

March 3, 2003

The Honorable Don Nickles  
Chairman  
Committee on the Budget  
United States Senate  
Washington, D.C.

The Honorable Kent Conrad  
Ranking Member  
Committee on the Budget  
United States Senate  
Washington, D.C.

Dear Chairman Nickles and Senator Conrad:

Thank you for affording me the opportunity to provide my views regarding matters within the purview of the Governmental Affairs Committee for your consideration as you prepare the budget resolution for the 2004 Fiscal Year. Based in part on the President's Budget recommended to Congress a few weeks ago, I have the following comments and concerns:

### **Homeland Security**

I am greatly disturbed that the President's proposed Budget shortchanges our most critical mission – securing the homeland from attack. The creation of a Department of Homeland Security, as developed in legislation that I sponsored and that was considered and endorsed by this Committee last year, provides an opportunity for the federal government to dramatically improve its homeland security effort under consolidated and empowered leadership. However, creation of the Department cannot increase our homeland security in and of itself – its constituent agencies and programs must also be given the necessary resources to implement new security initiatives. When it comes to our overseas battles, the Administration appreciates that new challenges will require new resources. Tragically, however, the proposed Budget does not provide adequate funding to fight the war against terrorism at home.

The President is requesting \$41.3 billion for homeland security programs throughout the federal government for FY 04, including about \$24 billion within the Department of Homeland Security and about \$17 billion for homeland programs in other departments and agencies. This is less than one percent over what the Administration expected would be spent on homeland security in the current fiscal year. By contrast, I have already identified \$16 billion in critical

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homeland security spending above and beyond the President's Budget – for an overall homeland budget for FY 04 of \$57 billion, rather than \$41 billion. I outlined my views on the necessary homeland security budget on February 14, 2001, in a speech the text of which is available on my website.<sup>1</sup> Some of the most glaring shortfalls of the President's request are highlighted below.

### *First Responders*

The most critical need is to rush significant new dollars to our first responders who are on the frontlines of the war on terrorism here at home. It is unconscionable that these first responders have yet to receive the \$3.5 billion that was promised them more than a year ago by the President. The recently approved omnibus appropriations bill for FY 03 will supply them with too little, too late. Moreover, looking ahead, the President proposes only the same level of federal support – \$3.5 billion – for these first responders in FY 04 as they gird for the battle against terrorism. Far more is needed, and fast. I am calling for an additional \$7.5 billion in FY 04 for first responders, for a total of \$11 billion. That money would help pay for interoperable communications equipment (a vital security need estimated to cost billions of dollars to address), training and equipment to prepare for and respond to weapons of mass destruction, and salaries for additional fire fighters. These are significant new expenditures, but they are essential if we are to meet our obligations to the communities on the frontlines of the war on terror. Moreover, unlike the President's proposed Budget, these funds should not come at the expense of existing programs for first responders, such as the Community Oriented Policing (COPS) grants or the Byrne formula grant program.

### *Transportation and Port Security*

It is widely recognized by leading experts that our ports constitute one of the most glaring weaknesses of our homeland defenses. For instance, millions of cargo containers arrive at these ports each year, yet only about 2 percent are searched. Any could become a vehicle to smuggle in a dangerous weapon, or even terrorists themselves. This poses a risk not only at the ports, but also inland – as some of these containers travel many miles to their final destination without being searched. We must do better to secure these vital portals and the containers that pass through them.

Notwithstanding this ominous picture, the Administration has slighted one of the most glaring needs: the physical security of these ports. The Coast Guard has estimated that it will cost \$4.4 billion to improve basic physical security at the nation's ports, starting with close to \$1 billion the first year. In addition, the Maritime Security Act, passed by Congress last fall and signed by the President, mandates certain security measures without providing a funding

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<sup>1</sup> <http://www.senate.gov/~lieberman/speeches/03/02/2003214923.html>

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mechanism. We must go beyond basic physical security to create sophisticated security systems that will isolate suspicious cargo while allowing the ongoing flow of trade. Yet the Administration's proposed Budget, remarkably, designates *no* money for port security grants to tackle these security problems. We must move to strengthen port security and I advocate \$1.2 billion in port security grants in FY 04. The proposed Budget also underfunds critical programs to inspect more containers overseas, and to modernize the Coast Guard fleet and related communications equipment. Proposed funding for the Coast Guard modernization effort, for instance, remains at the level outlined for a timetable of 20 years or longer. Clearly, current circumstances call for greater urgency – and greater funding. I call for an additional \$700 million for this modernization effort in FY 04.

\_\_\_\_\_ More broadly, the Administration must do more to tackle the threats to our diverse transportation networks. As we saw tragically on September 11, 2001, terrorists can exploit weaknesses in our transportation networks to turn them into instruments of terror. The Transportation Security Administration (TSA) was created to confront that grim reality, but it cannot succeed without more support from the Administration and Congress.

The TSA has made its initial mark at our airports, overseeing passenger screening and requirements that baggage be screened for possible explosives. Now, the agency must build on its work at airports, and expand to other transportation sectors. Unfortunately, the Administration's proposed Budget allows for neither task. The Administration has requested \$4.8 billion for TSA in FY 04, a 10% *decrease* from the Administration's FY03 request of \$5.3B. This will leave TSA hard-pressed to effectively maintain its current efforts regarding air travel, much less expand its reach to new transportation sectors for which it is also responsible.

Yet the security needs in other modes of transportation are glaring. For instance, passenger and freight rail must be strengthened through greater protection of bridges, tunnels, and other key facilities. Mass transit systems, as well, are facing hundreds of millions of dollars in potential security costs such as improved communications systems, surveillance equipment and mobile command centers. These essential security investments will not happen without help from the federal government. I am urging an additional \$1.7 billion for TSA in FY 04 to begin its work on other transportation modes, including money for rail, transit, and bus security.

### *Bioterror*

Some of the most chilling scenarios posed by homeland security experts are those of a chemical, biological, or radiological attack. We are painfully dependent on our public health network to help prepare for and respond to such an assault. Yet these health providers have not been given adequate resources to fulfill this role. The Administration's Budget proposes no increase for grants from the Centers for Disease Control to help state public health departments care for and track infectious disease outbreaks. Yet these departments desperately need more

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funds, and I would advocate an additional \$1 billion in FY 04 – essentially double the proposed and existing funding level – to help these departments detect and cope with a bioterror attack. Among other things, this funding could help defray the costs of administering the Administration’s smallpox vaccination program. In the same vein, the Administration should increase funding to help hospitals increase capacity, training and supplies. I would devote an additional \$500 million for this purpose. And while the Administration is requesting some new funds for bioterror research, the amounts are not sufficient to confront this daunting threat. In particular, more funds – I recommend an additional \$1.5 billion – must be targeted at moving bioterror-related research from “bench to bedside” – in other words, into actual vaccines, diagnostics, and treatments.

#### Other Critical Needs

These are not the only homeland security needs that go neglected in the President’s Budget. The request does not provide adequate funding for new border security personnel, or for improved information technology systems for the border. For instance, with respect to technology, it is especially critical that we expedite implementation of the biometric document system as mandated by the Patriot Act and Border Security Act. The Administration clearly has not allocated significant new resources to achieve this new system in the required timeframe, or anything close to it. I am advocating an additional \$1 billion in FY 04 to hire at least 2,000 - 3,000 new border personnel, and to speed development of the biometric document system.

Nor does the Budget adequately address the urgent challenge of protecting the nation’s critical infrastructure. Homeland security experts have increasingly highlighted the vulnerability of the nation’s critical infrastructure as one of the most dangerous gaps in our homeland defenses. About 85 percent of these resources – which include such vital systems as energy distribution grids and chemical and nuclear plants – are in private hands, complicating the process for assuring adequate security. The Administration appears to focus on continuing to study the vulnerabilities of these systems, and has requested about \$500 million for this process in FY 04. This is too sluggish for such a vital task. We must spend whatever it takes to get these assessments done immediately so that we can move to create action plans and conduct needed security enhancements at the earliest possible moment. I am calling for an additional \$500 million in FY 04 to expedite these efforts. In addition, in the immediate near-term, selected National Guard units can be dispatched to defend under-defended chemical plants, as well as biological and nuclear facilities.

The list goes on, but the message is clear: Real homeland security will cost money. We have made an important first step by creating the new Department of Homeland Security. Now, I hope Congress and the Administration can join forces to give the Department the tools it needs.

## **Government Employee Issues**

### *Pay Parity*

For FY 04, as in each of the past two years, the Administration's Budget proposes a significant boost in military pay, for the purpose of ensuring that military compensation remains competitive. The 2004 proposal provides a range of pay increases from 2.0 to 6.3 percent, targeted by rank and years of service. Especially now, as our armed forces are deployed in the Persian Gulf for possible war with Iraq, our service men and women deserve our gratitude and support, and I fully endorse this proposal.

But federal civilian employees, who work side-by-side to support our military personnel in foreign war zones — and who are on the front lines protecting us here at home — also deserve our strong support. Adequate civilian pay is essential not only for fairness, but also for effective human-capital management. A deficient pay raise would undermine morale at a time when the government faces critical needs to recruit and retain the highly skilled workforce needed to meet increased national security responsibilities. Yet, President Bush now recommends only a 2% across-the-board pay raise for federal civilian employees, below the 2.7% required under the statutory formula to maintain comparability with the private sector. The Budget proposes an additional \$500 million performance fund, which, even if fully distributed to employees, would raise the average increase to around 2.5%, which would still be far below the proposed boost in military pay, which has been estimated to average 4.1% under the President's Budget.

In the past two years, for FY 02 and FY 03, the Administration proposed raises for civilian employees substantially below the military pay increase, but Congress wisely rejected those proposals and enacted the same increase in pay for civilian employees and military personnel. Now, in considering the FY 04 budget, our commitment to adequate military pay must again be matched by ensuring parity in pay increases for civilian employees.

### *Performance Fund; Pay-for-Performance Legislation*

The Administration proposes to create a new \$500 million fund that agencies could use to raise the salaries of high performers and to fund other incentive programs. Agencies' pay-for-performance plans would be subject to approval by OPM.

Providing for money to fund bonuses and other performance incentives might be fine, but not instead of giving adequate pay adjustments to federal workers. The Administration has proposed only a 2% across-the-board pay raise for 2004, which is below the formula set in statute for making federal pay rates comparable to the private sector, and far below the proposed military pay raise, estimated to average 4.1%. As stated above, a pay system that is out of line with statutory guidelines for private-sector comparability, and that is out of parity with the military

pay raise, is unacceptable, especially when we are engaged in a war on terrorism and depend on the loyalty and service of our civilian employees, together with that of our men and women in uniform, to protect us both overseas and at home.

The specific legislative proposal in the Budget governing the use of the performance fund appears designed to grant very broad discretion to the Administration, both over the allocation and over the use of this half-billion-dollar fund. OPM, with little statutory guidance, would get to choose which agencies will, and which agencies will not, receive money from the fund, and OPM could grant itself latitude to decide how much money from the fund any particular agency would get above or below its pro rata share. The proposed legislation includes no criteria to govern how individual performance rewards will be granted, or to whom, or to govern the allocation of performance money among various programs and employee categories at a department.

Our Committee, which has jurisdiction over matters relating to the federal civil service, has not yet had an opportunity to consider this proposal. I believe that any new reward program must be fair and equitable to workers at all levels of the workforce, and must incorporate safeguards against the kind of politicization, favoritism, and discrimination that can undermine the integrity of our merit-based federal service, and I am concerned that the legislation in the President's Budget proposal might not meet these tests.

#### *Charging Agencies for Future Retirees' Benefits*

As it did last year, the Budget proposes to begin charging agencies for the full retirement and health benefits of the agencies' future retirees. I find this proposal very troubling. Under current law, a portion of the old Civil Service Retirement System costs and all civilian and military retiree health benefit costs are considered mandatory payments from the Treasury. The Administration's proposal would shift the responsibility for paying those amounts away from central mandatory accounts, and would impose the responsibility on agencies' discretionary accounts. While the Budget proposal purports to quantify the added costs, there is no assurance that the appropriations enacted for this or future years will adequately account for these increased costs being imposed on agencies. I would be very concerned that adding more costs on individual agencies could result in squeezing agencies' discretionary accounts to the point of underfunding essential programs and services, such as homeland security needs, protecting the environment, or safeguarding our food supply.

#### **Competitive Sourcing**

I strongly oppose the Administration's "Competitive Sourcing initiative," which imposes arbitrary, unrealistic, and inefficient numerical outsourcing quotas on federal agencies. The President's Budget makes clear that agencies will be judged harshly by OMB solely for failing to

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meet the quotas. All agencies were rated “red” because “[n]one has opened up a sufficient number of commercial activities to competition.” The Budget in many places explicitly calls individual agencies to task for not having met this year’s arbitrary 15% quota, and it praises other agencies that tried to meet last year’s goals through direct conversions rather than public-private competitions. The problems associated with numerical quotas will only get worse, as OMB’s goals for the privatization of the federal workforce climb dramatically in future years.

When conducted fairly, public-private competition can be one of several important tools in helping agencies to reduce costs and become more efficient. Instead of responding flexibly to the unique needs and circumstances of individual agencies and programs, OMB has adopted a one-size-fits-all approach. There is no evidence to suggest that the numerical quotas will generate savings. The General Accounting Office (GAO) has criticized the use of numerical quotas. Even the GAO’s Commercial Activities Panel, which contained many representatives from industry and the Administration, expressed concern about “arbitrary numbers driving sourcing policy or specific sourcing decisions.”

The Administration’s privatization quotas will very often have the opposite of the advertised effect, driving inefficient agency management and creating a less accountable government-contractor environment. Even at the current rate of contracting out, the GAO and Inspectors General have documented that agencies lack adequate systems to track costs from services contracts and to hold contractors accountable for the work they perform. Dramatically increasing the number of jobs to be privatized will only exacerbate the amount of wasteful spending. The Administration also alludes in its Budget documents to its proposed revisions to the A-76 Circular, which it claims will result in quicker and easier competitions. In fact, the changes have been criticized publicly by the GAO as well as agencies, for setting unreasonable time limits on competitions and failing to provide agencies with sufficient guidance. The proposed changes to A-76 would also effect a shift from competitions based on cost to a highly subjective “best value” approach. This standard would almost certainly be manipulated by agencies desperate to meet inflated numerical quotas, to the detriment of taxpayers as well as federal workers.

## **Federal Information Technology**

### *Electronic Government*

I am pleased that the Administration continues to make electronic government one of its five management priorities. For more than three years I have argued for the expansion of federal e-government initiatives, and the E-Government Act, which I introduced in May of 2001, was enacted into law on December 17, 2002. Even before the enactment of the legislation, the Administration was moving to develop and implement initiatives consistent with the bill’s provisions. These initiatives included the appointment of a official within OMB to promote e-

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government, the creation of an E-Government Fund to support inter-agency projects, and the development of on-line dockets by all regulatory agencies. The Administration and agencies will have to devote additional resources and the attention of senior management to meeting the new statutory mandates in the Act, including provisions strengthening privacy of personal information, making government information more available, and improving training for federal IT workers.

Adequate funding will be essential to ensure the continued development of electronic government programs, at the agency level and government-wide. I was disappointed that the recently enacted omnibus appropriations resolution included only \$5 million for the E-Government Fund, out of the \$45 million authorized by the E-Government Act and requested by the Administration. The Budget again requests \$45 million for the Fund, which nearly meets the Act's authorized level of \$50 million. However, the Budget does not contain specific line items in other areas where the Act specifically authorizes spending. For example, I strongly support full funding of \$15 million for the ongoing development of a Federal Internet Portal, through which the public will be able to access information and services organized according to citizens' needs rather than agency jurisdiction. Full funding of \$8 million is also necessary to provide for the continued development of a federal bridge certification authority, to ensure the compatibility of agencies' digital signatures.

#### IT management

As the Budget correctly points out, federal agencies should be deriving better results from the \$60 billion spent annually on information technology. Much of that money is wasted on IT systems that are redundant or obsolete. Better management of information resources will help agencies to realize savings at the same time they deliver services more closely targeted to the needs of the public. Improving management will require addressing the severe shortage in skilled federal information technology professionals, as well as managers able to properly oversee IT service contractors. The lion's share of the \$60 billion spent on IT is spent on service contracts, and there is ample evidence to suggest that oversight of these contracts has been deficient.

The Budget suggests several approaches to move to more efficient management of information resources. These require agencies to develop business cases for IT systems, and ensure the systems are consistent with overarching enterprise architectures and agency missions, among other things. The goals are ambitious and laudable, but the effort will succeed or fail largely based on the OMB's ability to communicate effectively to agencies exactly what is expected of them, and to ensure they have the resources and personnel necessary to implement new directives. OMB is also aggressively using its authority under the Clinger-Cohen Act to redirect appropriated IT funds, in a manner it considers more efficient. The Administration must



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consult closely with the relevant oversight and appropriations committees as it moves ahead in this area.

Federal computer security

I am extremely concerned about the many information security weaknesses that are still being identified at federal agencies by the GAO and agency IG's. The Budget candidly acknowledges these ongoing problems, and suggests a number of proposals for enhancing agencies' information security. Foremost among these is ongoing implementation of the Thompson-Lieberman Government Information and Security Reform Act (GISRA), which was re-authorized and updated as part of the E-Government Act (and was renamed the Federal Information Security Management Act, or FISMA). I generally support these and other steps suggested in the Budget. But in an area this vital to our nation's security, it will require adequate funding, as well as good management, to address information security comprehensively and quickly.

**Performance-based Budgeting / Performance Assessment Rating Tool (PART)**

According to the President's Budget, "Federal programs should receive taxpayer dollars only when they prove they achieve results." The Performance Assessment Rating Tool (PART) is a mechanism used by the Administration to evaluate the effectiveness of 20% of the programs in the federal government. PART relies heavily on an assessment of whether the program has good performance goals, and whether the program can show it is meeting those goals. It also looks at the extent to which the program managers collect and use performance information to manage the program and whether the program's purpose is clear and is designed to address a significant need. The results of the program ratings under PART are being used to make budget recommendations.

The Budget does not, however, provide sufficient information to determine how the ratings were achieved and what they were based on. The Administration acknowledges that this rating tool still has "limitations and shortcomings," and these "shortcomings" identified by the Administration are often significant. For example, the Budget notes problems with ensuring consistency and objectivity in the raters' answers to the questions; difficulties faced by agencies in designing good performance measures (and that "there are no 'right' measures for some programs"); failure to give credit for interim progress toward program goals; and the absence of criteria to assess how well a program complements other programs. Given these serious deficiencies, questions arise about whether budget decisions should be based on PART ratings.

Let me provide some examples. Of the programs surveyed using PART, more than half were "unable to demonstrate results." The Budget acknowledges that it is unclear whether this is due to program failure or to the difficulty of measurement. Yet, according to an analysis by the

Performance Institute,<sup>2</sup> the Budget recommends, on average, that programs “not showing results” receive a less than 1 percent budget increase, while those deemed “effective” are rewarded with an average 6 percent funding increase. The Administration has not provided any insight into how such funding decisions were made, *e.g.*, what criteria were used to determine that a program should be cut rather than reaching the conclusion that its funding should be increased because it needs more resources to do its job adequately. In fact, many of the summaries of PART program ratings do not explain any connection between the rating results and the funding recommendation, making the Administration’s use of these ratings difficult, if not impossible, to rely on.

For example, the Community Oriented Policing Services (COPS) program was rated as “results not demonstrated” in part because “the program’s long term goals have no timelines or specific targets.” In addition, the assessment states that although the program used evaluation studies to determine whether its efforts have had an impact on crime, the findings of those studies were “inconclusive.” The summary says that, in response to the rating, the agency will add timeframes to its goals and take additional steps to ensure the independence of its external evaluations, but the Administration does not explain how the PART rating supports the recommendation in the Budget that funding for hiring under this program be completely eliminated, and that the program be cut by over \$500 million overall. In fact, this rating contravenes studies by organizations such as the American Society for Criminology and the Urban Institute that determined that these hiring grants have “resulted in significant reductions in local crime rates” and have had a “broad national impact.” In February 2002, the Attorney General testified that COPS is a “miraculous sort of success” and said, “I think it’s worked very well.” The Senate Commerce, Justice, State Appropriations subcommittee recently disagreed with the Administration’s recommendation to eliminate the COPS hiring program in the FY03 appropriations legislation, noting, “There continues to be a need at the State and local level for additional law enforcement officers, especially in light of the fact that the nation’s first responders are now recognized as the front line of defense against future terrorist attacks.”

The Budget also proposes to eliminate funding for FEMA’s Hazard Mitigation Grant program, which provides post-disaster funding to help prevent damage from future disasters. The PART rating for this program states “results not demonstrated” and notes that the Administration proposes to replace it with a pre-disaster competitive grant program, but does not explain why only those projects whose needs can be identified before disaster strikes are worthy of funding. Experts in emergency management, including the National Emergency Management Association, believe that both pre- and post- disaster programs should coexist. (My views on this FEMA program are presented in more detail below, in a later section of this letter.)

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<sup>2</sup> The Performance Institute is a think tank, located in Arlington, VA, which focuses on performance-based management practices for government agencies.

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A third example is the Administration's proposal to cut funding for the Safe and Drug Free Schools State Grants program in the Department of Education. The intent of this program is to reduce crime in schools in order to provide a safe learning environment, as well as to reduce student smoking and alcohol and drug abuse. This program is the primary one offered by the federal government to help schools address the need to provide a safe learning environment for children. The program assessment, as described in the Budget, states that the program has been found to be "ineffective" and lists several concerns about the program, including the need for performance measures that help improve local programming decisions; the assessment also notes the results of a 2001 Rand study that concluded that the grant funds are spread too thinly to support quality interventions. The Budget proposes to cut this program by \$50 million, but does not explain how this will address the concern that funds are already "spread too thinly" nor how a budget cut will help school districts institute measures that improve programming decisions. This program was reauthorized last year in the No Child Left Behind Act (Public Law 107-110); program redesigns were instituted in this legislation to address some of these concerns. In particular, the new law requires states to report on school safety to the public and requires school districts to implement drug and violence prevention programs of demonstrated effectiveness and grounded in scientifically based research. As the U.S. Department of Education is still finalizing regulations to implement this new law, the Administration's proposal would prematurely cut funding just as states and school districts are moving to carry out these new requirements.

I have long been supportive of vigorous implementation of the Government Performance and Results Act (GPRA), on which the PART ratings attempt to build, and of GPRA's goal of linking performance reporting with agency budgets. However, agencies continue to face challenges in implementing this Act, due in some cases to the difficulties of collecting reliable performance data or in devising quantifiable outcome measures for many kinds of programs (such as the Hazard Mitigation grants program). By failing to make clear what criteria it used to recommend funding cuts in programs rated under PART, the Administration does not send a clear signal regarding the agency behavior it is trying to encourage and instead could seem to be justifying its budgetary preferences with subjective interpretations of unspecified data. The Administration's own failure to clearly state the basis for its decisions is ironic in view of its criticisms of agency failures to document concrete results for programs. Serious questions remain about the Budget's reliance on the PART ratings at a time before PART can be used as it is intended, as a truly "objective, credible and useful" tool.

### **Federal Emergency Management Agency**

#### **Hazard Mitigation Grant Program**

I am troubled by the Administration's proposal to eliminate the Hazard Mitigation Grant program and replace it with a new competitive grant program for pre-disaster mitigation. The

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Hazard Mitigation Grant program provides funds for post-disaster mitigation, in amounts up to 15% of the value of the losses incurred, to help prevent future losses in areas that have experienced a major disaster.

As I understand it, all of the focus under the new competitive grant program would shift to pre-disaster mitigation. Communities would have to compete for this funding under one application deadline. The funding would no longer be tied to when a disaster occurs. A competitive pre-disaster mitigation program also places a premium on the ability of a community to put together a sophisticated and well-planned grant proposal in advance of its needs, which not all communities possess.

While there is clearly value in providing significant funding for pre-disaster mitigation programs, the effect of this proposed shift, as I understand it, is to eliminate post-disaster funding for communities that experience an unexpected major disaster and need assistance to address known problems in a timely fashion. This approach is opposed by experts in the field, including the National Emergency Management Association (NEMA), which represents emergency managers in all 50 states, D.C., and U.S. territories. According to NEMA, replacing the hazard mitigation grant program “would prevent the lessons learned from disasters from being immediately incorporated into mitigation projects . . . [such as] rebuilding at a higher code level, for purchasing repetitive loss properties, and for projects that will prevent or minimize the next disaster.” It seems to me that a better balance between pre- and post-disaster mitigation programs is warranted.

#### *Emergency Food and Shelter Program*

Although I am pleased that the Administration supports continued funding for the Emergency Food and Shelter (EFS) program, I believe funding levels for this highly effective program should be increased. The EFS program, which is administered by FEMA, provides emergency assistance to supplement community efforts to meet food, shelter, and other related needs of homeless and hungry persons in all fifty states. Most of the money is allocated by local boards composed of representatives from religious and other charitable organizations, and administrative overhead is kept to an unusually low amount, less than 3%. In short, this program should serve as a model for the use of local charities in providing needed social services. Although widely praised, and supported by both parties in Congress for the past twenty years, funding for the program has lagged far behind inflation. I am disappointed that the Budget fails to provide any increase in spending for the program over 2002 levels.

I also continue to oppose the Administration’s proposal to transfer the EFS program to the Department of Housing and Urban Development (HUD). FEMA has been successfully administering the EFS program longer than HUD has operated similar programs. In providing funds to more than half of the nation’s counties, the program reaches many rural areas where

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HUD has little or no presence or expertise. The Administration's proposal to transfer EFS to HUD pre-dates the creation of the Department of Homeland Security. If the Administration now contends that FEMA's transfer to the Department of Homeland Security provides some new rationale for the transfer of EFS to HUD, it should state its reasons to Congress.

### **Election Reform**

The Committee held hearings on election reform after the November 2000 elections and heard recommendations from state and local experts on how to improve our flawed federal election system. Based on what we learned, I believe it is imperative that Congress fully fund the Help America Vote Act, which was enacted in October of 2002. This Act addresses the serious problems that the November 2000 election, and some subsequent elections, have exposed in our federal election process. Experts estimate that in the November 2000 election, some 2.5 million Americans had their ballots for President discarded for any number of reasons, including faulty voting equipment and confusing ballots. Many citizens who believed they were eligible to vote were turned away from the polls. Others were denied the right to vote because registration lists were simply not accurate.

The November 2000 election also made it painfully clear that states were being forced to bear the total financial burden for federal elections, and many states lacked the funding necessary to implement more efficient voting systems. Consequently, this legislation authorizes a total of \$3.8 billion for FY 03 - FY 06 to help states and localities meet the requirements for upgrading voting systems, to improve accessibility for disabled and special needs voters, and to implement new procedures to increase voter turnout, educate voters, and identify, deter, and investigate voter fraud. The recently enacted omnibus appropriations bill funds these programs at a level of \$1.5 billion for FY 03, which is almost \$700 million lower than the authorized amount, so it is all the more critical to maintain the level of funding for FY 04 at the same level as this year's funding. This would be a far more appropriate funding level than the \$500 million requested in the President's Budget.

These funds are absolutely essential to protect the voting rights of all Americans, and one of our highest priorities must be to ensure that it is fully funded. They are necessary so that states can implement the requirements of this landmark legislation, which include: adopting voting systems which permit voters to verify their ballot choices and correct errors before their vote is cast; creating computerized, statewide voter registration lists; and adopting voting systems that address the needs of disabled voters, and of voters with limited English proficiency; and implementing provisional balloting so that citizens who show up to vote have the right to cast ballots which can be tabulated if and when their eligibility is verified.

## **Market Oversight**

I am pleased to see that the Administration has proposed substantially increasing the Securities and Exchange Commission's (SEC's) budget to \$842 million, up from the \$467 million the Administration requested for FY 03 and more in keeping with the amounts authorized in the Sarbanes-Oxley Act. The collapse of Enron Corp. amid allegations of widespread fraud and the discovery of large-scale financial misconduct at several other prominent corporations not only erased billions of dollars in employee and investor savings, it triggered a crisis of confidence in U.S. financial markets the effects of which continue to this day. A reinvigorated SEC is critical to restoring stability and confidence to the country's financial markets.

This Committee and its Permanent Subcommittee on Investigations conducted wide-ranging investigations into the collapse of Enron, uncovering deceptive financial reporting and abusive accounting and auditing standards; examining the role of financial institutions in setting up some of the more egregious accounting schemes and the Board of Directors in approving others; and looking at the failure of Wall Street analysts and the credit rating agencies to alert the public to Enron's imminent collapse. The SEC has responsibilities – oversight, regulatory, or enforcement – in addressing the problems revealed. Indeed, the Sarbanes-Oxley Act gives the SEC specific new responsibilities in a number of these areas. The SEC's central role means reform will depend on the Commission having sufficient resources to perform this role well.

More specifically, Committee staff looked directly at the SEC's interactions with Enron, and prepared a report of its findings on the SEC's and others' financial oversight of Enron. The bipartisan staff report found, among other things, that the SEC had failed to review any of Enron's later public filings, missing any opportunity to uncover some of the company's financial problems, and that the SEC had allowed Enron to engage in certain accounting practices and exempted Enron from certain regulatory requirements without following up to see if the company was abusing these allowances. More generally, the report found that the SEC lacked adequate staff and technology to regularly and effectively review companies' financial filings for fraud and other irregularities.

Although the SEC faces significant challenges beyond simply a lack of resources, those resources, I believe, are essential for the SEC to provide meaningful protection to investors, including the ability to review more public filings more efficiently and to implement the important additional safeguards required by the Sarbanes-Oxley Act. I therefore support the Administration's budget request for the SEC.

At the same time, I am concerned that the Administration's proposed Budget for the Federal Energy Regulatory Commission (FERC) does not allocate sufficient resources for the agency's market oversight activities. As part of its Enron investigation, the Committee examined FERC's oversight of Enron's energy dealings, including trading practices that were allegedly

designed to manipulate prices in the California and Western energy markets. The Committee's hearing, and a majority staff memorandum that accompanied it, revealed that FERC was ill-equipped to effectively oversee the country's increasingly deregulated energy markets. Although FERC itself had fostered and promoted this deregulation, it had failed to substantially change its own mode of operations from that which had prevailed in an earlier area of regulated monopolies. In the case of Enron, we discovered that the agency was simply no match for the complex and deceptive practices of the company.

FERC's failings in addressing Enron's manipulative practices reflects the more systemic problems that were documented in a June 2002 GAO report that was prepared at my and Senator Carnahan's request. That report concluded that FERC was not adequately overseeing the evolving and increasingly complex energy markets, and thus not fulfilling its regulatory mandate to ensure that the market produced just and reasonable prices. To accomplish this "mammoth undertaking," GAO concluded that FERC "will have to place the highest priority on developing its oversight function and devote significant management attention and adequate resources to this task." Examining the resources the agency was devoting to this mission, however, our hearing and the majority staff report found that FERC spent a substantially lower percentage of its budget on market oversight and enforcement than other independent agencies with comparable market oversight responsibilities.

This shortcoming, unfortunately, is not corrected in the Administration's budget proposal. For FY 04, the Administration has proposed a \$199.4 million budget for FERC, with only \$31.3 million – less than 16% – of that money allocated for market oversight activities. This represents only a small increase in the amount (and roughly the same percentage) provided for market oversight funding in FY 03. Although money alone will not solve FERC's problems – any shift in resources must be accompanied by a shift in the agency's cultural orientation as well – I believe that a significantly greater portion of FERC's budget than that which has been proposed must be allocated to market oversight. This is necessary if FERC is to effectively oversee the nation's increasingly sophisticated energy markets, protect consumers, and proactively uncover and address the sorts of manipulative practices engaged in by Enron and others.

## **Budget Process**

### *Abuse of reconciliation procedures*

The Administration puts forth a number of proposals it contends will impose budget restraints on the Executive and Legislative branches. Yet at the same time, it has proposed a massive tax cut that would add hundreds of billions of dollars to our mushrooming deficit. I am concerned that the Budget Resolution will include reconciliation instructions directing

committees to report legislation that further aggravates the budget deficits in the short term, and that depletes the remaining budget surpluses in the long term. The budget reconciliation procedures were established for only one purpose, to provide momentum for deficit reduction. It would be an abuse of these procedures to use them to enact tax cuts or other legislation that does not reduce the deficit. (For a comprehensive discussion of this issue, see Senator Byrd's statement of February 15, 2001, in the Congressional Record at S1532 et. seq.)

I am likewise concerned that the Budget Resolution will include reconciliation procedures that direct committees to report legislation including extraneous matter. In particular, Chairmen Domenici and Nickles have indicated that they hope to include reconciliation instructions that would allow for oil development in the Arctic Refuge, a process that admittedly could produce some revenue over time. The two purposes of such a proposal, however, were fully developed on the Senator floor in the past year of debate: (1) to increase domestic production of petroleum; and (2) to stimulate the economy by allegedly producing hundreds of thousands of jobs. A budgetary purpose also was explicitly excluded from the purpose statement for the Arctic drilling amendment filed in last Congress, which was "to create jobs for Americans, to reduce dependence on foreign sources of crude oil and energy, to strengthen the economic determination of the Inupiat Eskimos, and to promote national security." S. Amdt. 3132 (107th Cong.). Any budgetary consequence of an Arctic drilling proposal thus would be "merely incidental" to its specifically-defined purpose and would be extraneous.

In fact, in the 1985 discussion of the Byrd Rule that banned extraneous material, Chairman Domenici expressed his displeasure with just this type of use of the reconciliation process. In particular, Senator Domenici stated, "I do not like to see committees put amendments on reconciliation that they have not been able to pass for years, or in the process of doing reconciliation just add untold numbers of amendments in order to be immune from unlimited debate." Congressional Record, Oct. 24, 1985 at 28972. This statement should preclude consideration of Arctic drilling in a reconciliation bill. Perhaps no other piece of environmental legislation has the long and heated history of the Arctic Refuge debate - it is certainly a controversial measure that the Energy and Natural Resources Committee "has not been able to pass for years" - and Chairmen Nickles and Domenici have indicated that they hope to use the budget process to avoid unlimited debate on the topic.

Finally, I am concerned that an Arctic drilling provision produced by the Energy and Natural Resources Committee would be extraneous because it implicates the jurisdiction of the Environment and Public Works Committee. As the late Senator Chafee wrote in 1991, "The Environment and Public Works Committee has sole jurisdiction over matters relating to the U.S. Fish and Wildlife Service, its programs and the management of fish and wildlife resources generally. The single largest responsibility of the U.S. Fish and Wildlife Service is the management of the National Wildlife Refuge System." Congressional Record, Oct. 31, 1991 at S15612. Any proposal to drill for oil in the Arctic Refuge would clearly affect its management,



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thereby implicating the Environment and Public Works Committee's jurisdiction and making the provision extraneous under the Byrd Rule.

Pay-as-you-go requirements

I support the extension of pay-as-you-go requirements to enforce budget discipline, but the enforcement mechanisms must be applied across the board. "PAYGO" must be applied to tax cut legislation, just as the budget reconciliation process should not be abused to force through fiscally irresponsible legislation. I cannot envision a legitimate policy rationale for exempting tax cuts from the PAYGO requirements. The sole overriding purpose of PAYGO is to impose budgetary discipline; it would be hypocritical to try to avoid its strictures in the case of tax cuts alone, simply out of expedience.

Emergency exemptions

I agree with the Administration that Congress should better define the emergency requirement allowing for exemptions from certain budget enforcement mechanisms. I have long supported the adoption of criteria providing more direction on what constitutes an emergency. At the same time, the Administration proposal is somewhat inflexible; rather than requiring the presence of each of the criteria before the designation can be used, the criteria should be viewed more generally as guidance. If a proposed emergency designation does not meet the criteria, its proponents should be given an opportunity to provide a written justification of why the provision should be accorded emergency status. This is precisely the proposal put forward by Senator Domenici, Senator Thompson, and me, and reported out of the Committee on March 4, 1999.

Biennial budgeting

For several Congresses I have backed biennial budgeting and appropriations legislation; I am pleased that the White House continues to support the concept, which has also been supported by several prior Administrations. Biennial budgeting and appropriations would give Congress more time to work through the budget and appropriations process in an orderly fashion, and it would also allow more time to legislate and engage in oversight.

Automatic continuing resolution

I disagree, however, with the proposition that an automatic continuing resolution would improve Congress's ability to complete the appropriations process in a timely manner. Certainly Congress must work harder to pass its appropriations legislation by October 1, and both the President and Congress should show more flexibility in negotiating the compromises that are required by our political process. When Congress fails to meet its deadlines, it should enact clean continuing resolutions that do not contain political conditions or other measures to change

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the status quo. The Budget refers to this past year's appropriations process as an example of why "government shutdown prevention" legislation is necessary; in fact, Congress avoided a shutdown easily enough by passing a series of continuing resolutions. Further, it is highly questionable that Congress and the President would have resolved their differences on appropriations any sooner if government could have gone on auto-pilot indefinitely.

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I appreciate this opportunity to comment on issues of interest within the purview of the Committee on Governmental Affairs.

Sincerely,

Joseph I. Lieberman

JIL:lbm

cc: The Honorable Susan Collins