serving under an ap-

1 pointment without time limitation, and has been currently  
2 employed for a continuous period of at least 3 years, but  
3 does not include—

4 (1) a reemployed annuitant under subchapter  
5 III of chapter 83 or chapter 84 of title 5, United  
6 States Code, or another retirement system;

7 (2) an employee having a disability on the basis  
8 of which such employee is or would be eligible for  
9 disability retirement under the applicable retirement  
10 system referred to in paragraph (1);

11 (3) an employee who is in receipt of a specific  
12 notice of involuntary separation for misconduct or  
13 unacceptable performance;

14 (4) an employee who, upon completing an addi-  
15 tional period of service as referred to in section  
16 3(b)(2)(B)(ii) of the Federal Workforce Restruc-  
17 turing Act of 1994 (5 U.S.C. 5597 note), would  
18 qualify for a voluntary separation incentive payment  
19 under section 3 of such Act;

20 (5) an employee who has previously received  
21 any voluntary separation incentive payment by the  
22 Federal Government under this section or any other  
23 authority and has not repaid such payment;

1           (6) an employee covered by statutory reemploy-  
2           ment rights who is on transfer to another organiza-  
3           tion; or

4           (7) any employee who, during the 24-month pe-  
5           riod preceding the date of separation, has received a  
6           recruitment or relocation bonus under section 5753  
7           of title 5, United States Code, or who, within the  
8           12-month period preceding the date of separation,  
9           received a retention allowance under section 5754 of  
10          title 5, United States Code.

11          (b) **AUTHORITY TO PROVIDE VOLUNTARY SEPARA-**  
12          **TION INCENTIVE PAYMENTS.—**

13           (1) **IN GENERAL.—**The Secretary of Homeland  
14          Security may pay voluntary separation incentive  
15          payments under this section to any employee to the  
16          extent necessary to carry out the plan to establish  
17          the Directorate of Immigration Affairs under title  
18          XI.

19           (2) **AMOUNT AND TREATMENT OF PAYMENTS.—**  
20          A voluntary separation incentive payment—

21           (A) shall be paid in a lump sum after the  
22          employee's separation;

23           (B) shall be paid from appropriations or  
24          funds available for the payment of the basic pay  
25          of the employees;

1 (C) shall be equal to the lesser of—

2 (i) an amount equal to the amount  
3 the employee would be entitled to receive  
4 under section 5595(c) of title 5, United  
5 States Code; or

6 (ii) an amount determined by an  
7 agency head not to exceed \$25,000;

8 (D) may not be made except in the case of  
9 any qualifying employee who voluntarily sepa-  
10 rates (whether by retirement or resignation) be-  
11 fore January 1, 2006;

12 (E) shall not be a basis for payment, and  
13 shall not be included in the computation, of any  
14 other type of Government benefit; and

15 (F) shall not be taken into account in de-  
16 termining the amount of any severance pay to  
17 which the employee may be entitled under sec-  
18 tion 5595 of title 5, United States Code, based  
19 on any other separation.

20 (c) ADDITIONAL DIRECTORATE OF IMMIGRATION AF-  
21 FAIRS CONTRIBUTIONS TO THE RETIREMENT FUND.—

22 (1) IN GENERAL.—In addition to any other  
23 payments which it is required to make under sub-  
24 chapter III of chapter 83 of title 5, United States  
25 Code, the Directorate of Immigration Affairs shall

1 remit to the Office of Personnel Management for de-  
2 posit in the Treasury of the United States to the  
3 credit of the Civil Service Retirement and Disability  
4 Fund an amount equal to 15 percent of the final  
5 basic pay of each employee who is covered under  
6 subchapter III of chapter 83 or chapter 84 of title  
7 5, United States Code, to whom a voluntary separa-  
8 tion incentive has been paid under this section.

9 (2) DEFINITION.—In paragraph (1), the term  
10 “final basic pay”, with respect to an employee,  
11 means the total amount of basic pay which would be  
12 payable for a year of service by such employee, com-  
13 puted using the employee’s final rate of basic pay,  
14 and, if last serving on other than a full-time basis,  
15 with appropriate adjustment therefore.

16 (d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH  
17 THE GOVERNMENT.—An individual who has received a  
18 voluntary separation incentive payment under this section  
19 and accepts any employment for compensation with the  
20 Government of the United States, or who works for any  
21 agency of the United States Government through a per-  
22 sonal services contract, within 5 years after the date of  
23 the separation on which the payment is based, shall be  
24 required to pay, prior to the individual’s first day of em-

1 ployment, the entire amount of the incentive payment to  
2 the Directorate of Immigration Affairs.

3 (e) USE OF VOLUNTARY SEPARATIONS.—The Direc-  
4 torate of Immigration Affairs may redeploy or use the full-  
5 time equivalent positions vacated by voluntary separations  
6 under this section to make other positions available to  
7 more critical locations or more critical occupations.

8 (f) EFFECTIVE DATE.—This section shall take effect  
9 upon the effective date of title XI of the Immigration Re-  
10 form, Accountability, and Security Enhancement Act of  
11 2002.

12 **SEC. 1204. BASIS FOR EVALUATION OF IMMIGRATION EM-**  
13 **PLOYEES.**

14 The Immigration and Naturalization Service and,  
15 upon the effective date of title XI of the Immigration Re-  
16 form, Accountability, and Security Enhancement Act of  
17 2002, the Directorate of Immigration Affairs, shall use  
18 the fair and equitable treatment of aliens by employees  
19 as one of the standards for evaluating employee perform-  
20 ance.

21 **SEC. 1205. EFFECTIVE DATE.**

22 Except as provided in section 1203(f), this title, and  
23 the amendments made by this title, shall take effect on  
24 the date of enactment of this Act.

1     **TITLE XIII—UNACCOMPANIED**  
2     **ALIEN CHILD PROTECTION**

3     **SEC. 1301. SHORT TITLE.**

4         This title may be cited as the “Unaccompanied Alien  
5 Child Protection Act of 2002”.

6     **SEC. 1302. DEFINITIONS.**

7         (a) IN GENERAL.—In this title:

8             (1) DIRECTOR.—The term “Director” means  
9             the Director of the Office.

10            (2) OFFICE.—The term “Office” means the Of-  
11            fice of Refugee Resettlement as established by sec-  
12            tion 411 of the Immigration and Nationality Act.

13            (3) SERVICE.—The term “Service” means the  
14            Immigration and Naturalization Service (or, upon  
15            the effective date of title XI, the Directorate of Im-  
16            migration Affairs).

17            (4) UNACCOMPANIED ALIEN CHILD.—The term  
18            “unaccompanied alien child” means a child who—

19                 (A) has no lawful immigration status in  
20                 the United States;

21                 (B) has not attained the age of 18; and

22                 (C) with respect to whom—

23                         (i) there is no parent or legal guard-  
24                         ian in the United States; or



1                   (ii) no parent or legal guardian in the  
2                   United States is available to provide care  
3                   and physical custody.

4           (5) VOLUNTARY AGENCY.—The term “vol-  
5           untary agency” means a private, nonprofit voluntary  
6           agency with expertise in meeting the cultural, devel-  
7           opmental, or psychological needs of unaccompanied  
8           alien children as licensed by the appropriate State  
9           and certified by the Director of the Office of Ref-  
10          ugee Resettlement.

11          (b) AMENDMENTS TO THE IMMIGRATION AND NA-  
12          TIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is  
13          amended by adding at the end the following new para-  
14          graphs:

15               “(53) The term ‘unaccompanied alien child’ means  
16          a child who—

17                   “(A) has no lawful immigration status in the  
18          United States;

19                   “(B) has not attained the age of 18; and

20                   “(C) with respect to whom—

21                               “(i) there is no parent or legal guardian in  
22          the United States; or

23                               “(ii) no parent or legal guardian in the  
24          United States is able to provide care and phys-  
25          ical custody.

1       “(54) The term ‘unaccompanied refugee children’  
2 means persons described in paragraph (42) who—

3               “(A) have not attained the age of 18; and

4               “(B) with respect to whom there are no parents  
5 or legal guardians available to provide care and  
6 physical custody.”.

## 7       **Subtitle A—Structural Changes**

### 8       **SEC. 1311. RESPONSIBILITIES OF THE OFFICE OF REFUGEE** 9               **RESETTLEMENT WITH RESPECT TO UNAC-** 10              **COMPANIED ALIEN CHILDREN.**

11       (a) IN GENERAL.—

12               (1) RESPONSIBILITIES OF THE OFFICE.—The  
13 Office shall be responsible for—

14                       (A) coordinating and implementing the  
15 care and placement for unaccompanied alien  
16 children who are in Federal custody by reason  
17 of their immigration status; and

18                       (B) ensuring minimum standards of deten-  
19 tion for all unaccompanied alien children.

20               (2) DUTIES OF THE DIRECTOR WITH RESPECT  
21 TO UNACCOMPANIED ALIEN CHILDREN.—The Direc-  
22 tor shall be responsible under this title for—

23                       (A) ensuring that the best interests of the  
24 child are considered in decisions and actions re-

1           lating to the care and placement of an unac-  
2           companied alien child;

3           (B) making placement, release, and deten-  
4           tion determinations for all unaccompanied alien  
5           children in the custody of the Office;

6           (C) implementing the placement, release,  
7           and detention determinations made by the Of-  
8           fice;

9           (D) convening, in the absence of the As-  
10          sistant Secretary, Administration for Children  
11          and Families of the Department of Health and  
12          Human Services, the Interagency Task Force  
13          on Unaccompanied Alien Children established  
14          in section 1312;

15          (E) identifying a sufficient number of  
16          qualified persons, entities, and facilities to  
17          house unaccompanied alien children in accord-  
18          ance with sections 1322 and 1323;

19          (F) overseeing the persons, entities, and  
20          facilities described in sections 1322 and 1323 to  
21          ensure their compliance with such provisions;

22          (G) compiling, updating, and publishing at  
23          least annually a State-by-State list of profes-  
24          sionals or other entities qualified to contract

1 with the Office to provide the services described  
2 in sections 1331 and 1332;

3 (H) maintaining statistical information  
4 and other data on unaccompanied alien children  
5 in the Office's custody and care, which shall  
6 include—

7 (i) biographical information such as  
8 the child's name, gender, date of birth,  
9 country of birth, and country of habitual  
10 residence;

11 (ii) the date on which the child came  
12 into Federal custody, including each in-  
13 stance in which such child came into the  
14 custody of—

15 (I) the Service; or

16 (II) the Office;

17 (iii) information relating to the cus-  
18 tody, detention, release, and repatriation of  
19 unaccompanied alien children who have  
20 been in the custody of the Office;

21 (iv) in any case in which the child is  
22 placed in detention, an explanation relating  
23 to the detention; and

24 (v) the disposition of any actions in  
25 which the child is the subject;

1 (I) collecting and compiling statistical in-  
2 formation from the Service, including Border  
3 Patrol and inspections officers, on the unaccom-  
4 panied alien children with whom they come into  
5 contact; and

6 (J) conducting investigations and inspec-  
7 tions of facilities and other entities in which un-  
8 accompanied alien children reside.

9 (3) DUTIES WITH RESPECT TO FOSTER CARE.—

10 In carrying out the duties described in paragraph  
11 (3)(F), the Director is encouraged to utilize the ref-  
12 ugee children foster care system established pursu-  
13 ant to section 412(d)(2) of the Immigration and Na-  
14 tionality Act for the placement of unaccompanied  
15 alien children.

16 (4) POWERS.—In carrying out the duties speci-  
17 fied in paragraph (3), the Director shall have the  
18 power to—

19 (A) contract with service providers to per-  
20 form the services described in sections 1322,  
21 1323, 1331, and 1332; and

22 (B) compel compliance with the terms and  
23 conditions set forth in section 1323, including  
24 the power to terminate the contracts of pro-  
25 viders that are not in compliance with such con-

1           ditions and reassign any unaccompanied alien  
2           child to a similar facility that is in compliance  
3           with such section.

4           (b) NO EFFECT ON SERVICE, EOIR, AND DEPART-  
5           MENT OF STATE ADJUDICATORY RESPONSIBILITIES.—  
6           Nothing in this title may be construed to transfer the re-  
7           sponsibility for adjudicating benefit determinations under  
8           the Immigration and Nationality Act from the authority  
9           of any official of the Service, the Executive Office of Immi-  
10          gration Review (or successor entity), or the Department  
11          of State.

12       **SEC. 1312. ESTABLISHMENT OF INTERAGENCY TASK FORCE**  
13                               **ON UNACCOMPANIED ALIEN CHILDREN.**

14           (a) ESTABLISHMENT.—There is established an Inter-  
15          agency Task Force on Unaccompanied Alien Children.

16           (b) COMPOSITION.—The Task Force shall consist of  
17          the following members:

18                   (1) The Assistant Secretary, Administration for  
19                   Children and Families, Department of Health and  
20                   Human Services.

21                   (2) The Under Secretary of Homeland Security  
22                   for Immigration Affairs.

23                   (3) The Assistant Secretary of State for Popu-  
24                   lation, Refugees, and Migration.

25                   (4) The Director.

1           (5) Such other officials in the executive branch  
2           of Government as may be designated by the Presi-  
3           dent.

4           (c) CHAIRMAN.—The Task Force shall be chaired by  
5           the Assistant Secretary, Administration for Children and  
6           Families, Department of Health and Human Services.

7           (d) ACTIVITIES OF THE TASK FORCE.—In consulta-  
8           tion with nongovernmental organizations, the Task Force  
9           shall—

10           (1) measure and evaluate the progress of the  
11           United States in treating unaccompanied alien chil-  
12           dren in United States custody; and

13           (2) expand interagency procedures to collect  
14           and organize data, including significant research and  
15           resource information on the needs and treatment of  
16           unaccompanied alien children in the custody of the  
17           United States Government.

18 **SEC. 1313. TRANSITION PROVISIONS.**

19           (a) TRANSFER OF FUNCTIONS.—All functions with  
20           respect to the care and custody of unaccompanied alien  
21           children under the immigration laws of the United States  
22           vested by statute in, or exercised by, the Commissioner  
23           of Immigration and Naturalization (or any officer, em-  
24           ployee, or component thereof), immediately prior to the  
25           effective date of this subtitle, are transferred to the Office.

1           (b) TRANSFER AND ALLOCATIONS OF APPROPRIA-  
2 TIONS AND PERSONNEL.—The personnel employed in con-  
3 nection with, and the assets, liabilities, contracts, prop-  
4 erty, records, and unexpended balances of appropriations,  
5 authorizations, allocations, and other funds employed,  
6 used, held, arising from, available to, or to be made avail-  
7 able in connection with the functions transferred by this  
8 section, subject to section 1531 of title 31, United States  
9 Code, shall be transferred to the Office. Unexpended funds  
10 transferred pursuant to this section shall be used only for  
11 the purposes for which the funds were originally author-  
12 ized and appropriated.

13           (c) LEGAL DOCUMENTS.—All orders, determinations,  
14 rules, regulations, permits, grants, loans, contracts, rec-  
15 ognition of labor organizations, agreements, including col-  
16 lective bargaining agreements, certificates, licenses, and  
17 privileges—

18           (1) that have been issued, made, granted, or al-  
19 lowed to become effective by the President, the At-  
20 torney General, the Commissioner of the Immigra-  
21 tion and Naturalization Service, their delegates, or  
22 any other Government official, or by a court of com-  
23 petent jurisdiction, in the performance of any func-  
24 tion that is transferred pursuant to this section; and



1           (2) that are in effect on the effective date of  
2           such transfer (or become effective after such date  
3           pursuant to their terms as in effect on such effective  
4           date);  
5           shall continue in effect according to their terms until  
6           modified, terminated, superseded, set aside, or revoked in  
7           accordance with law by the President, any other author-  
8           ized official, a court of competent jurisdiction, or operation  
9           of law, except that any collective bargaining agreement  
10          shall remain in effect until the date of termination speci-  
11          fied in the agreement.

12          (d) PROCEEDINGS.—

13           (1) PENDING.—The transfer of functions under  
14           subsection (a) shall not affect any proceeding or any  
15           application for any benefit, service, license, permit,  
16           certificate, or financial assistance pending on the ef-  
17           fective date of this subtitle before an office whose  
18           functions are transferred pursuant to this section,  
19           but such proceedings and applications shall be con-  
20           tinued.

21           (2) ORDERS.—Orders shall be issued in such  
22           proceedings, appeals shall be taken therefrom, and  
23           payments shall be made pursuant to such orders, as  
24           if this Act had not been enacted, and orders issued  
25           in any such proceeding shall continue in effect until

1 modified, terminated, superseded, or revoked by a  
2 duly authorized official, by a court of competent ju-  
3 risdiction, or by operation of law.

4 (3) DISCONTINUANCE OR MODIFICATION.—

5 Nothing in this section shall be considered to pro-  
6 hibit the discontinuance or modification of any such  
7 proceeding under the same terms and conditions and  
8 to the same extent that such proceeding could have  
9 been discontinued or modified if this section had not  
10 been enacted.

11 (e) SUITS.—This section shall not affect suits com-  
12 menced before the effective date of this subtitle, and in  
13 all such suits, proceeding shall be had, appeals taken, and  
14 judgments rendered in the same manner and with the  
15 same effect as if this section had not been enacted.

16 (f) NONABATEMENT OF ACTIONS.—No suit, action,  
17 or other proceeding commenced by or against the Depart-  
18 ment of Justice or the Immigration and Naturalization  
19 Service, or by or against any individual in the official ca-  
20 pacity of such individual as an officer or employee in con-  
21 nection with a function transferred pursuant to this sec-  
22 tion, shall abate by reason of the enactment of this Act.

23 (g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
24 PARTIES.—If any Government officer in the official capac-  
25 ity of such officer is party to a suit with respect to a func-

1 tion of the officer, and pursuant to this section such func-  
2 tion is transferred to any other officer or office, then such  
3 suit shall be continued with the other officer or the head  
4 of such other office, as applicable, substituted or added  
5 as a party.

6 (h) ADMINISTRATIVE PROCEDURE AND JUDICIAL  
7 REVIEW.—Except as otherwise provided by this title, any  
8 statutory requirements relating to notice, hearings, action  
9 upon the record, or administrative or judicial review that  
10 apply to any function transferred pursuant to any provi-  
11 sion of this section shall apply to the exercise of such func-  
12 tion by the head of the office, and other officers of the  
13 office, to which such function is transferred pursuant to  
14 such provision.

15 **SEC. 1314. EFFECTIVE DATE.**

16 This subtitle shall take effect one year after the effec-  
17 tive date of division A of this Act.

18 **Subtitle B—Custody, Release, Fam-**  
19 **ily Reunification, and Detention**

20 **SEC. 1321. PROCEDURES WHEN ENCOUNTERING UNACCOM-**  
21 **PANIED ALIEN CHILDREN.**

22 (a) UNACCOMPANIED CHILDREN FOUND ALONG THE  
23 UNITED STATES BORDER OR AT UNITED STATES PORTS  
24 OF ENTRY.—

1           (1) IN GENERAL.—Subject to paragraph (2), if  
2           an immigration officer finds an unaccompanied alien  
3           child who is described in paragraph (2) at a land  
4           border or port of entry of the United States and de-  
5           termines that such child is inadmissible under the  
6           Immigration and Nationality Act, the officer shall—

7                   (A) permit such child to withdraw the  
8                   child’s application for admission pursuant to  
9                   section 235(a)(4) of the Immigration and Na-  
10                  tionality Act; and

11                  (B) remove such child from the United  
12                  States.

13           (2) SPECIAL RULE FOR CONTIGUOUS COUN-  
14           TRIES.—

15                  (A) IN GENERAL.—Any child who is a na-  
16                  tional or habitual resident of a country that is  
17                  contiguous with the United States and that has  
18                  an agreement in writing with the United States  
19                  providing for the safe return and orderly repa-  
20                  triation of unaccompanied alien children who  
21                  are nationals or habitual residents of such  
22                  country shall be treated in accordance with  
23                  paragraph (1), unless a determination is made  
24                  on a case-by-case basis that—

1 (i) such child has a fear of returning  
2 to the child's country of nationality or  
3 country of last habitual residence owing to  
4 a fear of persecution;

5 (ii) the return of such child to the  
6 child's country of nationality or country of  
7 last habitual residence would endanger the  
8 life or safety of such child; or

9 (iii) the child cannot make an inde-  
10 pendent decision to withdraw the child's  
11 application for admission due to age or  
12 other lack of capacity.

13 (B) RIGHT OF CONSULTATION.—Any child  
14 described in subparagraph (A) shall have the  
15 right to consult with a consular officer from the  
16 child's country of nationality or country of last  
17 habitual residence prior to repatriation, as well  
18 as consult with the Office, telephonically, and  
19 such child shall be informed of that right.

20 (3) RULE FOR APPREHENSIONS AT THE BOR-  
21 DER.—The custody of unaccompanied alien children  
22 not described in paragraph (2) who are apprehended  
23 at the border of the United States or at a United  
24 States port of entry shall be treated in accordance  
25 with the provisions of subsection (b).

1 (b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN  
2 FOUND IN THE INTERIOR OF THE UNITED STATES.—

3 (1) ESTABLISHMENT OF JURISDICTION.—

4 (A) IN GENERAL.—Except as otherwise  
5 provided in subsection (a) and subparagraph  
6 (B), the custody of all unaccompanied alien  
7 children, including responsibility for their de-  
8 tention, where appropriate, shall be under the  
9 jurisdiction of the Office.

10 (B) EXCEPTION FOR CHILDREN WHO HAVE  
11 COMMITTED CRIMES.—Notwithstanding sub-  
12 paragraph (A), the Service shall retain or as-  
13 sume the custody and care of any unaccom-  
14 panied alien child who—

15 (i) has been charged with any felony,  
16 excluding offenses proscribed by the Immi-  
17 gration and Nationality Act, while such  
18 charges are pending; or

19 (ii) has been convicted of any such fel-  
20 ony.

21 (C) EXCEPTION FOR CHILDREN WHO  
22 THREATEN NATIONAL SECURITY.—Notwith-  
23 standing subparagraph (A), the Service shall  
24 retain or assume the custody and care of an un-  
25 accompanied alien child if the Secretary of

1 Homeland Security has substantial evidence  
2 that such child endangers the national security  
3 of the United States.

4 (2) NOTIFICATION.—Upon apprehension of an  
5 unaccompanied alien child, the Secretary of Home-  
6 land Security shall promptly notify the Office.

7 (3) TRANSFER OF UNACCOMPANIED ALIEN  
8 CHILDREN.—

9 (A) TRANSFER TO THE OFFICE.—The care  
10 and custody of an unaccompanied alien child  
11 shall be transferred to the Office—

12 (i) in the case of a child not described  
13 in paragraph (1) (B) or (C), not later than  
14 72 hours after the apprehension of such  
15 child; or

16 (ii) in the case of a child whose cus-  
17 tody has been retained or assumed by the  
18 Service pursuant to paragraph (1) (B) or  
19 (C), immediately following a determination  
20 that the child no longer meets the descrip-  
21 tion set forth in such paragraph.

22 (B) TRANSFER TO THE SERVICE.—Upon  
23 determining that a child in the custody of the  
24 Office is described in paragraph (1) (B) or (C),  
25 the Director shall promptly make arrangements

1 to transfer the care and custody of such child  
2 to the Service.

3 (c) AGE DETERMINATIONS.—In any case in which  
4 the age of an alien is in question and the resolution of  
5 questions about such alien's age would affect the alien's  
6 eligibility for treatment under the provisions of this title,  
7 a determination of whether such alien meets the age re-  
8 quirements of this title shall be made in accordance with  
9 the provisions of section 1325.

10 **SEC. 1322. FAMILY REUNIFICATION FOR UNACCOMPANIED**  
11 **ALIEN CHILDREN WITH RELATIVES IN THE**  
12 **UNITED STATES.**

13 (a) PLACEMENT AUTHORITY.—

14 (1) ORDER OF PREFERENCE.—Subject to the  
15 Director's discretion under paragraph (4) and sec-  
16 tion 1323(a)(2), an unaccompanied alien child in the  
17 custody of the Office shall be promptly placed with  
18 one of the following individuals in the following  
19 order of preference:

20 (A) A parent who seeks to establish cus-  
21 tody, as described in paragraph (3)(A).

22 (B) A legal guardian who seeks to estab-  
23 lish custody, as described in paragraph (3)(A).

24 (C) An adult relative.



1 (D) An entity designated by the parent or  
2 legal guardian that is capable and willing to  
3 care for the child's well-being.

4 (E) A State-licensed juvenile shelter, group  
5 home, or foster home willing to accept legal cus-  
6 tody of the child.

7 (F) A qualified adult or entity seeking cus-  
8 tody of the child when it appears that there is  
9 no other likely alternative to long-term deten-  
10 tion and family reunification does not appear to  
11 be a reasonable alternative. For purposes of  
12 this subparagraph, the qualification of the adult  
13 or entity shall be decided by the Office.

14 (2) HOME STUDY.—Notwithstanding the provi-  
15 sions of paragraph (1), no unaccompanied alien child  
16 shall be placed with a person or entity unless a valid  
17 home-study conducted by an agency of the State of  
18 the child's proposed residence, by an agency author-  
19 ized by that State to conduct such a study, or by an  
20 appropriate voluntary agency contracted with the  
21 Office to conduct such studies has found that the  
22 person or entity is capable of providing for the  
23 child's physical and mental well-being.

24 (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO  
25 CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

1 (A) PLACEMENT WITH PARENT OR LEGAL  
2 GUARDIAN.—If an unaccompanied alien child is  
3 placed with any person or entity other than a  
4 parent or legal guardian, but subsequent to  
5 that placement a parent or legal guardian seeks  
6 to establish custody, the Director shall assess  
7 the suitability of placing the child with the par-  
8 ent or legal guardian and shall make a written  
9 determination on the child's placement within  
10 30 days.

11 (B) RULE OF CONSTRUCTION.—Nothing in  
12 this title shall be construed to—

13 (i) supersede obligations under any  
14 treaty or other international agreement to  
15 which the United States is a party, includ-  
16 ing The Hague Convention on the Civil As-  
17 pects of International Child Abduction, the  
18 Vienna Declaration and Programme of Ac-  
19 tion, and the Declaration of the Rights of  
20 the Child; or

21 (ii) limit any right or remedy under  
22 such international agreement.

23 (4) PROTECTION FROM SMUGGLERS AND TRAF-  
24 FICKERS.—The Director shall take affirmative steps  
25 to ensure that unaccompanied alien children are pro-



1           (1) PROHIBITION OF DETENTION IN CERTAIN  
2 FACILITIES.—Except as provided in paragraph (2),  
3 an unaccompanied alien child shall not be placed in  
4 an adult detention facility or a facility housing delin-  
5 quent children.

6           (2) DETENTION IN APPROPRIATE FACILITIES.—  
7 An unaccompanied alien child who has exhibited a  
8 violent or criminal behavior that endangers others  
9 may be detained in conditions appropriate to the be-  
10 havior in a facility appropriate for delinquent chil-  
11 dren.

12           (3) STATE LICENSURE.—In the case of a place-  
13 ment of a child with an entity described in section  
14 1322(a)(1)(E), the entity must be licensed by an ap-  
15 propriate State agency to provide residential, group,  
16 child welfare, or foster care services for dependent  
17 children.

18           (4) CONDITIONS OF DETENTION.—

19           (A) IN GENERAL.—At a minimum, the Di-  
20 rector shall promulgate regulations incor-  
21 porating standards for conditions of detention  
22 in such placements that provide for—

23                   (i) educational services appropriate to  
24 the child;

25                   (ii) medical care;

- 1 (iii) mental health care, including  
2 treatment of trauma;
- 3 (iv) access to telephones;
- 4 (v) access to legal services;
- 5 (vi) access to interpreters;
- 6 (vii) supervision by professionals  
7 trained in the care of children, taking into  
8 account the special cultural, linguistic, and  
9 experiential needs of children in immigra-  
10 tion proceedings;
- 11 (viii) recreational programs and activi-  
12 ties;
- 13 (ix) spiritual and religious needs; and
- 14 (x) dietary needs.

15 (B) NOTIFICATION OF CHILDREN.—Such  
16 regulations shall provide that all children are  
17 notified orally and in writing of such standards.

18 (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-  
19 rector and the Secretary of Homeland Security shall de-  
20 velop procedures prohibiting the unreasonable use of—

- 21 (1) shackling, handcuffing, or other restraints  
22 on children;
- 23 (2) solitary confinement; or
- 24 (3) pat or strip searches.

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion shall be construed to supersede procedures favoring  
3 release of children to appropriate adults or entities or  
4 placement in the least secure setting possible, as defined  
5 in the Stipulated Settlement Agreement under Flores v.  
6 Reno.

7 **SEC. 1324. REPATRIATED UNACCOMPANIED ALIEN CHIL-**  
8 **DREN.**

9 (a) COUNTRY CONDITIONS.—

10 (1) SENSE OF CONGRESS.—It is the sense of  
11 Congress that, to the extent consistent with the trea-  
12 ties and other international agreements to which the  
13 United States is a party and to the extent prac-  
14 ticable, the United States Government should under-  
15 take efforts to ensure that it does not repatriate  
16 children in its custody into settings that would  
17 threaten the life and safety of such children.

18 (2) ASSESSMENT OF CONDITIONS.—

19 (A) IN GENERAL.—In carrying out repatri-  
20 ations of unaccompanied alien children, the Of-  
21 fice shall conduct assessments of country condi-  
22 tions to determine the extent to which the coun-  
23 try to which a child is being repatriated has a  
24 child welfare system capable of ensuring the  
25 child's well being.

1                   (B) FACTORS FOR ASSESSMENT.—In as-  
2                   sessing country conditions, the Office shall, to  
3                   the maximum extent practicable, examine the  
4                   conditions specific to the locale of the child's re-  
5                   patriation.

6                   (b) REPORT ON REPATRIATION OF UNACCOMPANIED  
7                   ALIEN CHILDREN.—Beginning not later than 18 months  
8                   after the date of enactment of this Act, and annually  
9                   thereafter, the Director shall submit a report to the Judi-  
10                  ciary Committees of the House of Representatives and  
11                  Senate on the Director's efforts to repatriate unaccom-  
12                  panied alien children. Such report shall include at a min-  
13                  imum the following information:

14                  (1) The number of unaccompanied alien chil-  
15                  dren ordered removed and the number of such chil-  
16                  dren actually removed from the United States.

17                  (2) A description of the type of immigration re-  
18                  lief sought and denied to such children.

19                  (3) A statement of the nationalities, ages, and  
20                  gender of such children.

21                  (4) A description of the procedures used to ef-  
22                  fect the removal of such children from the United  
23                  States.

1           (5) A description of steps taken to ensure that  
2           such children were safely and humanely repatriated  
3           to their country of origin.

4           (6) Any information gathered in assessments of  
5           country and local conditions pursuant to subsection  
6           (a)(2).

7   **SEC. 1325. ESTABLISHING THE AGE OF AN UNACCOM-**  
8                                   **PANIED ALIEN CHILD.**

9           The Director shall develop procedures that permit the  
10          presentation and consideration of a variety of forms of evi-  
11          dence, including testimony of a child and other persons,  
12          to determine an unaccompanied alien child's age for pur-  
13          poses of placement, custody, parole, and detention. Such  
14          procedures shall allow the appeal of a determination to  
15          an immigration judge. Radiographs shall not be the sole  
16          means of determining age.

17   **SEC. 1326. EFFECTIVE DATE.**

18          This subtitle shall take effect one year after the effec-  
19          tive date of division A of this Act.

20   **Subtitle C—Access by Unaccom-**  
21                                   **panied Alien Children to Guard-**  
22                                   **ians Ad Litem and Counsel**

23   **SEC. 1331. RIGHT OF UNACCOMPANIED ALIEN CHILDREN**  
24                                   **TO GUARDIANS AD LITEM.**

25          (a) GUARDIAN AD LITEM.—



1           (1) APPOINTMENT.—The Director shall appoint  
2 a guardian ad litem who meets the qualifications de-  
3 scribed in paragraph (2) for each unaccompanied  
4 alien child in the custody of the Office not later than  
5 72 hours after the Office assumes physical or con-  
6 structive custody of such child. The Director is en-  
7 couraged, wherever practicable, to contract with a  
8 voluntary agency for the selection of an individual to  
9 be appointed as a guardian ad litem under this para-  
10 graph.

11           (2) QUALIFICATIONS OF GUARDIAN AD  
12 LITEM.—

13           (A) IN GENERAL.—No person shall serve  
14 as a guardian ad litem who is not—

15                   (i) a child welfare professional or  
16 other individual who has received training  
17 in child welfare matters; and

18                   (ii) possessing of special training on  
19 the nature of problems encountered by un-  
20 accompanied alien children.

21           (B) PROHIBITION.—A guardian ad litem  
22 shall not be an employee of the Service.

23           (3) DUTIES.—The guardian ad litem shall—

1           (A) conduct interviews with the child in a  
2 manner that is appropriate, taking into account  
3 the child's age;

4           (B) investigate the facts and circumstances  
5 relevant to such child's presence in the United  
6 States, including facts and circumstances aris-  
7 ing in the country of the child's nationality or  
8 last habitual residence and facts and cir-  
9 cumstances arising subsequent to the child's de-  
10 parture from such country;

11           (C) work with counsel to identify the  
12 child's eligibility for relief from removal or vol-  
13 untary departure by sharing with counsel infor-  
14 mation collected under subparagraph (B);

15           (D) develop recommendations on issues  
16 relative to the child's custody, detention, re-  
17 lease, and repatriation;

18           (E) ensure that the child's best interests  
19 are promoted while the child participates in, or  
20 is subject to, proceedings or actions under the  
21 Immigration and Nationality Act;

22           (F) ensure that the child understands such  
23 determinations and proceedings; and

1 (G) report findings and recommendations  
2 to the Director and to the Executive Office of  
3 Immigration Review (or successor entity).

4 (4) TERMINATION OF APPOINTMENT.—The  
5 guardian ad litem shall carry out the duties de-  
6 scribed in paragraph (3) until—

7 (A) those duties are completed,

8 (B) the child departs the United States,

9 (C) the child is granted permanent resi-  
10 dent status in the United States,

11 (D) the child attains the age of 18, or

12 (E) the child is placed in the custody of a  
13 parent or legal guardian,

14 whichever occurs first.

15 (5) POWERS.—The guardian ad litem—

16 (A) shall have reasonable access to the  
17 child, including access while such child is being  
18 held in detention or in the care of a foster fam-  
19 ily;

20 (B) shall be permitted to review all records  
21 and information relating to such proceedings  
22 that are not deemed privileged or classified;

23 (C) may seek independent evaluations of  
24 the child;

1 (D) shall be notified in advance of all hear-  
2 ings involving the child that are held in connec-  
3 tion with proceedings under the Immigration  
4 and Nationality Act, and shall be given a rea-  
5 sonable opportunity to be present at such hear-  
6 ings; and

7 (E) shall be permitted to consult with the  
8 child during any hearing or interview involving  
9 such child.

10 (b) TRAINING.—The Director shall provide profes-  
11 sional training for all persons serving as guardians ad  
12 litem under this section in the circumstances and condi-  
13 tions that unaccompanied alien children face as well as  
14 in the various immigration benefits for which such a child  
15 might be eligible.

16 **SEC. 1332. RIGHT OF UNACCOMPANIED ALIEN CHILDREN**  
17 **TO COUNSEL.**

18 (a) ACCESS TO COUNSEL.—

19 (1) IN GENERAL.—The Director shall ensure  
20 that all unaccompanied alien children in the custody  
21 of the Office or in the custody of the Service who  
22 are not described in section 1321(a)(2) shall have  
23 competent counsel to represent them in immigration  
24 proceedings or matters.

1           (2) PRO BONO REPRESENTATION.—To the max-  
2           imum extent practicable, the Director shall utilize  
3           the services of pro bono attorneys who agree to pro-  
4           vide representation to such children without charge.

5           (3) GOVERNMENT FUNDED REPRESENTA-  
6           TION.—

7                   (A) APPOINTMENT OF COMPETENT COUN-  
8                   SEL.—Notwithstanding section 292 of the Im-  
9                   migration and Nationality Act (8 U.S.C. 1362)  
10                  or any other provision of law, when no com-  
11                  petent counsel is available to represent an unac-  
12                  companied alien child without charge, the Di-  
13                  rector shall appoint competent counsel for such  
14                  child at the expense of the Government.

15                   (B) LIMITATION ON ATTORNEY FEES.—  
16                  Counsel appointed under subparagraph (A) may  
17                  not be compensated at a rate in excess of the  
18                  rate provided under section 3006A of title 18,  
19                  United States Code.

20                   (C) AVAILABILITY OF FUNDING.—In car-  
21                  rying out this paragraph, the Director may  
22                  make use of funds derived from any source des-  
23                  ignated by the Secretary of Health and Human  
24                  Services from discretionary funds available to  
25                  the Department of Health and Human Services.

1                   (D) ASSUMPTION OF THE COST OF GOV-  
2                   ERNMENT-PAID COUNSEL.—In the case of a  
3                   child for whom counsel is appointed under sub-  
4                   paragraph (A) who is subsequently placed in  
5                   the physical custody of a parent or legal guard-  
6                   ian, such parent or legal guardian may elect to  
7                   retain the same counsel to continue representa-  
8                   tion of the child, at no expense to the Govern-  
9                   ment, beginning on the date that the parent or  
10                  legal guardian assumes physical custody of the  
11                  child.

12                 (4) DEVELOPMENT OF NECESSARY INFRA-  
13                 STRUCTURES AND SYSTEMS.—In ensuring that legal  
14                 representation is provided to such children, the Di-  
15                 rector shall develop the necessary mechanisms to  
16                 identify entities available to provide such legal as-  
17                 sistance and representation and to recruit such enti-  
18                 ties.

19                 (5) CONTRACTING AND GRANT MAKING AU-  
20                 THORITY.—

21                   (A) IN GENERAL.—Subject to the avail-  
22                   ability of appropriations, the Director shall  
23                   enter into contracts with or make grants to na-  
24                   tional nonprofit agencies with relevant expertise  
25                   in the delivery of immigration-related legal serv-

1           ices to children in order to carry out this sub-  
2           section.

3                   (B) INELIGIBILITY FOR GRANTS AND CON-  
4           TRACTS.—In making grants and entering into  
5           contracts with such agencies, the Director shall  
6           ensure that no such agency is—

7                   (i) a grantee or contractee for services  
8                   provided under section 1322 or 1331; and

9                   (ii) simultaneously a grantee or con-  
10           tractee for services provided under sub-  
11           paragraph (A).

12           (b) REQUIREMENT OF LEGAL REPRESENTATION.—  
13           The Director shall ensure that all unaccompanied alien  
14           children have legal representation within 7 days of the  
15           child coming into Federal custody.

16           (c) DUTIES.—Counsel shall represent the unaccom-  
17           panied alien child all proceedings and actions relating to  
18           the child's immigration status or other actions involving  
19           the Service and appear in person for all individual merits  
20           hearings before the Executive Office for Immigration Re-  
21           view and interviews involving the Service.

22           (d) ACCESS TO CHILD.—

23                   (1) IN GENERAL.—Counsel shall have reason-  
24           able access to the unaccompanied alien child, includ-  
25           ing access while the child is being held in detention,

1 in the care of a foster family, or in any other setting  
2 that has been determined by the Office.

3 (2) RESTRICTION ON TRANSFERS.—Absent  
4 compelling and unusual circumstances, no child who  
5 is represented by counsel shall be transferred from  
6 the child's placement to another placement unless  
7 advance notice of at least 24 hours is made to coun-  
8 sel of such transfer.

9 (e) TERMINATION OF APPOINTMENT.—Counsel shall  
10 carry out the duties described in subsection (c) until—

11 (1) those duties are completed,

12 (2) the child departs the United States,

13 (3) the child is granted withholding of removal  
14 under section 241(b)(3) of the Immigration and Na-  
15 tionality Act,

16 (4) the child is granted protection under the  
17 Convention Against Torture,

18 (5) the child is granted asylum in the United  
19 States under section 208 of the Immigration and  
20 Nationality Act,

21 (6) the child is granted permanent resident sta-  
22 tus in the United States, or

23 (7) the child attains 18 years of age,  
24 whichever occurs first.



1 (f) NOTICE TO COUNSEL DURING IMMIGRATION PRO-  
2 CEEDINGS.—

3 (1) IN GENERAL.—Except when otherwise re-  
4 quired in an emergency situation involving the phys-  
5 ical safety of the child, counsel shall be given prompt  
6 and adequate notice of all immigration matters af-  
7 fecting or involving an unaccompanied alien child,  
8 including adjudications, proceedings, and processing,  
9 before such actions are taken.

10 (2) OPPORTUNITY TO CONSULT WITH COUN-  
11 SEL.—An unaccompanied alien child in the custody  
12 of the Office may not give consent to any immigra-  
13 tion action, including consenting to voluntary depart-  
14 ure, unless first afforded an opportunity to consult  
15 with counsel.

16 (g) ACCESS TO RECOMMENDATIONS OF GUARDIAN  
17 AD LITEM.—Counsel shall be afforded an opportunity to  
18 review the recommendation by the guardian ad litem af-  
19 fecting or involving a client who is an unaccompanied alien  
20 child.

21 **SEC. 1333. EFFECTIVE DATE; APPLICABILITY.**

22 (a) EFFECTIVE DATE.—This subtitle shall take effect  
23 one year after the effective date of division A of this Act.

24 (b) APPLICABILITY.—The provisions of this subtitle  
25 shall apply to all unaccompanied alien children in Federal

1 custody on, before, or after the effective date of this sub-  
2 title.

3 **Subtitle D—Strengthening Policies**  
4 **for Permanent Protection of**  
5 **Alien Children**

6 **SEC. 1341. SPECIAL IMMIGRANT JUVENILE VISA.**

7 (a) J VISA.—Section 101(a)(27)(J) (8 U.S.C.  
8 1101(a)(27)(J)) is amended to read as follows:

9 “(J) an immigrant under the age of 18 on the  
10 date of application who is present in the United  
11 States—

12 “(i) who has been declared dependent on a  
13 juvenile court located in the United States or  
14 whom such a court has legally committed to, or  
15 placed under the custody of, a department or  
16 agency of a State, or an individual or entity ap-  
17 pointed by a State, and who has been deemed  
18 eligible by that court for long-term foster care  
19 due to abuse, neglect, or abandonment, or a  
20 similar basis found under State law;

21 “(ii) for whom it has been determined in  
22 administrative or judicial proceedings that it  
23 would not be in the alien’s best interest to be  
24 returned to the alien’s or parent’s previous

1 country of nationality or country of last habit-  
2 ual residence; and

3 “(iii) for whom the Office of Refugee Re-  
4 settlement of the Department of Health and  
5 Human Services has certified to the Under Sec-  
6 retary of Homeland Security for Immigration  
7 Affairs that the classification of an alien as a  
8 special immigrant under this subparagraph has  
9 not been made solely to provide an immigration  
10 benefit to that alien;

11 except that no natural parent or prior adoptive par-  
12 ent of any alien provided special immigrant status  
13 under this subparagraph shall thereafter, by virtue  
14 of such parentage, be accorded any right, privilege,  
15 or status under this Act;”.

16 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8  
17 U.S.C. 1255(h)(2)) is amended—

18 (1) by amending subparagraph (A) to read as  
19 follows:

20 “(A) paragraphs (1), (4), (5), (6), and  
21 (7)(A) of section 212(a) shall not apply;”;

22 (2) in subparagraph (B), by striking the period  
23 and inserting “, and”; and

24 (3) by adding at the end the following new sub-  
25 paragraph:

1           “(C) the Secretary of Homeland Security  
2           may waive paragraph (2) (A) and (B) in the  
3           case of an offense which arose as a consequence  
4           of the child being unaccompanied.”.

5           (c) ELIGIBILITY FOR ASSISTANCE.—A child who has  
6           been granted relief under section 101(a)(27)(J) of the Im-  
7           migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),  
8           as amended by subsection (a), and who is in the custody  
9           of a State shall be eligible for all funds made available  
10          under section 412(d) of such Act.

11 **SEC. 1342. TRAINING FOR OFFICIALS AND CERTAIN PRI-**  
12 **VATE PARTIES WHO COME INTO CONTACT**  
13 **WITH UNACCOMPANIED ALIEN CHILDREN.**

14          (a) TRAINING OF STATE AND LOCAL OFFICIALS AND  
15          CERTAIN PRIVATE PARTIES.—The Secretary of Health  
16          and Human Services, acting jointly with the Secretary of  
17          Homeland Security, shall provide appropriate training to  
18          be available to State and county officials, child welfare  
19          specialists, teachers, public counsel, and juvenile judges  
20          who come into contact with unaccompanied alien children.  
21          The training shall provide education on the processes per-  
22          taining to unaccompanied alien children with pending im-  
23          migration status and on the forms of relief potentially  
24          available. The Director shall be responsible for estab-  
25          lishing a core curriculum that can be incorporated into

1 currently existing education, training, or orientation mod-  
2 ules or formats that are currently used by these profes-  
3 sionals.

4 (b) TRAINING OF SERVICE PERSONNEL.—The Sec-  
5 retary of Homeland Security, acting jointly with the Sec-  
6 retary of Health and Human Services, shall provide spe-  
7 cialized training to all personnel of the Service who come  
8 into contact with unaccompanied alien children. In the  
9 case of Border Patrol agents and immigration inspectors,  
10 such training shall include specific training on identifying  
11 children at the United States border or at United States  
12 ports of entry who have been victimized by smugglers or  
13 traffickers, and children for whom asylum or special immi-  
14 grant relief may be appropriate, including children de-  
15 scribed in section 1321(a)(2).

16 **SEC. 1343. EFFECTIVE DATE.**

17 The amendment made by section 1341 shall apply to  
18 all eligible children who were in the United States before,  
19 on, or after the date of enactment of this Act.

20 **Subtitle E—Children Refugee and**  
21 **Asylum Seekers**

22 **SEC. 1351. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

23 (a) SENSE OF CONGRESS.—Congress commends the  
24 Service for its issuance of its “Guidelines for Children’s  
25 Asylum Claims”, dated December 1998, and encourages

1 and supports the Service’s implementation of such guide-  
2 lines in an effort to facilitate the handling of children’s  
3 asylum claims. Congress calls upon the Executive Office  
4 for Immigration Review of the Department of Justice (or  
5 successor entity) to adopt the “Guidelines for Children’s  
6 Asylum Claims” in its handling of children’s asylum  
7 claims before immigration judges and the Board of Immi-  
8 gration Appeals.

9 (b) TRAINING.—The Secretary of Homeland Security  
10 shall provide periodic comprehensive training under the  
11 “Guidelines for Children’s Asylum Claims” to asylum offi-  
12 cers, immigration judges, members of the Board of Immi-  
13 gration Appeals, and immigration officers who have con-  
14 tact with children in order to familiarize and sensitize such  
15 officers to the needs of children asylum seekers. Voluntary  
16 agencies shall be allowed to assist in such training.

17 **SEC. 1352. UNACCOMPANIED REFUGEE CHILDREN.**

18 (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-  
19 DREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

20 (1) by redesignating paragraphs (3), (4), (5),  
21 (6), and (7) as paragraphs (4), (5), (6), (7), and  
22 (8), respectively; and

23 (2) by inserting after paragraph (2) the fol-  
24 lowing new paragraph:

1           “(3) An analysis of the worldwide situation  
2           faced by unaccompanied refugee children, by region.

3           Such analysis shall include an assessment of—

4                   “(A) the number of unaccompanied refugee  
5           children, by region;

6                   “(B) the capacity of the Department of  
7           State to identify such refugees;

8                   “(C) the capacity of the international com-  
9           munity to care for and protect such refugees;

10                   “(D) the capacity of the voluntary agency  
11           community to resettle such refugees in the  
12           United States;

13                   “(E) the degree to which the United States  
14           plans to resettle such refugees in the United  
15           States in the coming fiscal year; and

16                   “(F) the fate that will befall such unac-  
17           companied refugee children for whom resettle-  
18           ment in the United States is not possible.”.

19           (b) TRAINING ON THE NEEDS OF UNACCOMPANIED  
20           REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C.  
21           1157(f)(2)) is amended by—

22                   (1) striking “and” after “countries,”; and

23                   (2) inserting before the period at the end the  
24           following: “, and instruction on the needs of unac-  
25           companied refugee children”.

1           **Subtitle F—Authorization of**  
2                           **Appropriations**

3   **SEC. 1361. AUTHORIZATION OF APPROPRIATIONS.**

4           (a) IN GENERAL.—There are authorized to be appro-  
5   priated such sums as may be necessary to carry out the  
6   provisions of this title.

7           (b) AVAILABILITY OF FUNDS.—Amounts appro-  
8   priated pursuant to subsection (a) are authorized to re-  
9   main available until expended.

10   **TITLE XIV—AGENCY FOR IMMI-**  
11           **GRATION HEARINGS AND AP-**  
12           **PEALS**

13   **Subtitle A—Structure and Function**

14   **SEC. 1401. ESTABLISHMENT.**

15           (a) IN GENERAL.—There is established within the  
16   Department of Justice the Agency for Immigration Hear-  
17   ings and Appeals (in this title referred to as the “Agen-  
18   cy”).

19           (b) ABOLITION OF EOIR.—The Executive Office for  
20   Immigration Review of the Department of Justice is here-  
21   by abolished.

22   **SEC. 1402. DIRECTOR OF THE AGENCY.**

23           (a) APPOINTMENT.—There shall be at the head of the  
24   Agency a Director who shall be appointed by the Presi-  
25   dent, by and with the advice and consent of the Senate.



1 (b) OFFICES.—The Director shall appoint a Deputy  
2 Director, General Counsel, Pro Bono Coordinator, and  
3 other offices as may be necessary to carry out this title.

4 (c) RESPONSIBILITIES.—The Director shall—

5 (1) administer the Agency and be responsible  
6 for the promulgation of rules and regulations affect-  
7 ing the Agency;

8 (2) appoint each Member of the Board of Immi-  
9 gration Appeals, including a Chair;

10 (3) appoint the Chief Immigration Judge; and

11 (4) appoint and fix the compensation of attor-  
12 neys, clerks, administrative assistants, and other  
13 personnel as may be necessary.

14 **SEC. 1403. BOARD OF IMMIGRATION APPEALS.**

15 (a) IN GENERAL.—The Board of Immigration Ap-  
16 peals (in this title referred to as the “Board”) shall per-  
17 form the appellate functions of the Agency. The Board  
18 shall consist of a Chair and not less than 14 other immi-  
19 gration appeals judges.

20 (b) APPOINTMENT.—Members of the Board shall be  
21 appointed by the Director, in consultation with the Chair  
22 of the Board of Immigration Appeals.

23 (c) QUALIFICATIONS.—The Chair and each other  
24 Member of the Board shall be an attorney in good stand-  
25 ing of a bar of a State or the District of Columbia and

1 shall have at least seven years of professional legal exper-  
2 tise in immigration and nationality law.

3 (d) CHAIR.—The Chair shall direct, supervise, and  
4 establish the procedures and policies of the Board.

5 (e) JURISDICTION.—

6 (1) IN GENERAL.—The Board shall have such  
7 jurisdiction as was, prior to the date of enactment  
8 of this Act, provided by statute or regulation to the  
9 Board of Immigration Appeals (as in effect under  
10 the Executive Office of Immigration Review).

11 (2) DE NOVO REVIEW.—The Board shall have  
12 de novo review of any decision by an immigration  
13 judge, including any final order of removal.

14 (f) DECISIONS OF THE BOARD.—The decisions of the  
15 Board shall constitute final agency action, subject to re-  
16 view only as provided by the Immigration and Nationality  
17 Act and other applicable law.

18 (g) INDEPENDENCE OF BOARD MEMBERS.—The  
19 Members of the Board shall exercise their independent  
20 judgment and discretion in the cases coming before the  
21 Board.

22 **SEC. 1404. CHIEF IMMIGRATION JUDGE.**

23 (a) ESTABLISHMENT OF OFFICE.—There shall be  
24 within the Agency the position of Chief Immigration  
25 Judge, who shall administer the immigration courts.

1 (b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—

2 The Chief Immigration Judge shall be responsible for the  
3 general supervision, direction, and procurement of re-  
4 source and facilities and for the general management of  
5 immigration court dockets.

6 (c) APPOINTMENT OF IMMIGRATION JUDGES.—Im-

7 migration judges shall be appointed by the Director, in  
8 consultation with the Chief Immigration Judge.

9 (d) QUALIFICATIONS.—Each immigration judge, in-  
10 cluding the Chief Immigration Judge, shall be an attorney  
11 in good standing of a bar of a State or the District of  
12 Columbia and shall have at least seven years of profes-  
13 sional legal expertise in immigration and nationality law.

14 (e) JURISDICTION AND AUTHORITY OF IMMIGRATION  
15 COURTS.—The immigration courts shall have such juris-  
16 diction as was, prior to the date of enactment of this Act,  
17 provided by statute or regulation to the immigration  
18 courts within the Executive Office for Immigration Review  
19 of the Department of Justice.

20 (f) INDEPENDENCE OF IMMIGRATION JUDGES.—The  
21 immigration judges shall exercise their independent judg-  
22 ment and discretion in the cases coming before the Immi-  
23 gration Court.

1 **SEC. 1405. CHIEF ADMINISTRATIVE HEARING OFFICER.**

2 (a) ESTABLISHMENT OF POSITION.—There shall be  
3 within the Agency the position of Chief Administrative  
4 Hearing Officer.

5 (b) DUTIES OF THE CHIEF ADMINISTRATIVE HEAR-  
6 ING OFFICER.—The Chief Administrative Hearing Officer  
7 shall hear cases brought under sections 274A, 274B, and  
8 274C of the Immigration and Nationality Act.

9 **SEC. 1406. REMOVAL OF JUDGES.**

10 Immigration judges and Members of the Board may  
11 be removed from office only for good cause, including ne-  
12 glect of duty or malfeasance, by the Director, in consulta-  
13 tion with the Chair of the Board, in the case of the re-  
14 moval of a Member of the Board, or in consultation with  
15 the Chief Immigration Judge, in the case of the removal  
16 of an immigration judge.

17 **SEC. 1407. AUTHORIZATION OF APPROPRIATIONS**

18 There are authorized to be appropriated to the Agen-  
19 cy such sums as may be necessary to carry out this title.

20 **Subtitle B—Transfer of Functions**  
21 **and Savings Provisions**

22 **SEC. 1411. TRANSITION PROVISIONS.**

23 (a) TRANSFER OF FUNCTIONS.—All functions under  
24 the immigration laws of the United States vested by stat-  
25 ute in, or exercised by, the Executive Office of Immigra-  
26 tion Review of the Department of Justice (or any officer,

1 employee, or component thereof), immediately prior to the  
2 effective date of this title, are transferred to the Direc-  
3 torate.

4 (b) TRANSFER AND ALLOCATIONS OF APPROPRIA-  
5 TIONS AND PERSONNEL.—The personnel employed in con-  
6 nection with, and the assets, liabilities, contracts, prop-  
7 erty, records, and unexpended balances of appropriations,  
8 authorizations, allocations, and other funds employed,  
9 used, held, arising from, available to, or to be made avail-  
10 able in connection with the functions transferred by this  
11 section, subject to section 1531 of title 31, United States  
12 Code, shall be transferred to the Directorate. Unexpended  
13 funds transferred pursuant to this section shall be used  
14 only for the purposes for which the funds were originally  
15 authorized and appropriated.

16 (c) LEGAL DOCUMENTS.—All orders, determinations,  
17 rules, regulations, permits, grants, loans, contracts, rec-  
18 ognition of labor organizations, agreements, including col-  
19 lective bargaining agreements, certificates, licenses, and  
20 privileges—

21 (1) that have been issued, made, granted, or al-  
22 lowed to become effective by the Attorney General or  
23 the Executive Office of Immigration Review of the  
24 Department of Justice, their delegates, or any other  
25 Government official, or by a court of competent ju-

1 jurisdiction, in the performance of any function that is  
2 transferred pursuant to this section; and

3 (2) that are in effect on the effective date of  
4 such transfer (or become effective after such date  
5 pursuant to their terms as in effect on such effective  
6 date);

7 shall continue in effect according to their terms until  
8 modified, terminated, superseded, set aside, or revoked in  
9 accordance with law by the Directorate, any other author-  
10 ized official, a court of competent jurisdiction, or operation  
11 of law, except that any collective bargaining agreement  
12 shall remain in effect until the date of termination speci-  
13 fied in the agreement.

14 (d) PROCEEDINGS.—

15 (1) PENDING.—The transfer of functions under  
16 subsection (a) shall not affect any proceeding or any  
17 application for any benefit, service, license, permit,  
18 certificate, or financial assistance pending on the ef-  
19 fective date of this title before an office whose func-  
20 tions are transferred pursuant to this section, but  
21 such proceedings and applications shall be contin-  
22 ued.

23 (2) ORDERS.—Orders shall be issued in such  
24 proceedings, appeals shall be taken therefrom, and  
25 payments shall be made pursuant to such orders, as

1 if this Act had not been enacted, and orders issued  
2 in any such proceeding shall continue in effect until  
3 modified, terminated, superseded, or revoked by a  
4 duly authorized official, by a court of competent ju-  
5 risdiction, or by operation of law.

6 (3) DISCONTINUANCE OR MODIFICATION.—  
7 Nothing in this section shall be considered to pro-  
8 hibit the discontinuance or modification of any such  
9 proceeding under the same terms and conditions and  
10 to the same extent that such proceeding could have  
11 been discontinued or modified if this section had not  
12 been enacted.

13 (e) SUITS.—This section shall not affect suits com-  
14 menced before the effective date of this title, and in all  
15 such suits, proceeding shall be had, appeals taken, and  
16 judgments rendered in the same manner and with the  
17 same effect as if this section had not been enacted.

18 (f) NONABATEMENT OF ACTIONS.—No suit, action,  
19 or other proceeding commenced by or against the Depart-  
20 ment of Justice or the Executive Office of Immigration  
21 Review, or by or against any individual in the official ca-  
22 pacity of such individual as an officer or employee in con-  
23 nection with a function transferred pursuant to this sec-  
24 tion, shall abate by reason of the enactment of this Act.

1 (g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
2 PARTIES.—If any Government officer in the official capac-  
3 ity of such officer is party to a suit with respect to a func-  
4 tion of the officer, and pursuant to this section such func-  
5 tion is transferred to any other officer or office, then such  
6 suit shall be continued with the other officer or the head  
7 of such other office, as applicable, substituted or added  
8 as a party.

9 (h) ADMINISTRATIVE PROCEDURE AND JUDICIAL  
10 REVIEW.—Except as otherwise provided by this title, any  
11 statutory requirements relating to notice, hearings, action  
12 upon the record, or administrative or judicial review that  
13 apply to any function transferred pursuant to any provi-  
14 sion of this section shall apply to the exercise of such func-  
15 tion by the head of the office, and other officers of the  
16 office, to which such function is transferred pursuant to  
17 such provision.

## 18 **Subtitle C—Effective Date**

### 19 **SEC. 1421. EFFECTIVE DATE.**

20 This title shall take effect one year after the effective  
21 date of division A of this Act.

Amend the title so as to read: “A bill to establish  
the Department of Homeland Security and the National



Office for Combating Terrorism, and for other purposes.”.