

February 24, 2004

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 2005 fiscal year. Based in part on the Administration's Budget recommended to Congress a few weeks ago, I have the following comments and concerns:

Homeland Security

Once again, the Administration's Budget leaves critical gaps in our urgent homeland security effort. This Committee has played a key role in overseeing the federal homeland security effort, including crafting the legislation to create the new Department of Homeland Security (DHS) and conducting oversight on a range of homeland security programs government-wide. The Department has begun to take shape and implement improvements in our homeland defenses, but it and the other federal homeland entities cannot do their jobs without sufficient resources. We must recognize that the homefront of the war on terrorism needs the same vigorous support we are providing our troops overseas.

The Administration is requesting \$47.4 billion for homeland security programs throughout the federal government for FY2005, including about \$27 billion within DHS and about \$20 billion for homeland programs in other departments and agencies. This does represent

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some new resources for homeland security, but the increase is less than meets the eye and far less than is truly needed. For instance, discretionary spending for DHS increases only about 4 percent, and would essentially maintain the status quo rather than allowing for critical new security initiatives. Some key programs – most notably aid to first responders, our homeland security “troops” – will actually be cut. As detailed below, I have identified \$14 billion in critical homeland security needs beyond the Administration’s Budget. Others may help identify additional homeland needs, however, I believe this list identifies many of the most pressing and well-documented shortfalls.

First Responders

I am advocating \$6.6 billion in FY2005 above the Administration’s request to help ensure that first responders have the equipment, training, and other resources they need to prevent, prepare for, and if necessary respond to acts of terrorism. This level will restore drastic cuts the Administration has proposed to established grant programs for first responders, while also increasing overall funding for several programs under the Office of Domestic Preparedness.

Last year, a report by an Independent Task Force sponsored by the Council on Foreign Relations – composed of distinguished former government officials, including a director of the CIA and the FBI, and led by our former colleague Senator Warren Rudman – found that, at current levels, our nation would fall nearly \$100 billion short of meeting the needs of our first responders. The Task Force report listed a number of urgent needs left unmet due to lack of funding – including obtaining interoperable communications equipment, enhancing urban search and rescue capabilities, and providing protective gear and weapons of mass destruction remediation equipment to first responders. How has the Administration responded? With a stunning 31% cut in key funding programs for first responders. My proposal to spend an additional \$6.6 billion on first responders would reverse the Administration’s ill-advised cuts, and provide funding closer to the levels recommended by this distinguished, bi-partisan Task Force.

Within this overall increase, an additional \$4 billion should be dedicated to boost the preparedness of first responders. One key focus of this funding should be on helping first responders obtain interoperable communications equipment so they can “talk to one another” when responding to events. In addition to equipment, this would include funding necessary for planning, evaluation, deployment, and training on the use of modern interoperable communications. Achieving this basic capacity is a top priority for first responders across the country, and one that a federal task force estimates could cost \$18 billion or more. Only a handful of states have made the necessary improvements and the Director of SAFECOM, the principal entity coordinating the federal government’s interoperability initiatives, estimates that,

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at the current rate, it will take twenty years to achieve true communications interoperability in our country. We need a focused federal effort to move toward interoperable communications.

The Budget should also include \$1 billion in FY2005 to fully fund the SAFER Act (Staffing for Adequate Fire and Emergency Response) that is necessary to hire 10,000 additional fire fighters. The SAFER Act authorizes the U.S. Fire Administration to award \$7.6 billion in grants over seven years to career, volunteer, and combination fire departments for the purpose of hiring new firefighters to help communities attain 24-hour staffing to provide adequate protection from fire and fire-related hazards. At a time when budget cuts have forced some local jurisdictions to actually reduce the number of first responders, this funding is necessary to bring fire departments across the nation closer to the minimum level of staffing necessary to meet OSHA safety standards. I would also provide an additional \$250 million to restore the President's proposed cut to Fire Assistance Grants, which provide direct support to fire departments across the country. The need is great – in FY2003 almost 20,000 fire departments requested approximately \$2 billion under the program.

I also advocate an additional \$1.35 billion to restore proposed cuts to three primary law enforcement assistance programs at the Department of Justice – the Local Law Enforcement Block Grant (LLEBG), the Edward Byrne Memorial Grant Program (BYRNE), and the Community Oriented Policing Services Program (COPS). Funding levels for these three programs have declined more than \$1.8 billion since FY2002, representing a dangerous and unwise reduction at a time when the threat from terrorism, but also domestic crime, has clearly increased. My proposal would address the legitimate concerns of our nation's law enforcement community that these cuts from FY2004 levels could significantly weaken the ability of state and local law enforcement agencies to protect our communities from both traditional acts of crime and the new specter of terrorism.

Port and Container Security

Port and container security is another critical concern, given the millions of containers entering our country through ports. Expert assessments have concluded that vulnerabilities with these containers and facilities could be used to wreak havoc on our lives, not to mention our economic well-being. The risk extends beyond our shores, since a container being used to smuggle a bomb or terrorists themselves might travel far inland to its final destination before being opened or searched. While the Administration does propose some increases for Coast Guard personnel, and to improve the security of containers before they reach U.S. shores, it ignores other critical needs.

The physical security of the nation's ports is an urgent priority, and I advocate \$500 million for port security grants in FY2005. The Administration's own Coast Guard has estimated

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it will cost more than \$7 billion over the next decade just to comply with newly passed port security laws and make basic necessary physical security improvements at the ports. More will be needed to implement sophisticated security systems that will close vulnerabilities without putting a stranglehold on trade. In December, the GAO stated that “funding is the most pressing challenge” to accomplishing needed security improvements. Yet in the face of these huge security gaps at the ports, the Administration has proposed only \$46 million to help meet these costs in FY2005. While the federal government cannot fund all of the necessary homeland security infrastructure improvements, the need and risk here are too compelling not to do more.

The President’s Budget also under-funds the Deepwater program to modernize the Coast Guard’s badly aging fleet and equipment. The Coast Guard operates the 39th oldest naval fleet in the world (out of 41) at a time it is being asked to accept ever-greater responsibility for the safety of U.S. citizens. By its own admission, the Administration’s status quo budget proposal will result in a **22**-year timetable for the planned “modernization.” I advocate a far more aggressive investment – an additional \$1.2 billion in FY2005 – to put the Deepwater Initiative on a 10-12 year timetable and give the Coast Guard the tools it needs to perform its rapidly expanding responsibilities. Of course, an increase of this magnitude would warrant careful oversight by the Coast Guard and Congress to ensure that the contracts are managed properly.

Finally, Operation Safe Commerce, a program designed to test innovative ideas and pilot programs in container security, while receiving minimal funding and support from the Administration over the past 3 years, has been zeroed out for FY2005, effectively killing one of the most promising container security programs. I urge that the program be continued and funded at \$25 million in FY2005. And while the Administration has provided some additional funding to increase staffing for the Container Security Initiative, an additional \$15 million (for a total increase of \$40 million) will allow for truly aggressive and effective expansion of this program, which stations Customs officers at overseas ports to help safeguard containers before they reach our shores.

Bioterror

While the President’s Budget for FY2005 appears to make significant increases for bioterrorism, on closer inspection there is little new spending and the Budget actually cuts key existing initiatives to help defend against a bioterror attack. The apparent surge in spending for countermeasures under the BioShield program is actually an accounting anomaly: the \$2.5 billion claimed by the Administration for FY2005 is part of a multi-year advance appropriation provided by Congress last year to cover that program’s funding needs for the next four years, and funding is expected to remain level in the coming year. There are some new funds to improve surveillance to detect a bioterror attack, which I support, yet these increases come largely from cuts in existing bioterror programs at the Centers for Disease Control (CDC) and the Department

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of Health and Human Services (HHS). The most egregious is a \$105 million cut in bioterrorism preparedness grants to state and local health departments. The Administration is cutting another \$39 million in grants to develop hospital surge capacity and eliminating the Metropolitan Medical Response System, both programs aimed at responding to a bioterrorism attack or any other mass casualty event. These are the very programs that the HHS official in charge of terrorism preparedness has said should be increased. Indeed, one public health official likened the Administration's funding proposal to "laying off firefighters while investing in new hoses and ladders." A recent report by the Trust for Public Health concluded that communities are "only modestly better prepared" to respond to a bioterror attack than they were before the 9/11 attacks.

Therefore, I am advocating spending an additional \$1.5 billion to fight bioterrorism. Of this amount, I would direct \$500 million to CDC grants that help state public health departments care for and track infectious disease outbreaks. This spending would restore the proposed cut of \$105 million, and boost spending by about \$400 million. I also advocate a \$1 billion increase in funding for the Health Resources and Services Administration, which provides money to help hospitals increase capacity, training, and supplies. After September 11th, the American Hospital Association developed a needs assessment which estimated that the Nation's financially-strapped hospitals needed roughly \$11.3 billion in additional medicine inventories, protective clothing and equipment for personnel, decontamination facilities, and other basic response capability. At the current funding levels, it would take twenty years to close this gap. This additional funding for the hospital grants would restore the Administration's proposed cut and move us closer toward bioterror preparedness.

Transportation Security

We must do more to secure our transportation systems. The Transportation Security Administration (TSA) is charged with securing all modes of transportation, yet has thus far focused almost exclusively on commercial aviation. The FY2005 Budget request continues this trend, with almost no money requested for non-aviation security improvements. I am advocating an additional \$1.55 billion to help secure our nation's rail and transit systems, and to make further improvements to our aviation security.

Specifically, I am advocating \$500 million for passenger and freight rail security. Rail traffic is a known vulnerability. Indeed, the chairman of the Administration's National Intelligence Council this month indicated that terrorists have looked at the possibility of derailing trains, including those carrying hazardous materials. GAO has documented security concerns regarding rail transport of hazardous materials, and the Senate Commerce Committee approved legislation in the 107th Congress to address a range of rail security needs. Unfortunately, that effort did not succeed and the Administration is not seeking funds for this effort. The \$500

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million I propose would provide money for DHS to conduct detailed risk assessment and security planning, and to help pay for protective measures such as deploying chemical and biological detection equipment, and training employees in terrorism response measures. I urge another \$620 million for transit security grants, such as subway and bus security, to address critical security needs that have already been identified by GAO. The American Public Transportation Association has been actively surveying its members, and has already identified at least \$6 billion in security needs. Most of these transit authorities are financially strapped and unable to make these security improvements without federal help.

While there has been more attention to aviation security, critical needs persist in this area too. I advocate \$200 million to help develop and install technology to detect explosives on persons being screened (not just their baggage); \$200 million for further installation of explosives detection systems in airport baggage handling areas; \$25 million for research and development of cargo screening technologies and for interim screening by existing means; and \$50 million for physical screening of airport workers, many of whom now have access to secure areas of the airport without undergoing such checks.

Other Critical Needs

The Administration's Budget falls short on the people and technologies we need to secure our borders, and I advocate an additional \$1.3 billion for these needs in FY2005.

Congress has authorized significant increases in border personnel in the USA Patriot Act and the Border Security Act, yet the Administration appears far from meeting these directives. A Congressionally-chartered task force (the Data Management Improvement Act or DMIA Task Force) continues to document serious understaffing at the borders and states in its December 2003 report that "insufficient staffing is universally recognized as one of the most critical issues that needs to be addressed." Even some of the reported increases may be illusory: for instance, the Bureau of Customs and Border Protection claims to have met the goal of tripling Border Patrol agents along the Northern border, yet appears to have done so largely by transferring agents from the Southern border. In short, we need a more robust presence at the borders and I am advocating an additional \$300 million to hire additional border security personnel, including ensuring sufficient agricultural inspections.

While this hiring is essential, it is not sufficient. The 2003 DMIA report also identified shortfalls in needed equipment, technologies, facilities, and infrastructure for border personnel. The report calls for such items as improved communication devices, surveillance systems, and fingerprint identification equipment. The list of needs is far longer, and I am urging an additional \$500 million above the President's budget proposal to address some of these requirements. I would also like to devote an additional \$500 million for the development and implementation of

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IT systems to improve border security. Most of this additional money would pay for the rapid development and deployment of biometric technologies to help keep suspected terrorists and other inadmissible aliens out of the country. Congress mandated these technologies in the Border Security Act as part of a required entry-exit system, but the Administration is far from developing – or paying for – a comprehensive plan to enact such a system.

On critical infrastructure, the Administration is disturbingly behind on efforts to conduct key threat and vulnerability assessments that can form the basis for detailed security planning and protective measures. Former Virginia Governor James Gilmore, chairman of a Congressionally chartered commission on homeland security, testifying before Congress in September stressed the critical need for threat and risk assessments to guide the nation's homeland security efforts, and lamented the ongoing lack of such guidance. The President's recent directive on this issue gives Secretary Ridge another year just to develop a plan to "identify, prioritize and coordinate the protection of critical infrastructure and key resources." Further, the budget request appears to actually cut resources for DHS work in this area. Clearly this is urgent work and I am advocating an additional \$500 million to expedite these vital assessments and begin critical protective measures in key areas such as chemical plant security.

Mail Security

The vulnerability of the mail system, and those who operate and use it, has passed from theory to fact, and we must do more to ensure the security of this vital network. Following the anthrax attacks through the mail in 2001, Congress provided emergency funding to the United States Postal Service (USPS) to help acquire and deploy equipment and materials to recover from, detect, prevent, and protect against such attacks, and to protect the safety of postal employees and the public. While much progress has been made, USPS needs to put additional measures in place that will help prevent and protect against future attacks, such as equipment that can detect biological or chemical agents transmitted through the mail and new ventilation and filtration systems in mail processing facilities. Although the President's FY2005 Budget does not include any funding for USPS, I support the USPS request for \$780 million to purchase and install such equipment.

Government Employee Issues

Pay Parity

For FY2005, as in each of the past three years, the Administration's Budget proposes a significant boost in military pay of 3.5 %, for the purpose of ensuring that military compensation remains competitive. Especially now, when our armed forces are deployed in Iraq and other

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dangerous areas to defend our nation, America's 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 and other essential needs. Yet, President Bush now recommends only a 1.5% across-the-board pay raise for federal civilian employees, which is far below the proposed boost in military pay of 3.5 %.

In the past three years, for FY2002, FY2003, and FY2004, 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 FY2005 budget, our commitment to adequate military pay must again be matched by ensuring parity in pay increases for civilian employees.

New Human Resources Management Systems at the Department of Homeland Security and the Department of Defense

The budget requests for the DHS and the Department of Defense (DoD) contain resources to support development and implementation of new human resources management systems for civilian employees at these departments. The establishment of a new human resources management system was authorized by section 841 of the Homeland Security Act of 2002, 6 U.S.C. § 411; and DHS, in collaboration with the Office of Personnel Management (OPM) and after consultation with employee representatives and others, has recently issued proposed regulations to establish the system. The development of a new National Security Personnel System was authorized by section 1101 of the National Defense Authorization Act for Fiscal Year 2004, 5 U.S.C. chapter 99, and DoD is now initiating its implementation of this new authority.

While these relevant statutes differ in significant ways, each authorizes new personnel rules that are “flexible” and “contemporary,” and each specifies fundamental rights and protections of our civil service system that must be preserved. Even beyond what is expressly required in statute, as DHS and DoD proceed with designing and implementing their new personnel systems, it is essential that decision processes be fair and transparent and that effective safeguards be designed and implemented against the kinds of politicization, favoritism, and discrimination that can undermine the integrity of our merit-based civil service system. Mechanisms must be in place to assure adequate pay levels. Employees must also be afforded a

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genuine opportunity to bargain collectively and to effectively participate through their unions in decisions that affect them, and real due process rights must be retained. Congress required that DHS and DOD act jointly with OPM, and in collaboration with and with participation of employee representatives, in establishing new human resources management systems; I expect the departments to fully adhere to these statutory requirements.

Competitive Sourcing

I continue to have serious reservations about the Administration's "Competitive Sourcing Initiative." Although the Administration purports to have finally done away with its numerical quotas, the new Competitive Sourcing Initiative continues to place undue pressure on agencies to perform large numbers of competitions. Rather than imposing a single government-wide numerical quota, the OMB now pressures agencies to develop individualized plans which still reflect unrealistically high goals. The Administration claims these high levels of competitive sourcing will realize cost savings, but they 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.

When conducted fairly, public-private competition can be one of several important tools in helping agencies to reduce costs and become more efficient. The Administration's revisions to the A-76 Circular, however, have resulted in an uneven playing field. The changes to A-76 effect a shift from competitions based on cost to a highly subjective "best value" approach. This standard would almost certainly be manipulated by agencies attempting to meet their unrealistic goals, to the detriment of taxpayers as well as federal workers. The revised A-76 allows agencies to use streamlined procedures for competitions, in which federal employees are not permitted to submit their most competitive bids. Despite the promises of OMB officials, including OMB Director Joshua Bolten, the Administration has not enhanced opportunities for federal employees to bid on new work, and on work currently performed by contractors. Federal employees winning a bid are required to re-compete the work every five years, a mandate not imposed on private contractors, and the consequences of default are more severe for federal employees compared to contractors. Finally, the Administration intervened to block legislation negotiated by appropriators that would have provided federal employees with the same legal standing before GAO on bid protests as is enjoyed by contractors. The Administration's policies suggest that its Competitive Sourcing Initiative is motivated by a desire to steer more work towards the private sector, and not to achieve greater efficiencies or cost savings.

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Use of Appropriated Funds to Pay Senate-Rejected Nominees

The Administration has proposed that Congress omit from its annual spending legislation the traditional prohibition against the use of appropriated funds to pay a person filling a Senate-confirmed position after that person's nomination for the position has been voted down by the Senate. (For FY2004 spending, this provision was enacted as section 609 of Division F, Public Law 108-199, January 23, 2004.) However, this provision appropriately forbids the use of federal funds to facilitate the circumvention of the Senate's constitutional advice-and-consent function, and I urge that the provision be retained for the 2005 fiscal year.

Information Technology

Electronic Government

I am pleased that the Administration continues to make electronic government one of its five management priorities. For 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. The Administration and agencies will have to devote additional resources and the attention of senior management to meeting the 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 am disappointed that the Administration's FY2005 budget requests only \$5 million for the E-Government Fund, out of the \$100 million authorized by the E-Government Act. Appropriations legislation enacted in prior years has significantly underfunded the E-Government Fund. I believe one reason for these low funding levels is that the Administration has not made this funding a priority and has not tried to demonstrate to Congress how the Fund can promote inter-agency IT projects that save money and provide better services to the public. I also strongly support full funding for the ongoing development of the Federal Internet Portal, FirstGov.gov, through which the public can access information and services organized according to citizens' needs rather than agency jurisdiction. Other mandates contained in the E-Government Act, including studies of the digital divide and best practices at Community Technology Centers, and the development of an on-line tutorial to E-Government, are being slowed or blocked entirely because the Administration has never requested the necessary funding. This does not augur well for more ambitious mandates contained in the new law, such as requirements that agencies make government information searchable electronically.

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Privacy and Information Technology

The Administration's FY2005 Budget notes that projects representing more than a third of the \$60 billion in federal IT spending are currently on the "Management Watch List" and need to be improved. The Administration is to be commended for that frank admission. Federal agencies should be deriving better results from the huge sums spent annually on information technology. A significant amount of the \$60 billion 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 Administration's Budget also emphasizes the importance of the E-Government Act mandate that agencies conduct Privacy Impact Assessments (PIAs) whenever they create new IT systems or initiate new collections of personal information. The budget document correctly notes that agencies have attempted to comply with the new mandate "with varying degrees of success." That effort was hampered by the fact that OMB released its PIA guidance months after the law had gone into effect. Stronger OMB leadership will be necessary to ensure agencies understand and properly implement the privacy requirements. I am also troubled by OMB's apparent policy of withholding publication of the PIAs for months after they have been completed by agencies. Transparency is an essential aspect of the PIAs' effectiveness, as the government has an obligation to inform the public how it is safeguarding personal information.

Federal Computer Security

I am concerned about the many information security weaknesses that are still being identified at federal agencies by the GAO and agency IGs. The Budget describes progress in establishing government-wide goals, but candidly acknowledges ongoing problems in meeting them, 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, re-authorized and updated as part of the E-Government Act, and renamed the Federal Information Security Management Act (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 unflagging management efforts, as well as adequate appropriations to support cybersecurity improvements, to address information security comprehensively and quickly.

Government Management

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

For the second year in a row, the Administration's Budget relies on the use of the Performance Assessment Rating Tool (PART) to help inform its funding decisions for agency programs. PART is a mechanism the Administration intends to use each year to evaluate the effectiveness of 20% of the programs in the federal government. Although the Administration has provided more information on its PART analyses in this year's Budget than it did for FY2004, the link between a program's rating under PART and the Administration's funding recommendation for that program remains unclear. In fact, OMB staff has acknowledged that the rating (e.g. "Effective," "Moderately Effective," etc.) received by a program under PART cannot necessarily be predicted by the program's score, and that the final rating received by a program "rarely" gives a full picture of the program's performance.

GAO recently released a report (GAO-04-174) that noted some significant concerns with the use of PART as an evaluation and budget tool, saying that "additional guidance and considerable revisions are needed to meet OMB's goal of an objective, evidence-based assessment tool." For example, GAO states that "inherent challenges exist in assigning a single 'rating' to programs that often have multiple purposes and goals." It notes problems with the rating system itself, such as "subjective terminology and a restrictive yes-no format," as well as inconsistent OMB staff interpretations of the guidance provided for complex PART questions and for defining acceptable measures.

Many programs received a PART rating of "results not demonstrated" because OMB decided that program performance information, performance measures, or both, were insufficient or inadequate. In fact, OMB has substituted its judgment about appropriate goals and measures for those developed by the agency in conjunction with interested stakeholders pursuant to the Government Performance and Results Act (GPRA), which GAO has warned could lead to conflict with agencies' efforts to set and achieve long-term strategic goals under GPRA. And it may be difficult for agencies to adopt and show results under OMB's suggested new goals when the results of OMB's PART analysis are first provided to the agency 6 to 9 months into the fiscal year, yet the agency's failure to utilize these measures and goals is considered when making budget recommendations for the next fiscal year.

GAO also noted that OMB's insistence on "independent, quality evaluations" of a program's effectiveness was difficult for agencies to satisfy because few outside sources would meet OMB's criteria. OMB's guidance for FY2005 was relaxed somewhat to permit some reliance on data from a broader range of evaluations, yet the Administration is proposing for

elimination in FY2005 several programs that have received strong endorsements in independent studies.

For example, the Budget proposes to eliminate funding for the Advanced Technology Program (ATP). The ATP is a government-industry partnership that is part of a national effort to help accelerate the commercialization of high-risk technologies that have significant commercial implications. Although OMB found ATP to be “well-managed” and having demonstrated progress, it rated the program as being only “adequate” in part because of a lack of “clear need.” In addition, the evaluation determined that ATP does not significantly advance high-risk technologies. However, this rating conflicts with numerous studies, including one prominent one by the National Academy of Sciences in 2001, which determined the program was effective and could use more funding wisely. The National Association of Manufacturers (NAM), the Biotechnology Industry Organization (BIO), the Industrial Research Institute, the Alliance for Science and Technology Research in America, and the American Chemical Society have all expressed support for ATP.

The demand for ATP is high as is evident by the fact that more proposals were submitted in 2002 than the previous two years combined. An article in *The Washington Post* reported that “From 1998 to 2001, the federal grant program saw about 400 to 500 business proposals per year. In 2002...it has received 1,075 proposals.” (“With Venture Funds Scarce, Start-up Firms Turn to U.S.”, *The Washington Post*, October 29, 2002.) In the current economy, venture funding is drying up as investors are moving to support more established products, leaving high-risk, ground-breaking developers with little or no private sector funding. ATP helps fill the critical gap between initial research and private sector investment for market viability.

ATP also has proven to be essential to our homeland security, funding several projects in detection, preparedness, prevention, and response with significant applications for homeland security. In particular, ATP has helped develop technologies with promise to bring lower-cost analyses to the detection of biological and chemical weapons.

Similarly, the HOPE VI program, which helps communities rebuild public housing, was rated as “ineffective” and recommended for elimination. The assessment highlights the fact that HOPE VI has been a highly successful program – demolishing 100,000 severely distressed public housing units over the course of its existence – and remarked that it was particularly successful in “removing dangerous public housing.” The primary criticism of the program notes that it is “slow at completing the job.” Some public housing experts contend that these projects take longer in part because of the complex nature of financing and planning mixed-income development projects that include both public and private involvement, and redeveloping some of the most severely distressed urban areas. They add that, without HOPE VI, housing

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authorities will have little resources available to leverage sizable funding from foundations and the private sector needed for revitalization projects.

The recommendation to terminate the program even contradicts laudatory comments given by President Bush during a visit to a public housing development in 2002 that received HOPE VI funding, touting it as a positive and successful housing program. Of particular significance, a 2002 report by the Bipartisan Millennial Housing Commission, appointed by the Congress, noted the detrimental effect severe blight has on educational achievement, crime, and unemployment rates, and tenancy in communities. It stressed the need to help turn around neighborhoods that have “suffered from decades of disinvestments,” stating that HOPE VI “must be maintained both as a preservation and production tool.”

GAO’s report on PART concludes that: “It is unlikely that the broad range of players whose input is critical to [budget] decisions will use performance information unless they believe it is relevant, credible, reliable, and reflective of a consensus about performance goals among a community of interested parties. Similarly, the measures used to demonstrate progress toward a goal, no matter how worthwhile, cannot appear to serve a single set of interests without potentially discouraging the use of this information by others.” To date, the PART evaluations have not met this test and therefore do not provide a sound basis for program funding decisions.

Government Waste

The Improper Payments Information Act of 2002 (Pub. L. 107-300) requires the government to identify programs that are vulnerable to improper payments and to estimate each year the amount of underpayments and overpayments made by these programs. Using estimates voluntarily provided by some agencies, GAO has reported that improper payments of between \$19 billion and \$20.7 billion were made in fiscal years 1999, 2000, and 2001. These improper payments included inadvertent errors, such as duplicate payments, as well as those due to mismanagement, abuse, or fraud. At my request, GAO issued an Executive Guide in October, 2001, *Strategies to Manage Improper Payments* (GAO-02-69G). The Guide provided best practices recommendations for agencies to consider to better manage improper payments in their programs. The Improper Payments Information Act begins the process of putting these recommendations into practice. It is vital that we implement the requirements of this law vigorously to ensure that we are doing all we can to prevent waste of taxpayer dollars.

The first reports of agency estimates are due this March; OMB released guidance to agencies in May 2003 for implementing these requirements. However, the OMB guidance may allow agencies to underreport their spending mistakes. Although the Act requires agencies to report all programs with estimated improper payments of more than \$10 million, OMB’s guidance counsels agencies to focus only on programs whose improper payments also exceed 2.5% of the program’s total spending. This latter threshold does not appear in the Act and could

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allow large programs to escape reporting. OMB should take steps to ensure that all programs whose improper payments exceed \$10 million receive appropriate attention and remedial action, as required by the Act.

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 the Federal Emergency Management Agency (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 recommend any increase in spending for the program over FY2004 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 HUD has little or no presence or expertise.

Budget Process

Government Accounting Reform

The size of our government's spending commitments and priorities – for programs such as social insurance entitlements, national defense, and homeland security – is growing and commands an increasingly substantial portion of our annual budgets. The undisclosed future cost of these commitments and our failure to set aside sufficient funds to pay for these programs into the future is of significant concern.

I have introduced legislation, the Honest Government Accounting Act (S. 1915), that requires the government to create a plan to pay for the long-term debts and entitlements to which it has committed. This plan will enable us to pay the costs of these programs and liabilities by knowing in advance what they will cost and preparing for them. The bill will ensure that the government fully accounts for both its explicit liabilities (public debt) and implicit commitments (social insurance entitlements), compares them to the funding required for other discretionary

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programs, and then adopts fiscal and economic policies that enable it to finance and manage these liabilities and commitments.

I urge the Committee to consider the bill's approach to measuring the government's liabilities and commitments. If we continue to use the present method of cash accounting, we will never be able to manage the government's fiscal policy with a long-term view.

Pay-as-you-go Requirements

I support the extension of pay-as-you-go (PAYGO) requirements to enforce budget discipline, but the enforcement mechanisms must be applied across the board. I cannot envision a legitimate policy rationale for exempting revenue legislation from the PAYGO requirements, as the Administration proposes. The sole overriding purpose of PAYGO is to impose budgetary discipline; it is hypocritical to try to avoid its strictures in the case of tax cuts and increases in discretionary spending, simply out of expedience. S. 1915 would reinstate a tough, across-the-board PAYGO rule. Section 12 of my legislation applies PAYGO to every type of spending and in every case except where there is a declaration of war.

Emergency Designation

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 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.

Reconciliation Bills

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. It is estimated that making the current tax cuts permanent will reduce government revenue by \$2.2 trillion over the next ten years.

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 procedure was established for only one purpose, to provide momentum for deficit

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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, *Congressional Record*, February 15, 2001 at S1532 - S1536.) Section 11 of S. 1915 would bar the use of reconciliation bills for these purposes:

It shall not be in order in the Senate or House of Representatives to consider any reconciliation bill or resolution reported pursuant to a concurrent resolution on the budget that increases the deficit or reduces the surplus for the budget year, for the total period of years covered by the concurrent resolution on the budget or that changes direct spending or revenues causing an adverse impact on the net present value of United States Government liabilities and commitments over 75 years or an indefinite time horizon.

I urge the Committee to support this proposal.

Abuse of Reconciliation Procedures

I am also concerned about any suggestion that the Budget Resolution will include reconciliation procedures that direct committees to report legislation including extraneous matter. In particular, the Administration's Budget includes revenue generated by oil developments in the Arctic refuge, a process that admittedly would produce some revenue. The two purposes of such a proposal, however, were fully developed on the Senate floor in the years of debate on this issue: (1) to increase domestic production of petroleum and thereby offset U.S. imports from the Middle East in general and Iraq in particular; 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 the 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 well-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." 131 *Cong. Rec.* 28972, Oct. 24, 1985. 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 Committee "has not been able to pass for years."

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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 Chaffee 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, thereby implicating the EPW Committee's jurisdiction and making the provision extraneous under the Byrd Rule.

Biennial Budgeting

I have been a long-time backer of 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 strongly disagree with the Administration's claim 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. In fact, the White House and Republican leaders in Congress have no one to blame but themselves for their failure to complete the process in a timely fashion last year. It is far from clear that Congress and the President would have passed appropriations bills any sooner if government could have gone on auto-pilot indefinitely. I find especially troubling the Administration's proposal that the automatic continuing resolution would provide funding at the lower of the President's Budget or the prior year's level. This provision would endow the President with extraordinary power to unilaterally effect severe cuts in government spending.

Other Issues

Election Reform

I propose adding \$590 million above the President's request to ensure that the Help America Vote Act (HAVA) is implemented, and fully funded, for FY2005.

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There can be no doubt that one of our highest priorities must be to restore the faith of all Americans in our election processes. Congress passed HAVA in order to foster much-needed reforms across the country. However, the President's FY2005 Budget does not provide the full funding Congress authorized for this critical task. The Budget request for FY2005 includes only \$65 million for election reform, of which \$40 million is additional funding for requirements grants and \$10 million is for administrative expenses of the Election Administration Commission (EAC). (The request also includes \$5 million for protection and advocacy systems and \$10 million for disability access grants, administered by the HHS.)

According to the Congressional Research Service, the President's request, if enacted, would mean that the country will have fallen some \$800 million short of the approximately \$3.85 billion that Congress authorized for FY2003-2005. It is vital that HAVA be fully funded. The EAC, which is charged with administering the Act, was appointed almost a year after the deadline, and was given only \$1.2 million in operating funds for this fiscal year, rather than the \$10 million authorized, which will make it extremely difficult to ensure that the states receive the funds they need to implement the law. While the President's Budget proposes to fully fund the EAC in FY2005, the Administration would now provide very little funding for grants to states to continue modernizing their election systems.

I appreciate this opportunity to comment on issues of interest within the purview of the Governmental Affairs Committee. Thank you for your attention to these concerns.

Sincerely,

Joseph I. Lieberman
Ranking Member