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### ACTIVITIES

OF THE

### HOUSE COMMITTEE ON GOVERNMENT REFORM

ONE HUNDRED SIXTH CONGRESS

FIRST AND SECOND SESSIONS

1999-2000

(Pursuant to House Rule XI, 1(d))



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## LETTER OF TRANSMITTAL

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HOUSE OF REPRESENTATIVES,  
*Washington, DC, January 2, 2001.*

Hon. JEFF TRANDAHL,  
*Clerk of the House of Representatives*  
*Washington, DC.*

DEAR MR. TRANDAHL: I am pleased to submit the enclosed report entitled, "Activities of the House Committee on Government Reform, 106th Congress, First and Second Sessions."

This report follows the committee's past practice of publishing its activities report annually as a separate final report at the end of a full Congress.

The present report includes matters required by Rule XI, 1(d) to be reported to the House not later than January 2, 2001, on the activities of the committee and in carrying out its duty under Rule X to "review and study, on a continuing basis, the application, administration, execution, and effectiveness" of laws whose subject matter is within the jurisdiction of the committee.

The present report describes fully the committee's jurisdiction and organization, and details its activities. Of particular note, in an extraordinarily productive Congress are committee efforts in the following areas: the year 2000 computer crisis (Y2K); the Federal Employees Health Benefits Program; the Persian Gulf war veterans illness; oversight and implementation of the Results Act; the Anthrax vaccine program, and, review of the Food and Drug Administration and its regulations involving the mandatory program for infants.

Sincerely yours,

DAN BURTON, *Chairman.*



# CONTENTS

	Page
Part One. General statement of organization and activities .....	1
I. Jurisdiction, authority, powers, duties .....	1
II. Historical background .....	9
III. Organization .....	15
A. Subcommittees .....	15
B. Rules of the Committee on Government Reform .....	16
IV. Activities, 106th Congress .....	23
A. Investigative reports .....	23
B. Legislation .....	24
C. Reorganization plans .....	29
D. Committee prints .....	29
E. Committee action on reports of the Comptroller General .....	30
Part Two. Report of Committee Activities .....	31

## I. MATTERS OF INTEREST, FULL COMMITTEE

A. General .....	31
1. Oversight plans of the committees of the U.S. House of Representatives .....	31
2. Investigations .....	33
a. Johnny Chung: Foreign Connections, Foreign Contributions .....	33
b. White House Insider Mark Middleton: His Ties to John Huang, Charlie Trie, and Other Campaign Finance Figures .....	33
c. The Role of John Huang and the Riady Family in Political Fundraising .....	34
d. The State Department's Handling of Allegations of Visa Fraud and Other Irregularities at the United States Embassy in Beijing .....	34
e. National Problems, Local Solutions: Federalism at Work .....	34
f. HUD Losing \$1 Million Per Day—Promised “Reforms” Slow in Coming .....	36
g. Fraud and Waste in Federal Government Programs .....	38
h. The Role of Complementary and Alternative Medicine in our Health Care System .....	39
i. A Review of Vaccine Safety Concerns, Policy Issues, and Concerns of Links to Autism and Other Chronic Conditions .....	79
j. Review of Vaccine Safety and Policy .....	83
k. The Department of Defense' Handling of the Anthrax Vaccine Immunization Program .....	88
l. Missing White House E-mails: Mismanagement of Subpoenaed Records .....	102
m. Contacts Between Northrop Grumman Corporation and the White House Regarding Missing White House E-mails .....	103
n. The Committee's Oversight of the Department of Justice's Campaign Finance Investigation .....	103
o. The Role of Yah Lin “Charlie” Trie in Illegal Political Fundraising .....	104
p. The Justice Department's Implementation of the Independent Counsel Act .....	105

## VI

	Page
A. General—Continued	
2. Investigations—Continued	
q. Has the Department of Justice Given Preferential Treatment to the President and Vice President .....	105
r. Felonies and Favors: A Friend of the Attorney General Gathers Information from the Department of Justice ..	106
s. Russian Threats to United States Security in the Post Cold War Era .....	106
t. Rising Fuel Prices and the Appropriate Federal Response .....	107
u. Further Investigation Into the Events Near Waco, TX in 1993 .....	108
v. Oversight of the Drug Enforcement Administration: Were Criminal Investigations Swayed by Political Considerations? December 6–7, 2000 .....	108
II. INVESTIGATIONS	
A. INVESTIGATIONS RESULTING IN FORMAL REPORTS	
Committee on Government Reform, Hon. Dan Burton, Chairman .....	111
1. “The FALN and Macheteros Clemency: Misleading Explanations, a Reckless Decision, a Dangerous Message,” House Report No. 106–488, December 10, 1999, Third Report by the Committee on Government Reform, together with Dissenting and Additional Views .....	111
2. “The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions,” House Report 106–1023, December 4, 2000, Eighth Report of the Committee on Government Reform, together with Minority and Additional Views .....	113
3. “Janet Reno’s Stewardship of the Justice Department: A Failure to Serve the Ends of Justice,” House Report 106–1027, December 13, 2000, Tenth Report of the Committee on Government Reform, together with Minority Views .....	114
4. “The Tragedy at Waco: New Evidence Examined,” House Report 106–1037, December 28, 2000, Eleventh Report of the Committee on Government Reform, together with Minority Views .....	114
Subcommittee on Criminal Justice, Drug Policy, and Human Resources, Hon. John L. Mica, Chairman .....	115
1. “The Vaccine Injury Compensation Program: Addressing Needs and Improving Practices,” House Report No. 106–977, October 12, 2000, Sixth Report by the Committee on Government Reform .....	115
Subcommittee on Government Management, Information, and Technology, Hon. Stephen Horn, Chairman .....	116
1. “A Citizen’s Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records,” House Report No. 106–50, March 11, 1999, First Report by the Committee on Government Reform .....	116
2. “Making the Federal Government Accountable: Enforcing the Mandate for Effective Financial Management,” House Report 106–170, June 7, 1999, Second Report by the Committee on Government Reform, together with Minority Views .....	119
3. “Making the Federal Government Accountable: Enforcing the Mandate for Effective Financial Management,” House Report 106–802, July 27, 2000, Fifth Report by the Committee on Government Reform, together with Minority Views .....	126
4. “Management Practices at the Office of Workers’ Compensation Programs, U.S. Department of Labor,” House Report 106–1024), December 4, 2000 .....	134
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, Hon. David M. McIntosh, Chairman .....	137
1. “Non-Binding Legal Effect of Agency Guidance Documents,” House Report 106–1009, October 26, 2000, Seventh Report by the Committee on Government Reform, together with Minority and Additional Views .....	137
Subcommittee on National Security, Veterans Affairs, and International Relations, Hon. Christopher Shays, Chairman .....	141

## VII

	Page
Subcommittee on National Security, Veterans Affairs, and International Relations, Hon. Christopher Shays, Chairman—Continued	
1. “The Department of Defense Anthrax Vaccine Immunization Program: Unproven Force Protection,” House Report 106–556, April 3, 2000, Fourth Report by the Committee on Government Reform, together with Dissenting and Supplemental Views .....	141
B. OTHER INVESTIGATIONS	
Full Committee .....	143
1. Investigate the current regulation of Federal wetlands, in particular the area owned by Mr. John Pozsgai of Morrisville, PA .....	143
2. Review of United States Counter-Narcotics Policy .....	144
Subcommittee on the Census .....	146
1. Oversight of the 2000 Census: Community Based Approaches for a Better Enumeration .....	146
2. Oversight of the 2000 Census: Examining the Benefits of Post-Census Local Review .....	147
3. Oversight of the 2000 Census: Examining the America Counts Today [ACT] Initiatives to Enhance Traditional Enumeration Methods .....	148
4. Oversight of the 2000 Census: Examining the Bureau’s Policy to Count Prisoners, Military Personnel, and Americans Residing Overseas .....	149
5. Oversight of the 2000 Census: Community-Based Approaches for a Better Enumeration .....	150
6. Oversight of the 2000 Census: Examining the Census Bureau’s Advertising Campaign .....	151
7. Oversight of the 2000 Census: Discussion of the Effects of Including Puerto Rico in the 2000 U.S. Population Totals .....	152
8. Oversight of the 2000 Census: A Midterm Evaluation of the Local Update of Census Addresses Program .....	153
9. The Rushed Census: Quality over Quantity? .....	154
10. The American Community Survey [ACS]—A Replacement for the Census Long Form? .....	155
11. The Accuracy and Coverage Evaluation [ACE]—Still More Questions than Answers .....	155
12. A Transparent Census? .....	156
13. Census Bureau Data Processing Systems .....	157
14. The Long Form .....	157
Subcommittee on the Civil Service .....	157
1. Federal Reserve Board Retirement Portability .....	157
2. Long-Term Care Insurance for Federal Employees .....	159
3. OPM’s FEHBP Policy Guidance for Fiscal Year 2000 .....	166
4. FEHBP as a Model for Medicare Reform .....	169
5. Implementing the FEHBP Demonstration Project for Military Retirees: A Good Faith Effort or Another Broken Promise? .....	173
6. FEGLI: New Options for Federal Employees .....	179
7. Reauthorization of the Office of Government Ethics .....	182
8. Federal Law Enforcement Retirement: Who Qualifies and Why? .....	184
9. Civilian Personnel Readiness .....	186
10. EEO Data and Complaint Processing Problems .....	193
11. Fulfilling the Promise .....	195
12. The FEHBP Demonstration Project for Medicare-eligible Military Retirees .....	197
13. FEHBP: OPM’s Policy Guidance for 2001 .....	200
14. Wildland Firefighters Pay: Are There Inequities? .....	201
15. Oversight of Wage-Grade Pay in Georgia and Oklahoma .....	203
Subcommittee on Criminal Justice, Drug Policy, and Human Resources .....	205
1. National Drug Control Policy and Practices .....	205
2. Public Safety and Criminal Justice Priorities .....	245
3. International Commerce and Trade .....	248
4. Immigration and Naturalization Service Operations and Resources ..	250
5. Student Education Loans .....	251
6. Health Issues .....	253
7. Housing and Urban Development Problems .....	264
8. The White House and the Privacy Act .....	265
Subcommittee on the District of Columbia .....	268

# VIII

	Page
Subcommittee on the District of Columbia—Continued	
1. New Visions for the District of Columbia .....	268
2. District of Columbia's Year 2000 Conversion Compliance .....	270
3. District of Columbia Public Schools .....	275
4. Public Law 104-8, District of Columbia Financial Responsibility and Management Assistance Authority (D.C. Control Board) .....	277
5. Receiverships .....	278
6. The Washington Metropolitan Area Transit Authority [WMATA] .....	279
Subcommittee on Government Management, Information, and Technology .....	280
1. Year 2000 Computer Challenge .....	280
2. Oversight of Federal Real Property Management .....	295
3. Oversight of the Minerals Management Service's Royalty Valuation Program .....	296
4. Oversight of Government Debt Collection Practices .....	300
5. Oversight of the Department of the Army's Chemical Stockpile Dis- posal Project at the Umatilla Depot, Hermiston, OR .....	305
6. Oversight of Government Procurement .....	307
7. Oversight of Federal Geographic Information Systems Policies and Programs .....	311
8. Implementation of the Government Performance and Results Act .....	312
9. Oversight of the National Archives and Records Administration .....	315
10. Oversight of Issues Involving Individual Privacy .....	317
11. Creating an Office of Management .....	319
12. Oversight of Information Technology in the Federal Government .....	320
13. General Oversight Hearings .....	329
Subcommittee on National Economic Growth, Natural Resources, and Regu- latory Affairs .....	329
1. Investigation of Government-Wide Paperwork Reduction Initiatives and Accomplishments and Leadership in Paperwork Reduction by the Office of Management and Budget's Office of Information and Regulatory Affairs .....	329
2. Investigation of the Office of Management and Budget's Congres- sional Review Act Guidance and Agency Compliance with the Con- gressional Review Act .....	337
3. Investigation of the White House Initiative on Global Climate Change and the Kyoto Protocol .....	341
4. Investigation of Other Environmental Protection Agency Initiatives .....	353
5. Investigation of Two Department of Labor Major Rules .....	358
6. Investigation of Agency Responses to Waiver Requests by the States Under Federal Grant Programs .....	372
7. Investigation of State Environmental Initiatives .....	374
8. Investigation of the Economic Effects of the Proposed Merger of B.F. Goodrich Co. and Coltec Industries .....	375
9. Investigation of Reformulated Gasoline Regulations and Their Effect of Midwest Gasoline Prices .....	376
Subcommittee on National Security, Veterans Affairs, and International Rela- tions .....	377
1. Cabinet Department and Agency Oversight .....	377
2. Oversight of the Application of the Prompt Payment Act in the Department of Defense .....	378
3. Oversight of Department of Defense Anthrax Vaccination Immuniza- tion Program [AVIP] .....	379
4. Oversight of Government-wide Coordination of Programs to Combat Terrorism .....	380
5. Oversight of the Implementation of the Department of Veterans Affairs Hepatitis C Testing and Treatment Initiative .....	381
6. Oversight of the Inter-American Foundation .....	382
7. Oversight of the VA Implementation of the Persian Gulf War Veter- ans Act of 1998 .....	382
8. Views of Veterans Service Organizations .....	382
9. DOD Administration of Investigational New Drugs on U.S. Service Personnel .....	383
10. Defense Security Service Oversight .....	383
11. Combating Terrorism: Management of Medical Supplies .....	384
12. Combating Terrorism: Coordination of Non-medical R&D Pro- grams .....	384
13. Joint Strike Fighter [JSF] Acquisition Reform .....	385



## IX

	Page
Subcommittee on National Security, Veterans Affairs, and International Relations—Continued	
14. F-22 Cost Controls .....	386
15. Combating Terrorism: Assessing Threats, Risk Management, and Establishing Priorities .....	386
16. Department of Defense Chemical and Biological Defense Program: Management and Oversight .....	387
17. Force Protection: Current Individual Protection Equipment .....	388
18. National Missile Defense: Test Failures and Technology Development .....	390
19. The Biological Weapons Convention: Status and Implications .....	391
20. Hepatitis C: Access, Testing and Treatment in the VA Health Care System .....	392
21. VA Health Care in the New Millennium .....	393
22. Oversight of the American Battle Monuments Commission and World War II Memorial .....	393
23. Oversight of the State Department's Compliance with the Results Act and Efforts to Improve Security .....	394
24. Gulf War Veterans' Illnesses .....	394
Subcommittee on the Postal Service .....	395
1. General Oversight of the U.S. Postal Service: The Inspector General; the General Accounting Office; the Postmaster General, and Chief Executive Officer .....	395
2. Y2K Technology Challenge: Will the Postal Service Deliver? .....	401
3. Executive Relocation Benefits .....	405
4. Cost Pertaining to Processing Periodicals .....	406
5. International Postal Policy .....	406
6. "The U.S. Postal Service and the Postal Inspection Service: Market Competition and Law Enforcement in Conflict?" .....	415
7. General Oversight Hearing for the U.S. Postal Service .....	420

## III. LEGISLATION

### A. NEW MEASURES

Subcommittee on the Census .....	429
1. H.R. 929, the 2000 Census Language Barrier Removal Act .....	429
2. H.R. 1058, the Census in the Schools Promotion Act .....	430
3. H.R. 1010, to improve participation in the 2000 decennial census by increasing the amounts available to the Census Bureau for marketing, promotion, and outreach .....	430
4. H.R. 928, 2000 Census Mail Outreach Improvement Act .....	431
5. H.R. 472, Local Census Quality Check Act of 1999 .....	432
6. H.R. 1009, the 2000 Census Community Participation Enhancement Act .....	432
7. H.R. 683, the Decennial Census Improvement Act of 1999 .....	433
8. H. Con. Res. 193, expressing the support of Congress for activities to increase public participation in the decennial census .....	434
9. H.R. 1632, to provide that certain attribution rules be applied with respect to the counting of certain prisoners in a decennial census of population .....	434
10. H.R. 2067, The Military Personnel Home of Record Act of 1999 .....	435
11. H.R. 3581, to make additional funds available to the Secretary of Commerce for purposes of the 2000 decennial census, and for other purposes .....	435
12. H.R. 3649, the Census of Americans Abroad Act .....	436
13. H. Con. Res. 263, expressing support for a National Teach Census Week .....	436
14. H.R. 4085, to provide that decennial census questionnaires be limited to requesting only the information required by the Constitution .....	436
15. H.R. 4154, the Common Sense Census Act of 2000 .....	437
16. H.R. 4158, to limit the penalty that may be assessed for not answering decennial census questions beyond those necessary for an enumeration of the population .....	437
17. H.R. 4188, the Common Sense Census Enforcement Act of 2000 .....	437

	Page
Subcommittee on the Census—Continued	
18. H.R. 4198, to declare United States policy with regard to the constitutional requirement of a decennial census for purposes of the apportionment of Representatives in Congress among the several States .....	438
19. H.R. 4291, to limit the decennial census questionnaires to basic questions needed for an enumeration of the population .....	438
20. H.R. 4458, to limit the information that may be requested on decennial census questionnaires .....	438
21. H.R. 4568, to provide funds for the planning of a special census of Americans residing abroad .....	439
Subcommittee on the Civil Service .....	439
1. H.R. 206, a bill to provide for greater access to child care services for Federal Employees .....	439
2. H.R. 208, a bill to amend title 5, United States Code, to allow for the contribution of certain rollover distributions to accounts in the Thrift Savings Plan, to eliminate certain waiting-period requirements for participating in the Thrift Savings Plan, and for other purposes .....	439
3. H.R. 416, the Federal Retirement Coverage Corrections Act .....	440
4. H.R. 457, the Organ Donor Leave Act .....	441
5. H.R. 807, the Federal Reserve Board Retirement Portability Act .....	441
6. H.R. 915, a bill to authorize a cost of living adjustment in the pay of administrative law judges .....	442
7. H.R. 1451, the Abraham Lincoln Bicentennial Commission Act .....	442
8. H.R. 2904, a bill to amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics, and to clarify the definition of a “special Government employee” under title 18, United States Code .....	442
9. H. Res. 105, to recognize and honor Joe DiMaggio .....	442
10. H. Res. 244, a resolution expressing the sense of the House of Representatives with regard to the U.S. Women’s Soccer Team and its winning performance in the 1999 Women’s World Cup tournament .....	443
11. H. Res. 264, a resolution expressing the sense of the House of Representatives honoring Lance Armstrong, America’s premier cyclist, and his winning performance in the 1999 Tour de France .....	443
12. H. Res. 269, a resolution expressing the sense of the House of Representatives that Joseph Jefferson “Shoeless Joe” Jackson should be appropriately honored for his outstanding baseball accomplishments .....	443
13. H. Res. 279, a resolution congratulating Henry “Hank” Aaron on the 25th anniversary of breaking the Major League Baseball career home run record established by Babe Ruth and recognizing him as one of the greatest baseball players of all time .....	443
14. H. Res. 293, a resolution expressing the sense of the House of Representatives in support of “National Historically Black Colleges and Universities Week.” .....	444
15. H. Res. 324, a resolution supporting National Civility Week, Inc. in its efforts to restore civility, honesty, integrity, and respectful consideration in the United States .....	444
16. H. Res. 344, a resolution recognizing and honoring Payne Stewart and expressing the condolences of the House of Representatives to his family on his death and to the families of those who died with him .....	444
17. H. Res. 363, a resolution recognizing and honoring Sacramento, CA, Mayor Joe Serna, Jr., and expressing the condolences of the House of Representatives to his family and the people of Sacramento on his death .....	445
18. H. Res. 370, a resolution recognizing and honoring Walter Payton and expressing the condolences of the House of Representatives to his family on his death .....	445
19. H. Con. Res. 94, a concurrent resolution recognizing the public need for reconciliation and healing, urging the United States to unite in seeking God, and recommending that the Nation’s leaders call for days of prayer .....	445
20. H.R. 4040, the Long-Term Care Security Act .....	446

# XI

	Page
Subcommittee on the Civil Service—Continued	
21. H.R. 2842, the Federal Employees Health Benefits Children's Equity Act of 1999 .....	446
22. H. Con. Res. 302, Calling on the people of the United States to observe a National Moment of Remembrance to honor the men and women of the United States who died in the pursuit of freedom and peace .....	446
23. H. Con. Res. 376, Expressing the sense of the Congress regarding support for the recognition of a Liberty Day .....	447
24. H. Con. Res. 396, Celebrating the birth of James Madison and his contributions to the Nation .....	447
25. H.R. 3312, Merit Systems Protection Board Administrative Dispute Resolution Act of 1999 .....	447
26. H. Res. 347, Expressing the sense of the House of Representatives in support of "Italian-American Heritage Month" and recognizing the contributions of Italian Americans to the United States .....	448
27. H.R. 460, To amend title 5, United States Code, to provide that the mandatory separation age for Federal firefighters be made the same as the age that applies with respect to Federal law enforcement officers .....	448
28. H. Con. Res. 317, Expressing the sense of the Congress on the death of John Cardinal O'Connor, Archbishop of New York .....	448
29. H. Con. Res. 381, Expressing the sense of the Congress that there should be established a National Health Center Week to raise awareness of health services provided by community, migrant, and homeless health centers .....	448
30. H.R. 4519, Baylee's Law .....	449
31. H.R. 4404, To permit the payment of medical expenses incurred by the U.S. Park Police in the performance of duty to be made directly by the National Park Service, to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision when required by State law, and for other purposes .....	449
32. H.R. 4907, Jamestown 400th Commemoration Commission Act of 2000 .....	449
33. S. 3137, James Madison Commemoration Commission Act .....	449
Subcommittee on the District of Columbia .....	450
1. H.R. 3995, the District of Columbia Receivership Accountability Act of 2000 .....	450
2. H.R. 4387, to provide that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such act is ratified by the voters of the District of Columbia .....	450
3. H.R. 5537, to waive the period of congressional review of the Child in Need of Protection Amendment Act of 2000 .....	450
4. H.R. 1198, District of Columbia Home Rule Act to eliminate congressional review of newly passed District laws .....	451
5. H.R. 433, District of Columbia Management Restoration Act of 1999 .....	451
6. H.R. 974, the District of Columbia College Access Act .....	451
Subcommittee on Government Management, Information, and Technology .....	452
1. H.R. 437, placing a Chief Financial Officer in the Executive Office of the President, becoming part of Public Law 106-58 .....	452
2. S. 468/H.R. 409, the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107 .....	453
3. H.R. 1219, the Construction Industry Payment Protection Act of 1999, becoming Public Law 106-49 .....	454
4. H.R. 1442, the Law Enforcement and Public Safety Enhancement Act of 1999, inserted as a provision of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that passed both the House and Senate, becoming Public Law 106-398 .....	455
5. H.R. 3137/H.R. 4931, the Presidential Transition Act Amendments, becoming Public Law 106-293 .....	456
6. H.R. 3582, the Federal Contractor Flexibility Act of 2000, inserted as a provision of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that passed both the House and Senate and became Public Law 106-398 .....	458

## XII

	Page
Subcommittee on Government Management, Information, and Technology— Continued	
7. H.R. 4110, a bill to amend title 44, U.S. Code, to authorize appropriations for the National Historical Publications and Records Commission for fiscal years 2002 through 2005, passed both the House and Senate, becoming Public Law 106-410 .....	458
8. Legislation to increase the salary of the President of the United States was inserted as a provision of H.R. 2490, the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies Appropriations Act for the fiscal year ending September 30, 2000. The act was signed into law on September 29, 1999, becoming Public Law 106-58 .....	459
9. H.R. 3218, the Social Security Number Confidentiality Act of 1999, passed both the House and Senate, becoming Public Law 106-433 .....	460
10. H.R. 5157, the Freedmen's Bureau Records Preservation Act of 2000, passed the House and Senate, becoming Public Law 106-444 .....	460
11. S. 1707, a bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to provide that certain designated Federal entities shall be establishments under such act and for other purposes, passed both the House and Senate becoming Public Law 106-422 .....	461
12. S. 1993, the Government Information Security Act, inserted as a provision of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that passed both the House and Senate, becoming Public Law 106-398 .....	461
13. S. 2712, the Reports Consolidation Act of 2000, passed both the House and Senate and is awaiting the President's signature .....	462
14. H. Con. Res. 300, recognizing and commending the Nation's Federal workforce for successfully preparing the Nation to withstand any catastrophic year 2000 computer problem disruptions, passed the House of Representatives under suspension of the rules by a vote 409 to 0 .....	463
15. H.R. 436, the Government Waste, Fraud and Error Reduction Act, passed the House of Representatives on February 24, 1999, by a vote of 419 to 1 .....	463
16. H.R. 1827, the Government Waste Corrections Act of 1999, passed the House of Representatives by a vote of 375 to 0 on March 8, 2000 .....	465
17. H.R. 2513, a bill directing the General Services Administration to acquire a building in Terre Haute, IN, passed the House of Representatives under suspension of the rules on November 2, 1999 .....	466
18. H.R. 2885, the Statistical Efficiency Act of 1999, passed the House of Representatives under suspension of the rules by a voice vote on October 26, 2000 .....	467
19. H.R. 4519, Baylee's Law, to amend the Public Buildings Act of 1959 concerning the safety and security of children enrolled in childcare facilities located in public buildings under the control of the General Services Administration, passed the House of Representatives on September 26, 2000 .....	468
20. H. Res. 15, expressing the sense of the House of Representatives regarding Government procurement access for women-owned businesses .....	469
21. H.R. 28, the Quality Child Care for Federal Employees Act .....	469
22. H.R. 1625, the Human Rights Information Act .....	471
23. H.R. 1788, the Nazi Benefits Termination Act of 1999 .....	472
24. H.R. 2376, a bill providing for a procedure for expedited reviews of State grant waiver requests .....	472
25. H.R. 4049, the Privacy Commission Act .....	473
26. H.R. 4181, the Debt Payment Incentive Act of 2000 .....	473
27. H.R. 1599, the Year 2000 Compliance Assistance Act .....	474

# XIII

	Page
Subcommittee on Government Management, Information, and Technology— Continued	
28. H.R. 88, legislation to amend the Treasury and General Govern- ment Appropriations Act of 1999, to repeal the requirement regard- ing data produced under Federal grants and agreements awarded to institutions of higher education, hospitals, and other nonprofit organizations .....	475
29. H.R. 4670, “Chief Information Officer of the United States Act of 2000” .....	475
Subcommittee on National Economic Growth, Natural Resources, and Regu- latory Affairs .....	476
1. H.R. 391, the Small Business Paperwork Reduction Act Amend- ments of 1999 .....	476
2. H.R. 1074, the Regulatory Right-to-Know Act of 1999 .....	478
3. H.R. 2221, Small Business, Family Farms, and Constitutional Pro- tection Act .....	479
4. H.R. 2245, Federalism Act of 1999 .....	480
5. H.R. 2376, a bill to require executive agencies to establish expedited review procedures for granting a waiver to a State under a grant program administered by the agency if another State has already been granted a similar waiver by the agency under such program ..	481
6. H.R. 3521, Congressional Accountability for Regulatory Information Act of 2000, and H.R. 4744, H.R. 4294 and S. 1198, Truth in Regulating Act of 2000 .....	482
Subcommittee on the Postal Service .....	483
1. H.R. 22, The Postal Modernization Act of 1999 .....	483
2. H.R. 100, a bill to establish designation for U.S. Postal Service buildings in Philadelphia, PA .....	507
3. H.R. 170, a bill to require certain notices in any mailing using a game of chance for the promotion of a product or service, and for other purposes .....	509
4. H.R. 197, a bill to designate the facility of the U.S. Postal Service at 410 North 6th Street in Garden City, KS, as the “Clifford R. Hope Post Office” .....	510
5. H.R. 642, a bill to redesignate the Federal building located at 701 South Santa Fe Avenue in Compton, CA, and known as the Comp- ton Main Post Office, as the “Mervyn Malcolm Dymally Post Office Building” .....	511
6. H.R. 643, a bill to redesignate the Federal building located at 10301 South Compton Avenue, in Los Angeles, CA, presently known as the Watts Finance Office, as the “Augustus F. Hawkins Post Office Building” .....	512
7. H.R. 1251, a bill to designate the U.S. Postal Service building lo- cated at 8850 South 700 East, Sandy, UT, as the “Noal Cushing Bateman Post Office Building” .....	513
8. H.R. 1327, a bill to designate the U.S. Postal Service building lo- cated at 34480 Highway 101 South in Cloverdale, OR, as the “Maurine B. Newberger U.S. Post Office” .....	513
9. H.R. 1374, a bill to designate the U.S. Post Office building located at 680 State Highway 130 in Hamilton, NJ, as the “John K. Rafferty Hamilton Post Office Building” .....	515
10. H.R. 1377, a bill to designate the facility of the U.S. Postal Service at 13234 South Baltimore Avenue in Chicago, IL, as the “John J. Buchanan Post Office Building” .....	515
11. H.R. 2307, a bill to designate the building of the U.S. Postal Service located at 5 Cedar Street in Hopkington, MA, as the “Thomas J. Brown Post Office Building” .....	516
12. H.R. 2319, a bill to make the American Battle Monuments Com- mission and the World War II Memorial Advisory Board eligible to use nonprofit standard mail rates of postage .....	517
13. H.R. 2357, a bill to designate the U.S. Post Office located at 3675 Warrensville Center Road in Shaker Heights, OH, as the “Louise Stokes Post Office” .....	518
14. H.R. 2358, a bill to designate the U.S. Post Office located at 3813 Main Street in East Chicago, IN, as the “Lance Corporal Harold Gomez Post Office” .....	519

# XIV

	Page
Subcommittee on the Postal Service—Continued	
15. H.R. 2460, a bill to designate the U.S. Post Office located at 125 Border Avenue West in Wiggins, MS, as the “Jay Hanna “Dizzy” Dean Post Office” .....	519
16. H.R. 2591, a bill to designate the U.S. Post Office located at 713 Elm Street in Wakefield, KS, as the “William H. Avery Post Office” .....	520
17. H.R. 3018, a bill to designate the U.S. Post Office located at 557 East Bay Street in Charleston, SC, as the “Marybelle H. Howe Post Office” .....	520
18. H.R. 3189, a bill to designate the U.S. Post Office located at 14071 Peyton Drive in Chino Hills, CA, as the “Joseph Iletto Post Office” ..	522
19. S. 335, a bill known as the Deceptive Mail Prevention and Enforcement Act .....	523
20. H.R. 2952, To redesignate the facility of the U.S. Postal Service located at 100 Orchard Park Drive in Greenville, SC, as the “Keith D. Oglesby Station” .....	525
21. H.R. 3699 To designate the facility of the U.S. Postal Service located at 8409 Lee Highway in Merrifield, VA, as the “Joel T. Broyhill Postal Building” .....	526
22. H.R. 3701, To designate the facility of the U.S. Postal Service located at 3118 Washington Boulevard in Arlington, VA, as the “Joseph L. Fisher Post Office Building” .....	527
23. H.R. 1666, to designate the facility of the U.S. Postal Service at 200 East Pinckney Street in Madison, FL, as the “Captain Colin P. Kelly Jr. Post Office” .....	528
24. H.R. 4241, to designate the facility of the U.S. Postal Service located at 1818 Milton Avenue in Janesville, WI, as the “Les Aspin Post Office Building” .....	529
25. H.R. 3030, to designate the facility of the U.S. Postal Service located at 757 Warren Road in Ithaca, NY, as the “Matthew F. McHugh Post Office” .....	530
26. H.R. 2938, to designate the facility of the U.S. Postal Service located at 424 South Michigan Street in South Bend, IN, as the “John Brademas Post Office” .....	531
27. H.R. 4658, to designate the facility of the U.S. Postal Service located at 301 Green Street in Fayetteville, NC, as the “J. L. Dawkins Post Office Building” .....	532
28. H.R. 4169, to designate the facility of the U.S. Postal Service located at 2000 Vassar Street in Reno, NV, as the “Barbara F. Vucanovich Post Office Building” .....	533
29. H.R. 3909, a bill to designate the facility of the U.S. Postal Service located at 4601 south cottage Grove Avenue in Chicago, IL, as the “Henry W. McGee Post Office Building” .....	534
30. H.R. 4447, to designate the facility of the U.S. Postal Service located at 919 West 34th Street in Baltimore, MD, as the “Samuel H. Lacy, Sr. Post Office Building” .....	535
31. H.R. 4437, to grant to the U.S. Postal Service the authority to issue semipostals, and for other purposes .....	535
32. H.R. 4430, to redesignate the facility of the U.S. Postal Service located at 11831 Scaggsville Road in Fulton, MD, as the “Alfred Rascon Post Office Building” .....	537
33. H.R. 4157, to designate the facility of the U.S. Postal Service located at 600 Lincoln Avenue in Pasadena, CA, as the “Matthew ‘Mack’ Robinson Post Office Building” .....	537
34. H.R. 4517, to designate the facility of the U.S. Postal Service located at 24 Tsienneto Road in Derry, NH, as the “Alan B. Shepard, Jr. Post Office Building” .....	538
35. H.R. 4554, to redesignate the facility of the U.S. Postal Service located at 1602 Frankford Avenue in Philadelphia, Pennsylvania, as the “Joseph F. Smith Post Office Building” .....	539
36. H.R. 4884, to redesignate the facility of the U.S. Postal Service located at 200 West 2nd Street in Royal Oak, MI, as the “William S. Broomfield Post Office Building” .....	540
37. H.R. 4534, to designate the facility of the U.S. Postal Service located at 114 Ridge Street in Lenoir, NC, as the “James T. Broyhill Post Office Building” .....	541

	Page
Subcommittee on the Postal Service—Continued	
38. H.R. 4615, to redesignate the facility of the U.S. Postal Service located at 3030 Meredith Avenue in Omaha, NE, as the “Reverend J.C. Wade Post Office” .....	541
39. H.R. 3454, to designate the U.S. post office located at 451 College Street in Macon, GA, as the “Henry McNeal Turner Post Office” .....	542
40. H.R. 4484, to designate the facility of the U.S. Postal Service located at 500 North Washington Street in Rockville, MD, as the “Everett Alvarez, Jr. Post Office Building” .....	543
41. H.R. 2302, to designate the building of the U.S. Postal Service located at 307 Main Street in Johnson City, NY, as the “James W. McCabe, Sr. Postal Office Building” .....	544
42. H.R. 4448, to designate the facility of the U.S. Postal Service located at 35 Dolfield Avenue in Baltimore, MD, as the “Judge Robert Bernard Watts, Sr. Post Office Building” .....	545
43. H.R. 4449, to designate the facility of the U.S. Postal Service located at 1908 North Ellamont Street in Baltimore, MD, as the “Dr. Flossie McClain Dedmond Post Office Building” .....	546
44. H.R. 4975, to designate the post office and courthouse located at 2 Federal Square, Newark, NJ, as the “Frank R. Lautenberg Post Office and Courthouse” .....	547
45. H.R. 4625, to designate the facility of the U.S. Postal Service located at 2108 East 38th Street in Erie, PA, as the “Gertrude A. Barber Post Office Building” .....	547
46. H.R. 4786, to designate the facility of the U.S. Postal Service located at 110 Postal Way in Carrollton, GA, as the “Samuel P. Roberts Post Office Building” .....	548
47. H.R. 4450, to designate the facility of the U.S. Postal Service located at 900 East Fayette Street in Baltimore, MD, as the “Judge Harry Augustus Cole Post Office Building” .....	549
48. H.R. 4451, to designate the facility of the U.S. Postal Service located at 1001 Frederick Road in Baltimore, MD, as the “Frederick L. Dewberry, Jr. Post Office Building” .....	549
49. S. 1295, a bill to designate the U.S. Post Office located at 3813 Main Street in East Chicago, IN, as the “Lance Corporal Harold Gomez Post Office” .....	550
50. H.R. 5229, to designate the facility of the U.S. Postal Service located at 219 South Church Street in Odum, GA, as the “Ruth Harris Coleman Post Office” .....	551
51. H.R. 4831, to redesignate the facility of the U.S. Postal Service located at 2339 North California Street in Chicago, IL, as the “Roberto Clemente Post Office” .....	551
52. S. 2686, a bill to amend chapter 36 of title 39, United States Code, to modify rates relating to reduced rate mail matter, and for other purposes .....	552
53. H.R. 4853, to redesignate the facility of the U.S. Postal Service located at 1568 South Glen Road in South Euclid, OH, as the “Arnold C. D’Amico Station” .....	553
54. H.R. 5143, to designate the facility of the U.S. Postal Service located at 3160 Irvin Cobb Drive, in Paducah, KY, as the “Morgan Station” .....	554
55. H.R. 5144, to designate the facility of the U.S. Postal Service located at 203 West Paige Street, in Tompkinsville, KY, as the “Tim Lee Carter Post Office Building” .....	554
56. H.R. 5068, to designate the facility of the U.S. Postal Service located at 5927 Southwest 70th Street in Miami, FL, as the “Marjory Williams Scrivens Post Office” .....	555
57. H.R. 5210, to designate the facility of the U.S. Postal Service located at 200 South George Street in York, PA, as the “George Atlee Goodling Post Office Building” .....	555
58. H.R. 5016, to redesignate the facility of the U.S. Postal Service located at 514 Express Center Drive in Chicago, IL, as the “J.T. Weeker Service Center” .....	556
59. H.R. 5903, to designate the facility of the U.S. Postal Service located at 2305 Minton Road in West Melbourne, FL, as the “Ronald W. Reagan Post Office Building” .....	557

## XVI

	Page
Subcommittee on the Postal Service—Continued	
60. S. 3194, a bill to designate the facility of the U.S. Postal Service located at 431 George Street in Millersville, PA, as the “Robert S. Walker Post Office” .....	558
61. H.R. 4339, to designate the facility of the U.S. Postal Service located at 440 South Orange Blossom Trail in Orlando, FL, as the “Arthur ‘Pappy’ Kennedy Post Office Building” .....	559
62. H.R. 4400, to designate the facility of the U.S. Postal Service located at 1601–1 Main Street in Jacksonville, FL, as the “Eddie Mae Steward Post Office Building” .....	559
B. REVIEW OF LAWS WITHIN COMMITTEE’S JURISDICTION	
Full Committee .....	560
Subcommittee on the Census .....	562
Subcommittee on the Civil Service .....	566
Subcommittee on the District of Columbia .....	571
Subcommittee on Government Management, Information, and Technology .....	571
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs .....	572
Subcommittee on National Security, Veterans Affairs, and International Relations .....	573
Subcommittee on the Postal Service .....	574
IV. OTHER CURRENT ACTIVITIES	
A. GENERAL ACCOUNTING OFFICE REPORTS	
Full Committee .....	577
Subcommittee on the Census .....	595
Subcommittee on the Civil Service .....	609
Subcommittee on Criminal Justice, Drug Policy, and Human Resources .....	623
Subcommittee on the District of Columbia .....	638
Subcommittee on Government Management, Information, and Technology .....	643
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs .....	651
Subcommittee on National Security, Veterans Affairs, and International Relations .....	656
Subcommittee on the Postal Service .....	665
V. PRIOR ACTIVITIES OF CURRENT OR CONTINUING INTEREST	
Subcommittee on the Census .....	683
Subcommittee on the Civil Service .....	684
Subcommittee on the District of Columbia .....	684
Subcommittee on Government Management, Information, and Technology .....	684
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs .....	686
Subcommittee on National Security, Veterans Affairs, and International Relations .....	686
Subcommittee on the Postal Service .....	687
VI. PROJECTED PROGRAMS FOR THE 107TH CONGRESS	
Subcommittee on the Census .....	689
Subcommittee on Government Management, Information, and Technology .....	689
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs .....	691
VII. VIEWS OF THE RANKING MINORITY MEMBER	
Views of Hon. Henry A. Waxman .....	693



## Union Calendar No. 615

106TH CONGRESS } 2d Session	HOUSE OF REPRESENTATIVES	{ REPORT 106-1053
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### ACTIVITIES OF THE HOUSE COMMITTEE ON GOVERNMENT REFORM

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JANUARY 2, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BURTON, from the Committee on Government Reform,  
submitted the following

### REPORT

### ACTIVITIES OF THE HOUSE COMMITTEE ON GOVERNMENT REFORM, 106TH CONGRESS, 1ST AND 2D SESSIONS, 1999 AND 2000

#### PART ONE. GENERAL STATEMENT OF ORGANIZATION AND ACTIVITIES

##### I. Jurisdiction, Authority, Powers, and Duties

The Rules of the House of Representative provide for election by the house, at the commencement of each Congress, of 19 named standing committees, 1 of which is the Committee on Government Reform.<sup>1</sup> Pursuant to House Resolutions 6, 7, and 8 (adopted January 6, 1999), membership of the Committee on Government Reform was set at 43 (7 vacancies at the beginning of the session) including 1 independent. Membership was decreased to 42 pursuant to communication to the Speaker on January 7, 1999. House Resolution 30 (adopted February 2, 1999), increased the membership to 44. Membership was decreased to 43 pursuant to communication to the Speaker on March 3, 1999. House Resolution 119 (adopted March 17, 1999), filled that vacancy, and brought the membership back to 44. Membership was decreased to 43 pursuant to communication to the Speaker on June 24, 1999, and House Resolution

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<sup>1</sup> Rule X.

223 filled that vacancy on June 25, 1999, and brought the membership back to 44.

Rule X sets forth the committee's jurisdiction, functions, and responsibilities as follows:

## RULE X

### ORGANIZATION OF COMMITTEES

#### *Committees and their legislative jurisdiction*

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

\* \* \* \* \*

#### (h) Committee on Government Reform

(1) The Federal Civil Service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National Archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

In addition to its legislative jurisdiction under the proceeding provisions of this paragraph (and its oversight functions under clause 2(a) (1) and (2)), the committee shall have the function of performing the activities and conducting the studies which are provided for in clause 4(c).

\* \* \* \* \*

#### *General oversight responsibilities*

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction or a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

\* \* \* \* \*

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

\* \* \* \* \*

#### *Additional functions of committees*

4. \* \* \*

(c)(1) The Committee on Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the House such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) study intergovernmental relationships between the United States and the States and municipalities and between the United States and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved and shall be in-

cluded in the report of any such other committee when required by clause 3(c)(4) of Rule XIII.

\* \* \* \* \*

### *Travel*

8. (a) Local currencies owned by the United States shall be made available by the committee and its employees engaged in carrying out their official duties outside the United States or its territories or possessions. Appropriated funds, including those authorized under this clause and clause 6 and 8, may not be expended for the purpose of defraying expenses of members of a committee or its employees in a country where local currencies are available for this purpose.

(b) The following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(1) A member or employee of a committee may not receive or expend local currencies for subsistence in a country for a day at a rate in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for his expenses for a day at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual, unreimbursed expenses (other than for transportation) he incurred during that day.

(3) Each member or employee of a committee shall make to the chairman of the committee an itemized report showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished and funds expended for any other official purpose and shall summarize in these categories the total foreign currencies or appropriated funds expended. Each report shall be filed with the chairman of the committee not later than 60 days following the completion of travel for use in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(c)(1) In carrying out the activities of a committee outside the United States in a country where local currencies are unavailable, a member or employee of a committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for his expenses for a day, at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual unreimbursed expenses (other than for transportation) he incurred during that day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside the United States unless the member or employee actually paid for the transportation.

(d) The restrictions respecting travel outside the United States set forth in paragraph (c) also shall apply to travel outside the United States by a member, delegate, Resident Commissioner, officer, or employee of the House authorized under any standing rule.

\* \* \* \* \*

Rule XI provides authority for investigations and studies, as follows:

## RULE XI

### PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

*In general—*

1. \* \* \*

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

\* \* \* \* \*

(d)(1) Each committee shall submit to the House, no later than January 2 of each odd-numbered year a report on the activities of that committee under this rule and Rule X during the Congress ending at noon on January 3 of each year.

\* \* \* \* \*

*Power to sit and act; subpoena power*

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of Rule XII), a committee or subcommittee is authorized (subject to subparagraph (2)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chairman of the committee, or a member designated by the chairman, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority of the members voting, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chairman of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chairman of the committee or by a member designated by the committee.

\* \* \* \* \*

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

\* \* \* \* \*

The committee also exercises authority under a number of congressional mandates.

#### 5 U.S.C. § 2954

##### *Information to committees of Congress on request*

An Executive agency, on request of the Committee on Government Reform of the House of Representatives, or of any seven members thereof, or on request of the Committee on Governmental Affairs of the Senate, or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

#### 18 U.S.C. § 1505

##### *Obstruction of proceedings before departments, agencies and committees*

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigation demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title or imprisoned not more than five years, or both.

#### 31 U.S.C. § 712

##### *Investigating the use of public money*

The Comptroller General shall—

\* \* \* \* \*

(3) analyze expenditures or each executive agency the Comptroller general believes will help Congress decide whether public money has been used and expended economically and efficiently;

(4) make an investigation and report ordered by either House of Congress or a committee of Congress having jurisdiction over revenue, appropriations, or expenditures; and

(5) give a committee of Congress having jurisdiction over revenue, appropriations, or expenditures the help and information the committee requests.

31 U.S.C. § 719

*Comptroller General reports*

\* \* \* \* \*

(d) The Comptroller General shall report on analyses carried out under section 712(3) of this title to the Committees on Governmental Affairs and Appropriations of the Senate, the Committees on Government Operations and Appropriations of the House, and the committees with jurisdiction over legislation related to the operation of each executive agency.<sup>2</sup>

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<sup>2</sup>For other requirements which relate to General Accounting Office reports to Congress and which affect the committee, see secs. 232 and 236 of the Legislative Reorganization Act of 1970 (Public Law 91-510).





## II. Historical Background

The committee was initially named the “Committee on Expenditures in the Executive Departments.” Its antecedents are summarized in Cannon’s *Precedents of the House of Representatives*, vol. VII, sec. 2041, p. 831 (1935), as follows:

This committee was created, December 5, 1927, by the consolidation of the eleven Committees on Expenditures in the various Departments of the Government, the earliest of which has been in existence since 1816. As adopted in 1816, the rule did not include the committees for the Departments of Interior, Justice, Agriculture, Commerce, and Labor. The committees for these Departments date, respectively, from 1860, 1874, 1889, 1905 and 1913.

The resolution providing for the adoption of the rules of the 70th Congress discontinued the several committees on expenditures and transferred their functions to the newly created Committee on Expenditures in the Executive Departments:

On March 17, 1928, the jurisdiction of the committee was further enlarged by the adoption of a resolution, reported from the Committee on Rules, including within its jurisdiction the independent establishments and commissions of the Government.<sup>3</sup>

From 1928 until January 2, 1947, when the Legislative Reorganization Act of 1946 became effective, the committee’s jurisdiction was set forth in Rule XI, 34, of the House Rules then in force (H. Doc. 810, 78th Cong., 2d Sess. (1945)), as follows:

### POWERS AND DUTIES OF COMMITTEES

\* \* \* \* \*

34. The examination of the account and expenditures of the several departments, independent establishments, and commissions of the Government, and the manner of keeping the same; the economy, justness, and correctness of such expenditures; their conformity with appropriation laws; the proper application of public moneys; the security of the Government against unjust and extravagant demands; retrenchment; and enforcement of the payment of moneys due the United States; the economy and accountability of public officers; the abolishment of useless offices, shall all be subjects within the jurisdiction of the Committee on Expenditures in the Executive Departments.

The Legislative Reorganization Act of 1946, section 121(b), as adopted in paragraphs (a), (b), and (c) of Rule XI, 8, of later Rules of the House (XI, 9, the 93d Congress), provided:

<sup>3</sup> Examples of the wide-ranging scope of the committee’s jurisdiction may be found in Cannon’s *Precedents*, *supra* VII, secs. 2042–2046, pp. 831–833 (1935).

## COMMITTEE ON GOVERNMENT OPERATIONS

- (a) Budget and accounting measures, other than appropriations.
- (b) Reorganizations in the executive branch of Government.
- (c) Such committee shall have the duty of—

- (1) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the House as it deems necessary or desirable in connection with the subject matter of such reports;

- (2) studying the operation of Government activities at all levels with a view to determining the economy and efficiency;

- (3) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

- (4) studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.

(d) For the purpose of performing such duties the committee, or any subcommittee thereof when authorized by the committee, is authorized to sit, hold hearings, and act at such times and places within the United States, whether or not the House is in session, is in recess, or has adjourned, to require by subpoena or otherwise the attendance of such witnesses and the production of such papers, documents, and books, and to take such testimony as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or of any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.<sup>4</sup>

Rule X, 1(h), of later Rules of the House, effective January 3, 1975 (H. Res. 988, 93d Congress), added the additional jurisdiction of general revenue sharing (formerly within the jurisdiction of the Committee on Ways and Means), and the National Archives (formerly within the jurisdiction of the Committee on Post Office and Civil Service).

Rule X, 1(j)(6), of later Rules of the House listed the additional jurisdiction of measures providing for off-budget treatment of Federal agencies or programs, which was added by sec. 225 of Public Law 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 (December 12, 1985).

The 1946 act contained the following proviso:

*Provided:* That unless otherwise provided herein, any matter within the jurisdiction of a standing committee prior to January 2, 1947, shall remain subject to the jurisdiction of that committee or of the consolidated committee succeeding to the jurisdiction of that committee.

This proviso was omitted from the Rules of the House adopted January 3, 1954.<sup>5</sup>

Under the Constitution (Art. I, sec. 5, cl. 2), "Each House may determine the Rules of its Proceedings." Omission of the proviso made no substantive change, since the scope of the committee's ju-

<sup>4</sup> Paragraph (d) was adopted by the House Feb. 10, 1947.

<sup>5</sup> H. Res. 5, 83d Cong. (99 Cong. Rec. 15). Cf. rules in H. Doc. 562, 82d Congress, 2d session p. 328 and in H. Doc. 739, 81st Congress, 2d session, p. 326.

risdiction prior to January 2, 1947, was embraced within the committee's jurisdiction as stated in existing rules and precedents.

The committee's membership, which was fixed at 21 when it was consolidated on December 5, 1927, was increased to 25 when the Legislative Reorganization Act of 1946 became effective on January 2, 1947. In 1951, the committee's membership was increased to 27.<sup>6</sup> From 1953 until January 1963, the committee's membership remained at 30.<sup>7</sup>

Pursuant to H. Res. 108, 88th Congress, adopted January 17, 1963, the committee was enlarged to 31 members. In the 89th Congress the membership of the committee was increased to 34 through passage of H. Res. 114, January 14, 1965. The committee membership in the 90th and 91st Congresses of 35 was first established by H. Res. 128, 90th Congress, approved January 16, 1967. The committee membership in the 92d Congress of 39 was established by H. Res. 192, approved February 4, 1971. It was raised to 41 by H. Res. 158, adopted January 24, 1973. The committee membership of 42 was established by H. Res. 1238, adopted July 17, 1974. It was increased to 43 by H. Res. 76 and 101, adopted January 20 and 28, 1975. Membership was maintained at 43 in the 95th Congress by H. Res. 117 and 118, adopted January 19, 1977. The committee membership was set at 39 in the 96th Congress by H. Res. 62 and 63, adopted January 24, 1979. The committee membership was set at 40 in the 97th Congress by H. Res. 44 and 45, adopted January 28, 1981. The committee size was increased to 41 by the adoption of H. Res. 370 on February 24, 1982. Pursuant to House Res. 26 and 27, adopted January 6, 1983, the committee membership for the 98th Congress was set at 39.

In the 99th Congress, the membership of the committee was set at 39, pursuant to House Res. 34 and 35, adopted January 30, 1985.

In the 100th Congress, the membership of the committee was set at 39, pursuant to House Res. 45 and 54, adopted January 21 and 22, 1987, respectively.

The committee membership in the 101st Congress was established at 39 by H. Res. 29 and H. Res. 45, adopted January 19 and 20, 1989. In the 102d Congress, the membership of the committee was set at 41, pursuant to H. Res. 43, 44, and 45, adopted January 24, 1991. The committee membership was set at 42 in the 103d Congress by adoption of H. Res. 8 and 9 on January 5, 1993; H. Res. 34 on January 21, 1993; H. Res. 67 on February 4, 1993; and H. Res. 92 and 93 on February 18, 1993. The membership was increased to 44 by the adoption of H. Res. 185 on May 26, 1993 and H. Res. 219 on July 21, 1993. Beginning September 28, 1949, the moneys appropriated to the committee were, by House resolution in each session of Congress, available for expenses incurred in conducting studies and investigations authorized under Rule XI, whether made within or without the United States.<sup>8</sup> In the 103d Congress, these matters are covered in paragraph (b) of clause 1

<sup>6</sup>H. Res. 60, 83d Congress, 1st session (97 Cong. Rec. 194).

<sup>7</sup>H. Res. 98, 83d Cong. (99 Cong. Rec. 436); H. Res. 94, 84th Cong. (101 Cong. Rec. 484); H. Res. 89, 85th Cong. (103 Cong. Rec. 412); H. Res. 120, 86th Cong. (105 Cong. Rec. 841); H. Res. 137, 87th Cong. (107 Cong. Rec. 1677).

<sup>8</sup>See items under (1) in footnote 3, of the final calendar of the committee for the 93d Congress (Dec. 31, 1974).

of Rule XI, as set forth above and by clause 5 of Rule XI. The funds for the committee's studies and oversight function during the first session of the 103d Congress were provided by H. Res. 107 adopted March 30, 1993 (H. Rept. 103-38).

The committee's name was changed to "Committee on Government Operations" by House resolution adopted July 3, 1952.<sup>9</sup> The *Congressional Record* indicates the reasons underlying that change in name were, in part, as follows:<sup>10</sup>

This committee is proposing the indicated change in the present title, in view of the fact that it is misleading and the committees' functions and duties are generally misunderstood by the public.

\* \* \* \* \*

In suggesting the proposed change the committee based its decision on what it considers to be the major or primary function of the committee under the prescribed duties assigned to it to study "the operations of Government activities at all levels with a view to determining its economy and efficiency." It was the unanimous view of the members of the committee that the proposed new title would be more accurate in defining the purposes for which the committee was created and in clearly establishing the major purpose it serves.

On January 4, 1995, the 104th Congress opened with a Republican majority for the first time in 40 years. The shift in power from Democrats to Republicans has resulted in a realignment of the legislative priorities and committee structure of the House of Representatives. Perhaps more than any other committee, the Government Reform and Oversight Committee embodies the changes taking place in the House of Representatives. The committee itself was created by consolidating three committees into one, resulting in budget and staff cuts of nearly 50 percent. The committees that were merged include the Committee on Government Operations, the Committee on the Post Office and Civil Service, and the Committee on the District of Columbia.

In order to fulfill the Republican *Contract with America*, the committee held a record number of hearings and mark-ups, and members cast more votes during this 100 day period than in any of the previous committees' histories. Over the course of the first session, 295 bills and resolutions were referred to the committee and its subcommittees, and 180 hearings and mark-ups were held. Five of these measures have been signed into law.

In addition to its greatly expanded legislative jurisdiction, the Government Reform and Oversight Committee serves as the chief investigative committee of the House, with the authority to conduct governmentwide oversight. Because the committee only authorizes money for a small number of Federal agencies and programs, it is able to review government activities with an independent eye.

<sup>9</sup>H. Res. 647, 82d Cong. (98 Cong. Rec. 9217). The Senate had made a similar change of name on Mar. 3, 1952, after conference between the chairman of the House and Senate Committees on Expenditures in the Executive Departments to ensure both Houses would adopt the change in name. S. Res. 280, 82d Cong. (98 Cong. Rec. 1701-1702). See also S. Rept. No. 1231, 80th Congress, 2d Session, p. 3 (May 3, 1948).

<sup>10</sup>Letter of Feb. 19, 1952, from the chairman, Senate Committee on Expenditures in the Executive Departments, Senator McCellan to Senator Hayden (98 Cong. Rec. 1702).

The 105th Congress and the Committee on Government Reform and Oversight under the leadership of Chairman Dan Burton (R-IN) enjoyed a productive year as Congress continued to move closer to its goals established with the *Contract of America* to seek to achieve a smaller, smarter, and more efficient common sense government.

In addition to the committee's oversight responsibilities, the Government Reform and Oversight Committee has pursued an active, ambitious agenda throughout the 105th Congress with its ongoing investigation of suspected illegal activities during the 1996 elections. The committee and its eight subcommittees conducted 252 hearings during the 105th Congress. Hearings covered the following diverse range of subjects: the year 2000 computer crisis; the Federal Employees Health Benefits Program; the Persian Gulf war veterans illnesses; oversight and implementation of the Results Act; the investigation of political fundraising improprieties; and the review of the Food and Drug Administration and its regulations respecting terminally ill patients and their ability to access desired treatments. The committee staff developed a website ([www.house.gov/reform](http://www.house.gov/reform)) to post up-to-minute witness testimonies and reports for quick availability.

The committee continued its oversight responsibilities during the 106th Congress. The committee continued with its investigation of suspected illegal fundraising during the 1996 elections. Hearings also covered a wide range of subjects including the year 2000 computer crisis, the President's decision to grant clemency to members of the FALN, oversight of Plan Colombia, an aid package to Colombia to fight the drug war, the Federal Employees Health Benefits Program, and oversight of the FDA. The committee also passed legislation to recover millions of dollars from government contractors through auditing. The committee also maintained a website ([www.house.gov/reform](http://www.house.gov/reform)) to post not only witness testimonies but live coverage of committee hearings.



### III. Organization

#### A. SUBCOMMITTEES <sup>11</sup>

In order to perform its functions and to carry out its duties as fully and as effectively as possible, the committee, under the leadership of its chairman, the Honorable Dan Burton of Indiana, at the beginning of the 106th Congress, established eight standing subcommittees, which cover the entire field of executive expenditures and operations. The names, chairpersons, and members of these subcommittees are as follows:

Subcommittee on the Census, Dan Miller, *Chairman*; members: John T. Doolittle, Thomas M. Davis, Paul Ryan, Mark Souder, Carolyn B. Maloney, Danny K. Davis, and Harold E. Ford, Jr.

Subcommittee on the Civil Service, Joe Scarborough, *Chairman*; members: Asa Hutchinson, Constance A. Morella, John L. Mica, Dan Miller, Elijah E. Cummings, Eleanor Holmes Norton, and Thomas H. Allen.

Subcommittee on Criminal Justice, Drug Policy, and Human Resources, John L. Mica, *Chairman*; members: Bob Barr, Benjamin A. Gilman, Christopher Shays, Ileana Ros-Lehtinen, Mark Souder, Steven C. LaTourette, Asa Hutchinson, Doug Ose, David Vitter, Patsy T. Mink, Edolphus Towns, Elijah E. Cummings, Dennis J. Kucinich, Rod R. Blagojevich, John F. Tierney, Jim Turner, and Janice D. Schakowsky.

Subcommittee on the District of Columbia, Thomas M. Davis, *Chairman*; members: Constance A. Morella, Stephen Horn, Joe Scarborough, Eleanor Holmes Norton, Carolyn B. Maloney, and Edolphus Towns.

Subcommittee on Government Management, Information, and Technology, Stephen Horn, *Chairman*; members: Judy Biggert, Thomas M. Davis, Greg Walden, Doug Ose, Paul Ryan, Jim Turner, Paul E. Kanjorski, Major R. Owens, Patsy T. Mink, and Carolyn B. Maloney.

Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, David M. McIntosh, *Chairman*; members: Paul Ryan, Bob Barr, Lee Terry, Greg Walden, Helen Chenoweth-Hage, John T. Doolittle, David Vitter, Dennis J. Kucinich, Tom Lantos, Paul E. Kanjorski, Bernard Sanders, and Harold E. Ford, Jr.

Subcommittee on National Security, Veterans Affairs, and International Relations, Christopher Shays, *Chairman*; members: Mark Souder, Ileana Ros-Lehtinen, John M. McHugh, John L. Mica, David M. McIntosh, Mark Sanford, Lee Terry, Judy Biggert, Helen Chenoweth-Hage, Rod R. Blagojevich, Tom

<sup>11</sup>The chairman and the ranking minority member of the committee are ex-officio members of all subcommittees on which they do not hold a regular assignment (committee rule 9).

Lantos, Robert E. Wise, Jr., Gary A. Condit, John A. Tierney, Thomas H. Allen, Edolphus Towns, Bernard Sanders, and Janice D. Schakowsky.

Subcommittee on the Postal Service, John M. McHugh, *Chairman*; members: Mark Sanford, Benjamin A. Gilman, Steven C. LaTourette, Dan Miller, Chaka Fattah, Major R. Owens, and Danny K. Davis.

## B. RULES OF THE COMMITTEE ON GOVERNMENT REFORM

Rule XI, clause 1(a)(1)(A) of the House of Representatives provides:

Except as provided in subdivision (B), the Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) A motion to recess from day to day, and a motion to dispense with the first reading (in full) of a bill or resolution, if printed copies are available, each shall be privileged in committees and subcommittees and shall be decided without debate.

Rule XI, clause 2(a)(1) of the House of Representatives provides, in part:

Each standing committee shall adopt written rules governing its procedures. \* \* \*

In accordance with this, the Committee on Government Reform, on February 3, 1999, adopted the rules of the committee:

### *Rule 1.—Application of Rules*

Except where the terms “full committee” and “subcommittee” are specifically referred to, the following rules shall apply to the Committee on Government Reform and its subcommittees as well as to the respective chairmen.

[See House Rule XI, 1.]

### *Rule 2.—Meetings*

The regular meetings of the full committee shall be held on the second Tuesday of each month at 10 a.m., when the House is in session. The chairman is authorized to dispense with a regular meeting or to change the date thereof, and to call and convene additional meetings, when circumstances warrant. A special meeting of the committee may be requested by members of the committee following the provisions of House Rule XI, clause 2(c)(2). Subcommittees shall meet at the call of the subcommittee chairmen. Every member of the committee or the appropriate subcommittee, unless prevented by unusual circumstances, shall be provided with a memorandum at least three calendar days before each meeting or hearing explaining (1) the purpose of the meeting or hearing; and (2) the names, titles, background and reasons for appearance of any witnesses. The ranking minority member shall be responsible for providing the same information on witnesses whom the minority may request.

[See House Rule XI, 2(b).]



*Rule 3.—Quorums*

A majority of the members of the committee shall form a quorum, except that two members shall constitute a quorum for taking testimony and receiving evidence, and one-third of the members shall form a quorum for taking any action other than the reporting of a measure or recommendation. If the chairman is not present at any meeting of the committee or subcommittee, the ranking member of the majority party on the committee or subcommittee who is present shall preside at that meeting.

[See House Rule XI, 2(h).]

*Rule 4.—Committee Reports*

Bills and resolutions approved by the committee shall be reported by the chairman following House Rule XIII, clauses 2–4.

A proposed report shall not be considered in subcommittee or full committee unless the proposed report has been available to the members of such subcommittee or full committee for at least three calendar days (excluding Saturdays, Sundays, and legal holidays, unless the House is in session on such days) before consideration of such proposed report in subcommittee or full committee. Any report will be considered as read if available to the members at least 24 hours before consideration, excluding Saturdays, Sundays, and legal holidays unless the House is in session on such days. If hearings have been held on the matter reported upon, every reasonable effort shall be made to have such hearings available to the members of the subcommittee or full committee before the consideration of the proposed report in such subcommittee or full committee. Every investigative report shall be approved by a majority vote of the committee at a meeting at which a quorum is present.

Supplemental, minority, or additional views may be filed following House Rule XI, clause 2(1) and Rule XIII, clause 3(a)(1). The time allowed for filing such views shall be three calendar days, beginning on the day of notice, but excluding Saturdays, Sundays, and legal holidays (unless the House is in session on such a day), unless the committee agrees to a different time, but agreement on a shorter time shall require the concurrence of each member seeking to file such views.

An investigative or oversight report may be filed after sine die adjournment of the last regular session of Congress, provided that if a member gives timely notice of intention to file supplemental, minority or additional views, that member shall be entitled to not less than seven calendar days in which to submit such views for inclusion with the report.

Only those reports approved by a majority vote of the committee may be ordered printed, unless otherwise required by the Rules of the House of Representatives.

*Rule 5.—Proxy Votes*

In accordance with the Rules of the House of Representatives, members may not vote by proxy on any measure or matter before the committee or any subcommittee.

[See House Rule XI, 2(f).]

*Rule 6.—Record Votes*

A record vote of the members may be had upon the request of any member upon approval of a one-fifth vote.

[See House Rule XI, 2(e).]

*Rule 7.—Record of Committee Actions*

The committee staff shall maintain in the committee offices a complete record of committee actions from the current Congress including a record of the rollcall votes taken at committee business meetings. The original records, or true copies thereof, as appropriate, shall be available for public inspection whenever the committee offices are open for public business. The staff shall assure that such original records are preserved with no unauthorized alteration, additions, or defacement.

[See House Rule XI, 2(e).]

*Rule 8.—Subcommittees; Referrals*

There shall be eight subcommittees with appropriate party ratios that shall have fixed jurisdictions. Bills, resolutions, and other matters shall be referred by the chairman to subcommittees within two weeks for consideration or investigation in accordance with their fixed jurisdictions. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdiction, the chairman shall refer the matter as he may deem advisable. Bills, resolutions, and other matters referred to subcommittees may be reassigned by the chairman when, in his judgement, the subcommittee is not able to complete its work or cannot reach agreement therein. In a subcommittee having an even number of members, if there is a tie vote with all members voting on any measure, the measure shall be placed on the agenda for full committee consideration as if it had been ordered reported by the subcommittee without recommendation. This provision shall not preclude further action on the measure by the subcommittee.

[See House Rule XI, 1(a)(2).]

*Rule 9.—Ex Officio Members*

The chairman and the ranking minority member of the committee shall be ex officio members of all subcommittees. They are authorized to vote on subcommittee matters; but, unless they are regular members of the subcommittee, they shall not be counted in determining a subcommittee quorum other than a quorum for taking testimony.

*Rule 10.—Staff*

Except as otherwise provided by House Rule X, clauses 6, 7 and 9, the chairman of the full committee shall have the authority to hire and discharge employees of the professional and clerical staff of the full committee and of subcommittees.

*Rule 11.—Staff Direction*

Except as otherwise provided by House Rule X, clauses 6, 7 and 9, the staff of the committee shall be subject to the direction of the chairman of the full committee and shall perform such duties as he may assign.

*Rule 12.—Hearing Dates and Witnesses*

The chairman of the full committee will announce the date, place, and subject matter of all hearings at least one week before the commencement of any hearings, unless he determines, with the concurrence of the ranking minority member, or the committee determines by a vote, that there is good cause to begin such hearings sooner. So that the chairman of the full committee may coordinate the committee facilities and hearings plans, each subcommittee chairman shall notify him of any hearing plans at least two weeks before the date of commencement of hearings, including the date, place, subject matter, and the names of witnesses, willing and unwilling, who would be called to testify, including, to the extent he is advised thereof, witnesses whom the minority members may request. The minority members shall supply the names of witnesses they intend to call to the chairman of the full committee or subcommittee at the earliest possible date. Witnesses appearing before the committee shall so far as practicable, submit written statements at least 24 hours before their appearance and, when appearing in a non-governmental capacity, provide a curriculum vitae and a listing of any Federal Government grants and contracts received in the previous fiscal year.

[See House Rules XI, 2 (g)(3), (g)(4), (j) and (k).]

*Rule 13.—Open Meetings*

Meetings for the transaction of business and hearings of the committee shall be open to the public or closed in accordance with Rule XI of the House of Representatives.

[See House Rules XI, 2 (g) and (k).]

*Rule 14.—Five-Minute Rule*

(1) A committee member may question a witness only when recognized by the chairman for that purpose. In accordance with House Rule XI, clause 2(j)(2), each committee member may request up to five minutes to question a witness until each member who so desires has had such opportunity. Until all such requests have been satisfied, the chairman shall, so far as practicable, recognize alternately based on seniority of those majority and minority members present at the time the hearing was called to order and others based on their arrival at the hearing. After that, additional time may be extended at the direction of the chairman.

(2) The chairman, with the concurrence of the ranking minority member, or the committee by motion, may permit an equal number of majority and minority members to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side.

(3) The chairman, with the concurrence of the ranking minority member, or the committee by motion, may permit committee staff of the majority and minority to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side.

(4) Nothing in paragraph (2) or (3) affects the rights of a Member (other than a Member designated under paragraph (2)) to question a witness for 5 minutes in accordance with paragraph (1) after the questioning permitted under paragraph (2) or (3). In any extended questioning permitted under paragraph (2) or (3), the chairman shall determine how to allocate the time permitted for extended questioning by majority members or majority committee staff and the ranking minority member shall determine how to allocate the time permitted for extended questioning by minority members or minority committee staff. The chairman or the ranking minority member, as applicable, may allocate the time for any extended questioning permitted to staff under paragraph (3) to members.

*Rule 15.—Investigative Hearing Procedures*

Investigative hearings shall be conducted according to the procedures in House Rule XI, clause 2(k). All questions put to witnesses before the committee shall be relevant to the subject matter before the committee for consideration, and the chairman shall rule on the relevance of any questions put to the witnesses.

*Rule 16.—Stenographic Record*

A stenographic record of all testimony shall be kept of public hearings and shall be made available on such conditions as the chairman may prescribe.

*Rule 17.—Audio and Visual Coverage of Committee Proceedings*

(1) An open meeting or hearing of the committee or a subcommittee may be covered, in whole or in part, by television broadcast, radio broadcast, Internet broadcast, and still photography, unless closed subject to the provisions of House Rule XI, clause 2(g). Any such coverage shall conform with the provisions of House Rule XI, clause 4.

(2) Use of the Committee Broadcast System shall be fair and nonpartisan, and in accordance with House Rule XI, clause 4(b), and all other applicable rules of the House of Representatives and the Committee on Government Reform. Members of the committee shall have prompt access to a copy of coverage by the Committee Broadcast System, to the extent that such coverage is maintained.

(3) Personnel providing coverage of an open meeting or hearing of the committee or a subcommittee by Internet broadcast, other than through the Committee Broadcast System, shall be currently accredited to the Radio and Television Correspondents' Galleries.

*Rule 18.—Additional Duties of Chairman*

The chairman of the full committee shall:

- (a) Make available to other committees the findings and recommendations resulting from the investigations of the commit-

tee or its subcommittees as required by House Rule X, clause 4(c)(2);

(b) Direct such review and studies on the impact or probable impact of tax policies affecting subjects within the committee's jurisdiction as required by House Rule X, clause 2(c);

(c) Submit to the Committee on the Budget views and estimates required by House Rule X, clause 4(f), and to file reports with the House as required by the Congressional Budget Act;

(d) Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the committee;

(e) Prepare, after consultation with subcommittee chairmen and the minority, a budget for the committee which shall include an adequate budget for the subcommittees to discharge their responsibilities;

(f) Make any necessary technical and conforming changes to legislation reported by the committee upon unanimous consent; and

(g) Will designate a vice chairman from the majority party.

*Rule 19.—Commemorative Stamps*

The committee has adopted the policy that the determination of the subject matter of commemorative stamps properly is for consideration by the Postmaster General and that the committee will not give consideration to legislative proposals for the issuance of commemorative stamps. It is suggested that recommendations for the issuance of commemorative stamps be submitted to the Postmaster General.



## IV. Activities, 104th Congress

### SUMMARY

1. In the 106th Congress, the committee approved and submitted to the House of Representatives 11 investigative reports. In addition, the committee issued 3 committee prints.

2. In the 106th Congress, 530 bills and resolutions were referred to the committee and studied. Of these, the committee reported 35. In addition, 22 Memorials, 6 Petitions, and 6 Presidential messages were referred to the committee.

3. Pursuant to its duty of studying reports of the Comptroller General, the Congress officially received 1,754 such reports during the 106th Congress, and the committee studied 68. In addition, 1,418 Executive communications were referred to the committee under clause 2 of Rule XIV of the House of Representatives.

4. The full committee met 71 days during the 106th Congress while the subcommittees met a total of 269 days in public hearings, markups, and meetings.

The significant actions taken by the committee with respect to these and a considerable number of other matters are discussed in detail below.

### A. INVESTIGATIVE REPORTS

During the 106th Congress, the Committee on Government Reform approved and submitted to the Congress eleven reports of an investigative nature.

For convenience, the published reports are listed here with the names of the originating subcommittees. A more detailed discussion of the material will be found in part two below in the breakdown of the committee's activities by subcommittee:

First Report (H. Rept. 106-50): "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records." (Subcommittee on Government Management, Information, and Technology)

Second Report (H. Rept. 106-170): "Making the Federal Government Accountable: Enforcing the Mandate for Effective Financial Management."\* (Subcommittee on Government Management, Information, and Technology)

Third Report (H. Rept. 106-488): "The FALN and Macheteros Clemency: Misleading Explanations, A Reckless Decision, A Dangerous Message."\*

Fourth Report (H. Rept. 106-556): "The Department of Defense Anthrax Vaccine Immunization Program: Unproven

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\*Denotes report accompanied by additional, dissenting, minority, separate, or supplemental views.

Force Protection.”\* (Subcommittee on National Security, Veterans Affairs, and International Relations)

Fifth Report (H. Rept. 106–802): “Making the Federal Government Accountable: Enforcing the Mandate for Effective Financial Management.”\* (Subcommittee on Government Management, Information, and Technology)

Sixth Report (H. Rept. 106–977): “The Vaccine Injury Compensation Program: Addressing Needs and Improving Practices.” (Subcommittee on Criminal Justice, Drug Policy, and Human Resources)

Seventh Report (H. Rept. 106–1009): “Non-Binding Legal Effect of Agency Guidance Documents.”\* (Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs)

Eighth Report (H. Rept. 106–1023): “The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions.”\*

Ninth Report (H. Rept. 106–1024): “Management Practices at the Office of Workers’ Compensation Programs, U.S. Department of Labor.”\* (Subcommittee on Government Management, Information, and Technology)

Tenth Report (H. Rept. 106–1027): “Janet Reno’s Stewardship of the Justice Department: A Failure to Serve the Ends of Justice.”\*

Eleventh Report (H. Rept. 106–1037): “The Tragedy at Waco: New Evidence Examined.”\*

## B. LEGISLATION

The legislative jurisdiction of the Committee on Government Reform covers a wide range of important governmental operations. In accordance with jurisdiction assumed from the former Committee on Government Reform and Oversight, the committee receives all budget and accounting measures other than appropriations; all measures relating to the overall economy and efficiency of Government operations and activities, including Federal procurement, intergovernmental relationships, general revenue sharing (the latter subject was formerly within the jurisdiction of the Committee on Ways and Means), and the National Archives (formerly within the jurisdiction of the Committee on Post Office and Civil Service); all reorganization plans and bills providing for the establishment of new departments in the executive branch such as the Department of Energy and Department of Education; and most other reorganization legislation, examples of which are legislation to reorganize the intelligence community, international trade, and regulatory agencies. Other legislation includes debt collection and proposals relating to delinquent payments and paperwork reduction. It also receives legislation dealing with the General Services Administration, including the Federal Property and Administrative Services Act of 1949 and special bills authorizing the Administrator of General Services to make specific transfers of property, plus legislation dealing with the General Accounting Office, the Office of

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\*Denotes report accompanied by additional, dissenting, minority, separate, or supplemental views.



Management and Budget, the Administration Expenses Act, the Travel Expenses Act, the Employment Act of 1946, and Javits-Wagner-O'Day Act relating to the sale of products and services of blind and other handicapped persons. In addition, the committee has jurisdiction over the Freedom of Information provisions of the Administrative Procedure Act, the Privacy, the Government in the Sunshine Act, and the Federal Advisory Committee as well as the Inspector General Act.

Rule X, 2(b) of the standing Rules of the House, requires the committee to see and review the administration of all laws in the legislative jurisdiction, and Rule XI, 1(d) requires that the committee report to the House thereon by the end of each Congress. The present report outlines the extent and nature of the committee and subcommittee activities constituting the review.

During the 106th Congress, the committee reviewed 530 bills and resolutions referred to it and reported 85 to the House. The measures reported or ordered reported are discussed more fully in part two below. However, they are listed with the name of the subcommittee that initially considered them:

H.R. 28, to provide for greater access to child care services for Federal employees. (Subcommittee on Government Management, Information, and Technology.)

H.R. 170, to require certain notices in any mailing using a game of chance for the promotion of a product or service, and for other purposes. (Subcommittee on the Postal Service.)

H.R. 206, to provide for greater access to child care services for Federal employees. (Subcommittee on the Civil Service.)

H.R. 208, to amend title 5, United States Code, to allow for the contribution of certain rollover distributions to accounts in the Thrift Savings Plan, to eliminate certain waiting-period requirements for participating in the Thrift Savings Plan, and for other purposes. (Subcommittee on the Civil Service.)

H.R. 391, to amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements applicable to small businesses, and for other purposes. (Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs.)

H.R. 416, to provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes. (Subcommittee on the Civil Service.)

H.R. 436, to reduce waste, fraud, and error in Government programs by making improvements with respect to Federal management and debt collection practices, Federal payment systems, Federal benefit programs, and for other purposes. (Subcommittee on Government Management, Information, and Technology.)

H.R. 437, to provide for a Chief Financial Officer in the Executive Office of the President. (Subcommittee on Government Management, Information, and Technology.)

H.R. 457, to amend title 5, United States Code, to increase the amount of leave time available to a Federal employee in any year in connection with serving as an organ donor, and for other purposes. (Subcommittee on the Civil Service.)

H.R. 472, to amend title 13, United States Code, to require the use of post census local review as part of each decennial census. (Subcommittee on the Census.)

H.R. 683, to facilitate the recruitment of temporary employees to assist in the conduct of the 2000 decennial census of population. (Subcommittee on the Census.)

H.R. 807, to amend title 5, United States Code, to provide portability of service credit for persons who leave employment with the Federal Reserve Board to take positions with other Government agencies. (Subcommittee on the Civil Service.)

H.R. 915, to authorize a cost of living adjustment in the pay of administrative law judges. (Subcommittee on the Civil Service.)

H.R. 928, to require that the 2000 decennial census include either a general or targeted followup mailing of census questionnaires, whichever, in the judgment of the Secretary of Commerce, will be more effective in securing the return of census information from the greatest number of households possible. (Subcommittee on the Census.)

H.R. 929, to amend title 13, United States Code, to require that the questionnaire used in taking the 2000 decennial census be made available in certain languages besides English. (Subcommittee on the Census.)

H.R. 974, to establish a program to afford high school graduates from the District of Columbia the benefits of in-State tuition at state colleges and universities outside the District of Columbia, and for other purposes. (Subcommittee on the District of Columbia.)

H.R. 1009, to authorize the awarding of grants to cities, counties, tribal organizations, and certain other entities for the purpose of improving public participation in the 2000 decennial census. (Subcommittee on the Census.)

H.R. 1010, to improve participation in the 2000 decennial census by increasing the amounts available to the Bureau of the Census for marketing, promotion, and outreach. (Subcommittee on the Census.)

H.R. 1058, to promote greater public participation in decennial censuses by providing for the expansion of the educational program commonly referred to as the "Census in Schools Project." (Subcommittee on the Census.)

H.R. 1074, to provide Governmentwide accounting of regulatory costs and benefits, and for other purposes. (Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs.)

H.R. 1219, to amend the Office of Federal Procurement Policy Act and the Miller Act, relating to payment protections for persons providing labor and materials for Federal construction projects. (Subcommittee on Government Management, Information, and Technology.)

H.R. 1442, to amend the Federal Property and Administrative Services Act of 1949 to continue and extend authority for transfers to State and local governments of certain property for law enforcement, public safety, and emergency response pur-

poses. (Subcommittee on Government Management, Information, and Technology.)

H.R. 1788, to deny Federal public benefits to individuals who participated in Nazi persecution. (Subcommittee on Government Management, Information, and Technology.)

H.R. 1827, to improve the economy and efficiency of Government operations by requiring the use of recovery audits by Federal agencies. (Subcommittee on Government Management, Information, and Technology.)

H.R. 2842, to amend chapter 89 of title 5, United States Code, concerning the Federal Employees Health Benefits [FEHB] Program, to enable the Federal Government to enroll an employee and his or her family in the FEHB Program when a State court orders the employee to provide health insurance coverage for a child of the employee but the employee fails to provide the coverage. (Subcommittee on the Civil Service.)

H.R. 2885, to provide uniform safeguards for the confidentiality of information acquired for exclusively statistical purposes, and to improve the efficiency and quality of Federal statistics and Federal statistical programs by permitting limited sharing of records among designated agencies for statistical purposes under strong safeguards. (Subcommittee on Government Management, Information, and Technology.)

H.R. 2904, to amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics. (Subcommittee on the Civil Service.)

H.R. 3137, to amend the Presidential Transition Act of 1963 to provide for training of individuals a President-elect intends to nominate as department heads or appoint to key positions in the Executive Office of the President. (Subcommittee on Government Management, Information, and Technology.)

H.R. 3995, to establish procedures governing the responsibilities of court-appointed receivers who administer departments, offices, and agencies of the District of Columbia government. (Subcommittee on the District of Columbia.)

H.R. 4040, a bill to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, member of the uniformed services, and civilian and military retirees, provide for the correction of retirement coverage errors under chapters 83 and 84 of such title, and for other purposes. (Subcommittee on the Civil Service.)

H.R. 4049, to establish the Commission for the Comprehensive Study of Privacy Protection.

H.R. (Subcommittee on Government Management, Information, and Technology.)

H.R. 4110, to amend titled 44, United States Code, to authorize appropriations for the National Historical Publications and Records Commission for fiscal years 2002 through 2005. (Subcommittee on Government Management, Information, and Technology.)

H.R. 4387, to provide that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such Act is ratified by the voters of the District of Columbia. (Sub-

committee on Government Management, Information, and Technology.)

H.R. 4437, to grant the U.S. Postal Service the authority to issue semipostals, and for other purposes. (Subcommittee on the Postal Service.)

H.R. 4744, to require the General Accounting Office to report to Congress on economically significant rules of Federal agencies, and for other purposes. (Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs.)

There were also 50 bills dealing with the naming or renaming of U.S. Postal Offices. A description of these bills is located under the Subcommittee on the Postal Service section found on page 483.

#### OTHER LEGISLATIVE ACTION

The following bills were referred to the Committee on Government Reform. After analysis by committee staff members the committee was discharged from further consideration, and therefore, the bills were not reported. They are listed as follows:

H. Con. Res. 317, expressing the sense of the Congress on the death of John Cardinal O'Connor, Archbishop of New York.

H. Con. Res. 381, expressing the sense of the Congress that there should be established a National Health Center Week to raise awareness of health services provided by community, migrant, and homeless health centers.

H. Res. 264, expressing the sense of the House of Representatives honoring Lance Armstrong, America's premier cyclist, and his winning performance in the 1999 Tour de France. (Subcommittee on the Civil Service.)

H. Res. 293, expressing the sense of the House of Representatives in support of "National Historically Black Colleges and Universities Week." (Subcommittee on the Civil Service.)

H. Res. 376, expressing the sense of the House of Representatives in support of "National Children's Memorial Day." (Subcommittee on the Civil Service.)

H. Res. 677, expressing the commitment of the Member of the House of Representatives to fostering a productive and collegial partnership with the 43rd President.

H.R. 417, to amend the Federal Election Campaign Act of 1971 to reform the financing of campaigns for elections for Federal office, and for other purposes. (Subcommittee on the Civil Service.)

H.R. 433, to restore the management and personnel authority of the Mayor of the District of Columbia.

H.R. 642, to redesignate the Federal building located at 701 South Santa Fe Avenue in Compton, CA, and known as the Compton Main Post Office, as the "Mervyn Malcolm Dymally Post Office Building." (Subcommittee on the Postal Service.)

H.R. 1907, to amend title 35, United States Code, to provide enhanced protection for inventors and innovators, protect patent terms, reduce patent litigation, and for other purposes.

H.R. 3312, to clarify the Administrative Dispute Resolution Act of 1996 to authorize the Merit Systems Protection Board to establish under such act a 3-year pilot program that will

provide a voluntary early intervention alternative dispute resolution process to assist Federal agencies and employees in resolving certain personnel actions and disputes in administrative programs. (Subcommittee on the Civil Service.)

H.R. 3488, to designate the U.S. Post Office located at 60 Third Avenue in Long Branch, NJ, as the "Pat King Post Office Building." (Subcommittee on the Postal Service.)

H.R. 4404, to permit the payment of medical expenses incurred by the U.S. Park Police in the performance of duty to be made directly by the National Park Service, to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision which required by State law, and for other purposes. (Subcommittee on the Civil Service.)

H.R. 4519, to amend the Public Buildings Act of 1959 concerning the safety and security of children enrolled in childcare facilities located in public buildings under the control of the General Services Administration. (Subcommittee on Government Management, Information, and Technology.)

H.R. 4853, to redesignate the facility of the U.S. Postal Service located at 1568 South Glen Road in South Euclid, OH, as the "Arnold C. D'Amico Station." (Subcommittee on the Postal Service.)

H.R. 4931, to provide for the training or orientation of individuals, during a Presidential transition, who the President intends to appoint to certain key positions, to provide for a study and report on improving the financial disclosure process for certain Presidential nominees, and for other purposes. (Subcommittee on Government Management, Information, and Technology.)

H.R. 5157, to amend title 44, United States Code, to ensure preservation of the records of the Freedmen's Bureau. (Subcommittee on Government Management, Information, and Technology.)

S. 2686, a bill to amend chapter 36 of title 39, United States Code, to modify rates relating to reduced rate mail matter, and for other purposes.

S. 3062, a bill to modify the date on which the Mayor of the District of Columbia submits a performance accountability plan to Congress, and for other purposes. (Subcommittee on the District of Columbia.)

### C. REORGANIZATION PLANS

The most recent authority of the President to transmit reorganization plans to Congress was reestablished by Public Law 98-614. Approved November 8, 1984, this authority expired on December 31, 1984. Legislation extending executive reorganization authority was not enacted during the 106th Congress.

### D. COMMITTEE PRINTS

Three committee prints, resulting from work by the committee staff, were issued during the 106th Congress, as follows:

“Rules of the Committee on Government Reform, House of Representatives, Together with Selected Rules of the House of Representatives (Including Clause 2 of House Rule XI) and Selected Statutes of Interest.” (Full committee.) (February 1999.)

“Title 5, United States Code, Government Organization and Employees.” (Subcommittee on the Civil Service.) (May 1999.)

“Rules of the Committee on Government Reform, House of Representatives, Together with Selected Rules of the House of Representatives (Including Clause 2 of House Rule XI) and Selected Statutes of Interest.” (Full committee.) (March 2000.)

#### E. COMMITTEE ACTION ON REPORTS OF THE COMPTROLLER GENERAL

Rule X, 4(c)(1)(A), of the Rules of the House, imposes the duty upon this committee to receive and examine reports of the Comptroller General referred to and make such recommendations to the House as it deems necessary or desirable in connection with the subject matter of the reports.

In discharging this responsibility, each report of the Comptroller General received by the committee is studied and analyzed by the staff and referred to a subcommittee for action. Furthermore, in implementation of section 236 of the Legislative Reorganization Act of 1970, the committee regularly receives GAO reports that are not addressed to Congress but contain recommendations to heads of the Federal agencies. The committee received a total of 1,754 such GAO reports to Federal agencies or other committees and members within the legislative branch.

Periodic reports are received from the subcommittees on actions taken with respect to individual reports, and monthly reports are made to the chairman as to reports received. During the session, the committee used the reports to further specific investigations and reviews. In most cases, additional information concerning the findings and recommendations of the Comptroller General was requested and received from the administrative agency involved, as well as from the General Accounting Office. More specific information on the actions taken appears in part two below.

Complete files are maintained by the committee on all Comptroller General's reports received. Detailed records are kept showing the subcommittee to which the report is referred, the date of referral, and the subsequent action taken.

The committee will review all of the Comptroller General's reports received during the congress in the light of additional information obtained and actions taken by the subcommittees, and determinations will be made whether specific recommendations to the House are necessary or desirable under Rule X.

## **PART TWO. REPORT OF COMMITTEE ACTIVITIES**

### **I. Matters of Interest, Full Committee**

#### **A. GENERAL**

1. Oversight Plans of the Committees of the U.S. House of Representatives.

The 104th Congress adopted a new Rule that provides for each standing committee of the House to formally adopt oversight plans at the beginning of each year. Specifically, the Rule states in part:

Rule X, clause (2)(d)(1). Not later than February 15 of the first session of a Congress, each standing committee of the House shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plans for that Congress. Such plans shall be submitted simultaneously to the Committee on Government Reform and to the Committee on House Administration.

On March 31, 1999, Committee Chairman Dan Burton submitted the oversight plans of each House committee together with recommendations to ensure the most effective coordination of such plans and otherwise achieve the objectives of the House Rules.

#### **RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM**

##### **OVERSIGHT PLANS OF THE COMMITTEES OF THE HOUSE**

Congressional oversight, as envisioned by the majority leadership of the House, is ultimately about the public interest, the liberty of citizens, and the taxpayers' dollars. The ability, and duty, of popularly-elected representatives to oversee the executive branch is a fundamental component of the system of checks and balances established by the founding fathers. The Rules of the House of Representatives ensure Congress' responsibility to the public in this regard. Pursuant to House Rule X, clause 2(b)(1), each standing committee of the House shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not

a bill or resolution has been introduced with respect thereto);  
and

(D) future research and forecasting on subjects within its jurisdiction.

Congressional oversight in the 106th Congress focused on three fundamental efforts:

(1) Review the implementation by the executive branch of recent policy changes enacted by Congress to assess their effectiveness. Congress enacted significant reform legislation in the 105th Congress. These reforms include balancing the budget, restructuring the Internal Revenue Service, improving public education in our classrooms, and providing tax relief to small businesses, the self-employed, and families with children. Other reform efforts include healthcare reforms, anticrime legislation that is helping to significantly lower crime rates, protecting our children from pornography on the Internet, strengthening our military, and cracking down on deadbeat parents.

Many of these reforms have already resulted in major cost savings, improvements in the efficiency of the Federal Government, and improvements to the health, safety, and welfare of American citizens. But they will need monitoring and oversight by the Congress to ensure their success as effective legislative changes. In their oversight plans for the 106th Congress, House committees recognize the importance of their responsibility to oversee the implementation of recent legislative reforms. The Government Reform Committee recommends that House committees fully utilize the auditing and oversight services of the General Accounting Office, the Congressional Research Service, and agency Inspectors General to augment their efforts to oversee the implementation of these critical legislative reforms.

(2) Review existing government programs in order to inform the public and build a compelling case for further change and reform. While the legislative successes of the 105th Congress are laudable, many other opportunities for streamlining, improving efficiency, and reducing costs to the American taxpayer exist. The House committee oversight plans reveal priorities areas for additional programmatic and agency reform efforts in the 106th Congress, including: public education system reform, Social Security trust fund solvency, fundamental tax code reform; and reforms to assure minimal year 2000 computer conversion problems. Most committees recognize the importance of the Government Performance and Results Act as a tool for building the case for reform. The use of this important tool is affirmed in most committee oversight plans, but is most evident as it filters into the daily work of committees, particularly in hearings and legislative decisionmaking. The Government Reform Committee recommends that each House committee continue using agency strategic plans and performance plans mandated by the Results Act as a basis for conducting oversight of agencies and programs in its jurisdiction, and for holding government more accountable for the activities and services it delivers.

(3) Review government programs to root out waste, fraud, and abuse, thereby maximizing accountability in the Federal Government to the public. The merits of Federal programs and activities are, of course, subject to intense debate-particularly in times of



keen competition for limited Federal resources. However, the importance of efficient, effective, and honest management is not a debatable issue, and is perhaps even more important in an era of budget surpluses. Fraud, waste, abuse, and mismanagement serve no legitimate constituency or political interest. They cheat both the taxpayers and the intended beneficiaries of the programs and activities they affect. They also undermine the confidence of the American people in the capacity and will of the Federal Government to perform its functions effectively. The Government Reform Committee recommends that House committees rigorously conduct oversight of the problems identified in (1) the General Accounting Office's "High Risk List" of Federal programs at risk for serious fraud, waste, and abuse, (2) the General Accounting Office's January 1999 report entitled, "Major Management Challenges and Program Risks" [GAO/OCG-99-8]; and (3) agency Inspectors General semi-annual and annual reports to Congress. These documents are an important source of serious problems currently festering in the Federal Government that need immediate attention by Congress.

## 2. Investigations

### *a. Johnny Chung: Foreign Connections, Foreign Contributions, May 11, 1999.*

The committee held a hearing into the illegal activities of Johnny Chung in the 1996 Presidential election. Mr. Chung was questioned about contributions to the DNC and various delegations of foreign officials and businessmen that he brought to the White House. Mr. Chung testified about how the Democratic National Committee [DNC] began to solicit him for many different fundraisers in exchange for access to officials, including President Clinton. Mr. Chung confirmed reports that the Chinese Government was funneling contributions into United States elections. At a meeting in August 1996, General Ji Shengde, chief of Chinese Military Intelligence, gave Mr. Chung \$300,000 to funnel into the Democratic party. In total, Mr. Chung contributed over \$366,000 to the DNC. Mr. Chung also advised the committee that he witnessed Charles Parrish, a consular official at the United States Embassy in Beijing, take a bag full of cash and passports so visas could be issued to Chinese nationals visiting the United States.

### *b. White House Insider Mark Middleton: His Ties to John Huang, Charlie Trie, and Other Campaign Finance Figures, August 5, 1999.*

At this hearing, the committee called Mark Middleton to testify about his knowledge of alleged campaign financing violations during the 1992 and 1994 Federal election cycles. Mr. Middleton had relationships with many of the individuals who have since pled guilty to numerous campaign financing schemes to funnel money to the Clinton/Gore election and reelection efforts, as well as the Democratic National Committee. Documents and testimony showed that he had information related to John Huang, James Riady, Charlie Trie, and other individuals related to the committee's investigation. In addition, several allegations of illegal fundraising had been made against Mr. Middleton himself. Mr. Middleton was

subpoenaed to testify. However, when he appeared before the committee he refused to testify, invoking his fifth amendment privilege against self-incrimination.

*c. The Role of John Huang and the Riady Family in Political Fundraising, December 15–17, 1999.*

The committee received testimony from John Huang, a central figure in the committee's campaign finance investigation, about his activities in the 1992 and 1996 Presidential elections. Both Mr. Huang and James Riady, Huang's former boss at the Lippo Group, are longtime associates of President Clinton and Vice President Gore. Mr. Huang testified that he and Mr. Riady conspired to funnel \$1 million in illegal contributions to President Clinton's 1992 Presidential campaign. After President Clinton's election, Mr. Huang took a job at the Department of Commerce in July 1994, where Mr. Huang continued to solicit political contributions. In November 1995, after the President's personal intervention, Mr. Huang was hired as a fundraiser at the DNC. Mr. Huang's main outside contact and fundraising partner was Yah Lin "Charlie" Trie, another central figure in the committee's investigation. Mr. Huang embarked on a series of fundraisers that took in mostly illegal foreign and conduit contributions. The DNC returned almost \$3 million raised by Mr. Huang. Mr. Huang also had unfettered access to President Clinton and the White House which he visited over 80 times.

*d. The State Department's Handling of Allegations of Visa Fraud and Other Irregularities at the United States Embassy in Beijing, July 29, 1999.*

The committee conducted an investigation of allegations that the chief of the Non-Immigrant Visa Section in the United States Embassy in Beijing, Charles M. Parish, was both improperly issuing visas to Chinese citizens, and accepting gratuities from Chinese citizens. The first witness at this hearing was Mr. Parish. Mr. Parish invoked his fifth amendment rights rather than testify regarding his activities in Beijing. The second panel of witnesses were State Department personnel who investigated Mr. Parish: Peter Bergin, Acting Assistant Secretary and Director of Diplomatic Security; Jacquelyn L. Williams-Bridgers, Inspector General for the Department of State; Bonnie R. Cohen, Under Secretary for Management; Edward W. Gnehm, Director General of the Foreign Service; Mary Ryan, Assistant Secretary for Consular Affairs; and Don Schurman, former Regional Security Officer. The second panel was questioned about the adequacy of the investigation of Mr. Parish, including the failure to secure important evidence regarding Mr. Parish, the failure to obtain important evidence about Mr. Parish, and the failure to discipline Mr. Parish for his improper conduct.

*e. National Problems, Local Solutions: Federalism at Work.*

The committee conducted an investigation focusing on innovative and successful reforms in government programs at the State and local levels. In so doing, the committee sought to determine which existing Federal regulations and programs best assisted State and local governments, and which hindered progress. The committee

also explored new ways that the Federal Government could best assist State and local governments. The committee's investigation focused on four major issues: criminal justice; taxes; education; and, welfare reform.

The committee was in contact with numerous States about the progress they had made in the areas outlined above. After reviewing many of the State and local programs in these areas, the committee held three hearings to highlight the reforms at the State and local levels and to demonstrate that many of the solutions to the problems facing America originate at the State and local level, rather than with the Federal Government.

#### Part I, Fighting Crime in the Trenches, March 3, 1999.

At this hearing, the committee heard testimony from New York City Mayor Rudolph W. Giuliani, who has had unparalleled success in lowering the crime rate in America's largest city. Mayor Giuliani explained his approach to fighting both violent and non-violent crime in an effort to stem general disrespect for the law. The committee also heard from State Attorney Harry Shorstein of Jacksonville, FL. Mr. Shorstein explained his innovative policies and successes in the area of juvenile justice that have also gained him broad bipartisan support. According to Mr. Shorstein, the keys to tackling juvenile crime include early intervention, truancy prevention, incarceration of habitual violent juvenile offenders as adults, and rehabilitation and aftercare. Philadelphia Police Commissioner John F. Timoney also testified.

#### Part II, Tax Reform in the States, April 14 and 15, 1999.

At this hearing, the committee heard testimony from Governors Christine Whitman of New Jersey, Mike Huckabee of Arkansas, Jim Gilmore of Virginia, and George Pataki of New York. Each Governor spoke about the tax plans they had implemented in their respective States. Governor Whitman discussed the 17 tax cuts she has enacted since taking office in 1994. The tax cuts resulted in \$6 billion returned to the New Jersey economy and a surplus of \$700 million. Governor Huckabee explained his sweeping overhaul of Arkansas' income tax system, including the \$80 million tax cut package signed into law in 1997. Governor Gilmore spoke about his popular phase out of the "car tax" in Virginia, as well as his program of tax credits to promote business growth in Virginia. Governor Pataki discussed his 25 percent income tax cut in New York. The hearing was held on tax day to call attention to the fact that the average family today pays more in taxes than it spends on food, clothing, shelter, and transportation combined. All of the Governors testified that by cutting taxes, their overall economy grew.

#### Part III, Welfare Reform is Working: A Report on State and Local Initiatives, April 22, 1999.

In 1996, the Federal Government passed the Personal Responsibility and Work Opportunity Act, or welfare reform. Through the act, the Federal Government ultimately gave all States greater flexibility to achieve reforms that would work for their citizens. Wisconsin Governor Tommy Thompson testified on his successful Wisconsin Works program. To assist in the transition from welfare

to work, Wisconsin instituted programs to assist recipients in their struggle for independence, such as programs for childcare, health care, job search assistance, and transportation. Virginia Secretary of Health and Human Services Claude A. Allen spoke about Virginia's welfare reform efforts. Since 1995, Virginia's welfare rolls have dropped 47 percent. The chairman of Florida's Board of Directors for its welfare program, Michael Poole, testified about Florida's unique, independent oversight body for the welfare program, composed of private sector interests and State agency directors. Representing the private sector was Julia Taylor, CEO of YW Works. YW Works is a for-profit company that the State of Wisconsin contracted with to administer its welfare program in one region of Milwaukee. Jason Turner, the commissioner of New York City's Department of Social Services and Human Resources Administration, testified about the efforts of the Giuliani administration. New York City's welfare rolls had dropped by 400,000 since Mayor Giuliani instituted his reforms. The hearing demonstrated that with fewer Federal Government regulations, the States were able to more effectively serve their citizens.

*f. HUD Losing \$1 Million Per Day—Promised "Reforms" Slow in Coming, March 23, 1999.*

In a previous hearing, the committee heard testimony about Federal programs that are wasting billions of taxpayer dollars a year. As a result of that hearing, Chairman Burton and Chairman Young of the Appropriations Committee cosigned a letter to every major Federal agency. The letter stated that they wanted to see serious efforts by these agencies to resolve these kinds of problems, starting with specific, measurable performance goals, and their annual Government Performance and Results Act plans.

On March 23, 1999, the committee held a hearing to focus on the Department of Housing and Urban Development [HUD], which at the time of the hearing had not yet submitted its annual performance report, as required by the Results Act. The hearing entitled, "HUD Losing \$1 Million Per Day—Promised 'Reforms' Slow in Coming" was chaired by Dan Burton. The hearing specifically examined HUD's Federal Housing Administration [FHA] program.

FHA is the home mortgage insurer for many people who wouldn't ordinarily qualify for a home loan in the private marketplace. In his opening statement, Chairman Burton expressed his concern about the large number of defaulted FHA homes. These properties go back to HUD, and as a result, HUD sits on a huge backlog of repossessed properties that become poorly managed, run down, and vandalized.

The committee first heard from Nancy Cooper, District Inspector General, Southeast Caribbean District, U.S. Department of Housing and Urban Development. She discussed the ongoing audit of HUD's single family property management and disposition program. The audit was initiated by GAO findings from March 1998, which revealed poor property conditions and management efficiencies. The IG investigation showed that conditions overall had not improved since the GAO study.

First, they found that there was an inability to turn over properties acquired by HUD. Second, sales to homeowners went down,

while sales to investors went up. Third, HUD's ability to maximize returns to the mortgage insurance fund also declined. Finally, preliminary data indicated that HUD had not been effective in dealing with non-performing contractors.

The committee also heard from William Apgar, Assistant Secretary for Housing, Federal Housing Commissioner, U.S. Department of Housing and Urban Development. He talked about a different type of HUD. He spoke about the success of FHA. For example, by insuring low down payment loans for people with less than perfect credit history, FHA has helped 27 million American families to become homeowners. He also spoke highly of the HUD's new management and marketing approach.

Gale Cincotta, executive director, National Training and Information Center, Chicago; Grace Jackson, volunteer, Roseland Neighborhood Housing Services, Chicago; and Carl Edwards, president, Organization for a New Eastside, Indianapolis, all discussed their own personal experiences with FHA.

Ms. Cincotta expressed her concern about the increased rate of FHA foreclosures, leaving abandoned buildings throughout our Nation's neighborhoods. She blamed the FHA foreclosure increase on two things. First, the changing of the FHA appraisal process to what is called lender select, meaning lenders are able to choose their own appraisers. This usually results in houses getting over appraised. Second, HUD's mortgage assistance program was replaced with the Loss Mitigation Program that makes it optional for mortgage bankers to do workouts with families that are facing foreclosures. In her written testimony, Ms. Cincotta gave several solutions that would prevent FHA foreclosures and reduce the number of abandoned property.

Mr. Edwards and Ms. Jackson also talked about the alarming rise in FHA foreclosures, and the negative impact this has had on both of their communities.

Mr. Davis, director, Northeast Ohio Coalition for the Homeless and Mr. Czerwinski, Associate Director, Resources, Community and Economic Development Division, U.S. General Accounting Office, addressed the issue of homelessness. Mr. Davis focused on the status of the care system for homeless persons in Cleveland, OH, and the surrounding Cuyahoga County. In particular, he talked about a program operated by the Salvation Army that had problems working with HUD. He also discussed some modest changes that need to be made that could improve the HUD homeless assistance grant.

Mr. Czerwinski summarized a GAO study that examined how well the Federal Government has been at helping State, local, and private entities assist homeless people. He urged the need for better coordination between the 50 different programs so that they could be more effective at providing services.

The chairman voiced concern regarding the many problems at HUD, and expressed an interest in working with Mr. Cuomo to resolve these issues as quickly as possible.

*g. Fraud and Waste in Federal Government Programs, February 10, 1999.*

Under House Rules, the Committee on Government Reform has the authority to look at the overall economy, efficiency, and management of all government operations. Therefore, it was very appropriate that the focus of the first full committee hearing investigate the waste, fraud, and abuse within Federal Government programs.

The hearing reviewed reports recently delivered to the committee, specifically the Inspectors General's reports on the top 10 problems in their agency, GAO's "High Risk List" update, and GAO's "Major Management Challenges and Program Risks."

The hearing was entitled, "Fraud and Waste in Federal Government Programs." It was held on February 10, 1999, and was chaired by Dan Burton. In his opening statement Chairman Burton stressed that while it is important to publicize the dimensions of these problems, we must also begin to develop and enforce solutions, like the Government Performance and Results Act.

Chairman Burton also appealed to appropriators to make better use of the Results Act, as well as the high-risk information available from the General Accounting Office. Appropriators have the authority to make agencies more accountable by cutting an agency's funding if it continues to waste taxpayers' dollars. Appropriators need to become part of the solution.

The first panel had Inspector Generals from three problem-plagued agencies, including Mr. Roger C. Viadero, Department of Agriculture; Susan Gaffney, Department of Housing and Urban Development; and June Gibbs Brown, Department of Health and Human Services.

Mr. Viadero specifically discussed problems in the area of food safety and the Food Stamp Program at the Department of Agriculture. It was estimated that about \$1 billion a year is lost in food stamp overpayments. Part of the problem is that prisoners and deceased individuals are included as members of the households receiving benefits.

Ms. Gaffney talked about the overwhelming problems HUD is having with reinvention and reform, which is primarily due to internal control weaknesses. For example, the IG estimated that management delays in disposing of more than 41,000 properties in its inventory is costing HUD over \$1 million per day.

Ms. Brown discussed how HHS programs that are critical to the well being of all Americans are also vulnerable to waste, fraud, and abuse. The IG estimated \$20.3 billion in net overpayments in fee-for-service payments in fiscal year 1997. These improper payments could range from inadvertent mistakes to outright fraud and abuse. HCFA's corrective action plan is to reduce the error rate to 10 percent by year 2002.

The second panel included Mr. David Walker, Comptroller General at the General Accounting Office. His remarks highlighted the three major challenges facing the government. First, he stressed the importance of addressing high-risk areas. Since 1990, GAO has periodically reported to Congress on key areas in the Federal Government that are particularly vulnerable to waste, fraud, and abuse. The list has grown from 14 areas in 1990 to 26 areas in

1999. Over that time period, 18 problems were added, but only 6 have been addressed sufficiently to warrant removal.

Second, he spoke about the urgency of moving toward full implementation of a management framework. Congress already has established this framework through the Results Act, the Chief Financial Officers [CFO] Act of 1990, and related financial management legislation, and information technology reforms. These laws should be used by agencies to instill a results-oriented government, improve financial management, and revamp information technology practices.

Unfortunately many agencies continue to struggle to implement basic tenets of performance-based management. For example, the government spends millions of dollars each year on information technology meanwhile the return on investment has been disappointing in some cases.

Third, he said that there needed to be greater attention focused on human capital issues in order to achieve the goals of a performance-based government. Proper alignment of an agency's employees with program goals and strategies is essential to achieving program results.

Chairman Burton expressed a firm commitment to work with GAO, department heads, and the Inspectors General to eliminate waste and enhance the effectiveness of important government services.

#### *h. The Role of Complementary and Alternative Medicine in our Health Care System.*

*a. Summary.*—Based on concerns raised during the 105th Congress regarding Federal agencies' prejudice against complementary and alternative therapies, the committee initiated an inquiry into the role of complementary and alternative medicine in the U.S. health care system. While complementary and alternative medicine [CAM] usage continues to increase, research, regulation, and access have not met the needs of many Americans. A 1997 survey in the *Journal of the American Medical Association* showed that 42.1 percent of Americans used at least 1 of 16 alternative therapies during the previous year. This was up from 33.8 percent in 1990.<sup>12</sup> The survey also indicated that more visits were made to alternative practitioners than to U.S. primary care physicians. The World Health Organization estimates that between 65 and 80 percent of the world's population relies on traditional medicine as their primary form of health care.<sup>13</sup> Four basic issues arose:

- Even with the establishment of the Office of Alternative Medicine<sup>14</sup> at the National Institutes of Health in 1992, research to evaluate the effectiveness of complementary and alternative therapies continues to be inadequate.
- Reliable and useful information regarding complementary and alternative therapies provided from Government resources was woefully inadequate.

<sup>12</sup> Eisenberg D.M., Davis R.B., Ettner S.L., et al, Trends in Alternative Medicine Use in the United States 1990–1997. *JAMA*, Vol. 280: pp. 1569–1575, Nov. 11, 1998.

<sup>13</sup> Complementary and Alternative Medicine at the NIH, Vol. III, No. 1, p. 3.

<sup>14</sup> Now the National Center for Complementary and Alternative Medicine.

- Conventional health care providers who integrate CAM, CAM practitioners, and companies that provide products continue to be challenged with agencies who create barriers to the integration of CAM into our health care system.
- Medical freedom in the United States is very limited. Individuals, especially those with life threatening illnesses, are not fully able to access CAM products and therapies in the United States.

The U.S. medical model of the 1980's and 1990's is not fully addressing the needs of Americans. With the graying of our population and the epidemic levels of chronic diseases such as cardiac disease, diabetes, depression, arthritis, and asthma, different approaches to health care are needed. Oftentimes, these chronic diseases, as well as hard-to-treat conditions such as fibromyalgia, chronic fatigue syndrome, and allergies, are improved through an integrative medicine or CAM approach. Cancer rates remain high in the U.S. population. One in three Americans will get cancer and one in four will die from it. An integrated approach to care that respects the wishes of the patient while encompassing holistic approaches to healing including the recognition of the importance of nutrition, mind-body approaches, spirituality, and stress and pain management is needed. A recently published survey of patients attending one of eight outpatient clinics of the University of Texas MD Anderson Cancer Center, Houston, TX, showed that over 83 percent of adult cancer patients used some form of CAM.<sup>15</sup>

The Health Care Financing Administration estimates that health care costs will double by 2007, to exceed \$2.13 trillion. Of that estimate, almost \$1 trillion of those dollars will be public funds.<sup>16</sup> While the United States continues to outspend the rest of the world on health care (13.7 percent of Gross Domestic Product or \$4,187 per person), a World Health Organization report released in June 2000 ranked the United States as 37th out of 191 countries in quality of health care services.<sup>17</sup>

Between 25 and 40 percent of Americans receive some or all of their health care through Federal funds, including services provided through Medicare, Medicaid, Department of Defense [DOD], Veterans Administration [VA], Indian Health Services, and public and community health clinics.

Ongoing at the DOD are two demonstration projects that will expand access for members of the military and their dependents to chiropractic medicine and to the Ornish Lifestyle Modification Program for Cardiovascular Disease. Additionally, some facilities offer acupuncture when medical personnel have received additional training and are licensed acupuncturists. In 1998, the VA conducted a CAM survey to determine what CAM therapies were being offered to our Nation's veterans. While numerous programs were identified, there has been no concerted effort as yet to expand

<sup>15</sup> Richardson M.A., Sanders L., Palmer J.L., Griesinger A., Singletary S.E., "Complementary/Alternative Medicine Use in a Comprehensive Cancer Center and the Implications for Oncology," *J of Clinical Oncology*, Vol. 18, Issue 13 (July) 2000: 2505-2514.

<sup>16</sup> Smith S., Freeland M., Hefler S., et al, *The Next Ten Years of Health Spending: What Does the Future Hold?* Health Affairs, Vol. 17: pp. 128-140, 1998.

<sup>17</sup> World Health Report 2000, Health Systems: Improving Performance. <http://www.who.int/whr/2000/en/report.htm>.



access to CAM therapies at all VA facilities or to offer consistent referrals to CAM providers.

Through the Fiscal Year 1999 Omnibus appropriations bill signed into law in October 1998, the National Center for Complementary and Alternative Medicine was created. This was done to elevate the Office of Alternative Medicine into a full Center at the National Institutes of Health.

*b. Benefits.*—Complementary and Alternative Medicine [CAM] has the potential for reducing costs while improving the health and well-being of Americans. With the graying of the population, and the epidemic-level increases of chronic diseases such as cardiac disease, diabetes, arthritis, asthma, and depression; as well as the high percentages of cancers such as lung, breast, prostate, colon, and melanoma; the committee sought to be open-minded in its look at additional options in medical care, research funding levels, and patient access to treatments that patients and their health care providers deem appropriate.

The Federal Government provides health care primarily through three Departments—the Department of Health and Human Services [HHS], the Department of Defense [DOD], and the Department of Veterans Affairs [VA]. Health care is provided to between 25 and 40 percent of the U.S. population through Federal funds.

Cost, scientific evidence, patient preference, and the “first do no harm” philosophy are important factors in determining inclusion of services. The health care delivery paradigm is shifting dramatically and part of that shift includes CAM. There is an increasing body of scientific evidence that shows the efficacy of some CAM therapies. Patients often mention the desire for a more natural approach, the desire for personal choice, and for the inclusion of a whole being or holistic (body, mind, spirit) philosophy in their health care. CAM therapies are often lower in cost than conventional treatments and especially in chronic illnesses where conventional therapies often do not meet with great success. In these cases, CAM approaches may be more effective or can be used in conjunction with conventional treatments to enhance and improve outcomes.

Botanical products often have few adverse effects when used wisely, whereas many pharmaceutical products, even when used as directed, have high rates of adverse effects. Over 100,000 individuals in the United States die each year from adverse reactions from prescription medications, while only about 16 each year die from adverse reactions from dietary supplements.

In 1994 Congress passed the Dietary Supplement Health and Education Act. This legislation created a new framework for the regulation of dietary supplements. It signals a major departure from the well-established “food” versus “drug” dichotomy that guided the Food and Drug Administration’s [FDA’s] policy with respect to products for over 50 years. The legislation, the outgrowth of a phenomenal grassroots effort, is premised on the role of nutrition and the benefits of dietary supplements to health promotion.

As reflected in numerous surveys, Americans are increasingly using complementary and alternative medicine as a means of improving their health. A large part of this trend has been utilizing nutritional approaches including dietary supplements to improve

health and prevent illness. While many universities and Government agencies have long researched the benefits of foods, herbs, and vitamins for health, most medical schools are not teaching doctors adequately in this area.

It has been noted numerous times in congressional reports that there is persistent evidence of FDA bias against supplements. Senate Report 103-410 states, "Despite the fact that the scientific literature increasingly reveals the potential health benefits of dietary supplements, the FDA has pursued a regulatory agenda which discourages their use by citizens seeking to improve their health through dietary supplements."

Dietary Supplements—vitamins, minerals, and botanical products—have been shown through traditional use and through research to provide health benefits. Examples of the health benefits include:

- Vitamin C is necessary for wound healing. It is needed for many functions in the body, including helping the body use carbohydrates, fats, and protein. Vitamin C also strengthens blood vessel walls. Dr. Linus Pauling made a connection between the use of high doses of vitamin C daily and the prevention of cancer.
- Vitamin E is important for the proper function of nerves and muscles. A 1998 analysis from a large prevention trial conducted by the National Cancer Institute [NCI] and the National Public Health Institute of Finland, shows that long-term use of a moderate-dose vitamin E supplement substantially reduced prostate cancer incidence and deaths in male smokers. A study published in 1997 in the *New England Journal of Medicine*, from research conducted at 23 Alzheimer's Disease Cooperative Study [ADCS] sites across the United States showed that vitamin E may slow important functional signs and symptoms of Alzheimer's disease by about 7 months.
- Folic acid is necessary for strong blood. Folic acid taken by women before they become pregnant and during early pregnancy may reduce the chances of certain birth defects (neural tube defects). Folic Acid may also help prevent heart disease by lowering homocysteine levels.
- Coenzyme Q10 is a powerful antioxidant both on its own and in combination with vitamin E and is vital in powering the body's energy production [ATP] cycle. Coenzyme Q10 has the ability to protect the heart during periods of ischemia (lack of oxygen). Several clinical trials have recently shown that when patients with heart failure are treated with Coenzyme Q10 for months to years, serious complications such as pulmonary edema and ventricular arrhythmia are reduced in frequency. The number of hospitalizations is reduced and survival is increased.
- Hypericum Perforatum, also known as St. John's Wort has a 2,400-year history of safe and effective usage in folk, herbal, and ancient medicine. A series of recent double-blind, placebo-controlled studies indicate that a specific extract of Hypericum perforatum was as effective as prescription antidepressants but had far fewer side effects and cost considerably less. In Germany, more than 50 percent of depression, anxiety, and sleep

disorders are treated with hypericum. Many CAM therapies have been safely used for thousands of years are backed by a substantial body of scientific evidence. Acupuncture for example, has been used in traditional Chinese medicine for at least 3,000 years. However, until 1996, the Food and Drug Administration regulated acupuncture needles as Class III “investigational devices” rather than as Class II for “general acupuncture use,” which made it difficult for licensed or certified practitioners to obtain disposable acupuncture needles in the United States unless you were conducting research.<sup>18</sup> According to an NIH consensus panel of scientists, researchers, and practitioners who convened in November 1997, clinical studies have shown that acupuncture is an effective treatment for nausea caused by surgical anesthesia and cancer chemotherapy as well as for dental pain experienced after surgery. The panel also found that acupuncture is useful by itself or combined with conventional therapies to treat addiction, headaches, menstrual cramps, tennis elbow, fibromyalgia, myofascial pain, osteoarthritis, lower back pain, carpal tunnel syndrome, and asthma; and to assist in stroke rehabilitation.<sup>19</sup>

Numerous complementary therapies are increasingly used in hospitals and clinics with good benefit. Those therapies include music therapy, aromatherapy, mind-body techniques, massage, qi gong, sand therapy, art therapy, and touch therapy. Additionally, the role of nutrition, including the use of dietary supplements—vitamins, minerals, and botanicals—is increasingly recognized by Americans as a valuable avenue to explore to improve and maintain health status. Diet and lifestyle play a major role in disease prevention.

Dr. Dean Ornish and his research team have shown through rigorous research that heart disease can be reversed and that bypass and angioplasty surgery can be avoided at an immediate cost savings of \$30,000 per patient.

*c. Hearings.—*

*1. Complementary and Alternative Medicine in Government-Funded Health Programs, February 24, 1999.*—The purpose of the hearing was to explore the following questions:

a. Have Federal agencies that deliver or fund health care begun integrating CAM therapies?

b. Are research results translating into access to alternative treatments by the average American?

c. Are alternative practitioners being included in Federal programs?

d. What policies are currently in place or are proposed regarding integration?

e. What, if any, impediments are there to further integration?

f. How are Federal agencies combining patient access with the collection of outcomes research data on cost, effectiveness, and patient preference?

The Department of Health and Human Services [HHS] is the Federal Government’s principal agency for protecting the health of

<sup>18</sup> Acupuncture Needle Status Change, FDA Communications, <http://www.fda.gov/bbs/topics/ANSWERS/ANS00722.html>.

<sup>19</sup> National Institutes of Health Consensus Panel. Acupuncture. National Institutes of Health Consensus Development Statement (Bethesda, MD, Nov. 3–5, 1997).

all Americans and providing essential human services, especially for those who are least able to help themselves. HHS is also the largest grantmaking agency in the Federal Government, providing approximately 60,000 grants per year. HHS' Medicare program is the Nation's largest health insurer, handling more than 900 million claims per year. HHS works closely with State and local governments, and many HHS-funded services are provided at the local level by State or county agencies, or through private sector grantees. In addition to the services they deliver, the HHS enable the collection of national health and other data. The HHS fiscal year 1999 budget was \$387 billion.<sup>20</sup>

Through the National Institutes of Health's Office of Alternative Medicine, recently elevated through legislation<sup>21</sup> to the National Center of Complementary and Alternative Medicine, the majority of Government-funded research in complementary and alternative medicine is coordinated and funded. Good quality research has been and is being conducted in CAM and results of those are published regularly in peer reviewed publications. There are still gaps in the knowledge base and much research work still to be done. Through the National Institutes of Health's Consensus Development and Technology Assessment Programs—the premier health technology assessment and transfer program in American medicine—several complementary and alternative therapies have been recommended for integration into mainstream medicine. In each instance the panel recommended coverage of the CAM therapies in order to provide access.

Organizations and individuals within HHS have approached CAM with varying levels of enthusiasm and trepidation. For example, the NIH Warren Grant Magnuson Clinical Center has long been progressive in extending the availability of CAM to its patients. Since the early 1990's the Clinical Center has had Ming Tian, M.D. on call to provide acupuncture treatments for pain relief to those patients in the Clinical Center whose pharmacological pain interventions were not adequate. Additionally, patients and family members have access to music therapy chairs and mats for stress and pain relief through the Rehabilitation Department. Classes in Qi Gong, meditation, and Tai Chi have frequently been available in the Clinical Center. The Indian Health Service in its South Central Foundation's<sup>22</sup> program has implemented a traditional healing component of its primary care program. In the Navajo area programs, each of the eight units has incorporated varying levels of Navajo traditional healing/medicine including sweat lodges, traditional healing services and rooms, and traditional medicine practitioners. The Bureau of Primary Health Care held a conference in 1997 to initiate a discussion in making alternative medicine available in public health clinics, but as yet has no policy in place to do so.

However, for the most part, HHS and other Federal agencies have been slow to integrate CAM into health programs. Medicare still does not reimburse for acupuncture, even though the NIH's

<sup>20</sup> HHS website—What We Do, <http://www.hhs.gov/about/profile.html>.

<sup>21</sup> Fiscal Year 1999 Omnibus Spending, Public Law 105-277.

<sup>22</sup> The South Central Foundation Traditional Healing Program serves as a resource to staff and patients for referral to traditional healers and practitioners in South Central Alaska.

consensus panel found it a scientifically valid treatment for chemotherapy nausea and numerous other disorders. Nor has there been integration of the mind-body techniques recommended by the NIH Technology Assessment conference on insomnia and pain. Medicare offers only limited access to chiropractic treatment. Even in States with certification and licensure for various alternative practices, there is limited access in Government programs to Naturopathic doctors, licensed massage therapists, licensed and M.D. acupuncturists, certified nutritionists, and chiropractors.

The investigation in the 105th Congress indicated that there exists within Federal agencies an institutional bias against CAM or novel treatments that prejudices those in decisionmaking positions from establishing demonstration projects or other opportunities to provide access? Testimony was received from Douglas Kamerow, M.D., Director, Center for Health Care Technology, Agency for Health Care Policy Research, on behalf of the Department of Health and Human Services.

The Department of Veterans' Affairs [VA] provides benefits and services to the country's veterans—a population of over 25 million—as well as approximately 44 million family members. The fiscal year 2000 budget submission provides \$18.1 billion (with provisions for \$749 million in medical collections) to provide medical care to eligible veterans. The estimated number of eligible veterans that will receive care in 2000 is 3.6 million.<sup>23</sup> Given the increased demand by patients to have access to alternative therapies, in April 1998 the VA Under Secretary for Health, Kenneth W. Kizer, M.D., M.P.H., requested that the Office of Primary and Ambulatory Care assess what, if any, CAM therapies should be offered by the VA.<sup>24</sup> The report which was due out in December 1998, had not been published prior to the February hearing.

In 1998, the VA *Vanguard Magazine*, a VA employee's magazine, featured a few examples of alternative medicine practices within the VA.<sup>25</sup> These included:

1. The Honolulu VA Medical and Regional Office Center sponsored an interdisciplinary orientation to healing from Native Hawaiian, Native American and Asian perspectives, focusing on tri-cultural healing alternatives. Included were workshops on herbal medicine, Hawaiian conflict resolution, tai-chi, acupuncture, Native American philosophy and more.

2. The Phoenix VAMC has held day-long seminars for medical staff members on alternative medicine and has established a sharing agreement with local Indian tribes to contract with them to provide tribal medicine to Indian patients at the facility.

3. VA offers a number of creative arts therapies including dance, music and art therapy. Many VA facilities also offer programs in garden therapy, pet therapy, wood-carving therapy, humor therapy, yoga, tai chi and meditation.

4. VA's Chaplain Service is currently conducting a multi-site study on the effects of spiritual care on homeless veterans re-

<sup>23</sup> Department of Veterans' Affairs Fiscal Year 2000 Budget Submission, Summary, vol. 5; pp. 3–8.

<sup>24</sup> <http://www.va.gov/NCHP/Pubs/summer98.pdf>.

<sup>25</sup> <http://www.va.gov/vanguard/altmed>, Vanguard Magazine, Washington, DC.

siding in VA domiciliaries in Dallas, TX; Dublin, GA; Mountain Home, TN; Portland, OR; St. Cloud, MN; Los Angeles, CA; and Anchorage, AK.

5. Eye Movement Desensitization and Reprocessing [EMDR], is used by some VA psychologists in treating veterans with post-traumatic stress disorder.

6. A study by doctors at the Palo Alto, CA, VA Medical Center has shown that anodyne therapy hypnosis combined with guided imagery helps patients relieve pain, quicken recovery, and replace feelings of anxiety with those of empowerment.

7. Dr. Emilio Felipe Romeno, a psychiatrist at the San Antonio, TX, VA Medical Center, works with individuals interpreting dreams. He finds that about 60 percent of dreams have some connection to daily activities and can be used to make decisions.

8. VA physical therapists offer a number of manual techniques such as massage therapy, acupressure, myofascial release, cranial-sacral therapy and Feldenkrais, among others.

9. Of VA's 7,984 full-time physicians, 34 are osteopathic physicians, most of whom completed additional training and are specialists in surgery, medicine, anesthesia or other areas.

10. Acupuncture, as a method of pain control, may be used by VA anesthesiologists who are trained in its use. Privileging the anesthesiologist, or other VA health practitioner, for acupuncture is within the purview of individual VA medical centers.

11. A researcher at the Boston VA Medical Center is working with laser light on acupuncture sites to treat carpal tunnel syndrome, stroke, accident victims, and other neurologically-impaired patients.

The article stated that within the VA, alternative medical practices may be used for treatment if they meet certain criteria. The alternative practice or technique must do no harm, be accepted by the patient, and reflect the interest of the practitioner. The practitioner also must be trained or certified in the technique and obtain privileges to practice that technique, and the practice or technique must have some level of acceptance as an "alternative." Thomas V. Holohan, M.D., Chief Patient Care Services Officer, testified on behalf of the Veterans Health Administration.

The Department of Defense provides health care to its active duty service members and active duty dependents, retirees and their dependents, and survivors of deceased members and certain former spouses through the Military Health Services System [MHSS] and the Civilian Health and Medical Program of the Uniformed Services [CHAMPUS]. TRICARE is a new initiative to coordinate the efforts of the service's medical facilities. The MHSS currently includes 102 hospitals and 489 clinics operating worldwide with 42,000 civilian and 102,000 active duty military personnel. The DOD requested \$15.6 billion for health care in fiscal year 1999—\$5.3 billion for military personnel costs and \$3.5 billion for CHAMPUS and TRICARE Managed Support Contracts. The Department of Defense has been mandated by Congress to conduct two CAM demonstration projects.

- Chiropractic Health Care Demonstration Program.<sup>26</sup>
- Ornish Lifestyle Modification Program.<sup>27</sup>

There are an increasing number of health care providers within the DOD who have specialized training in complementary and alternative therapies. Military physicians, when assigned to military hospitals, develop their scopes of practice based on their specific training and the comfort level of the hospital administration with allowing CAM. Walter Reed Army Hospital and Andrews Air Force Base Hospital each have physician acupuncturists on staff. However, these physicians do not focus entirely on acupuncture, nor is there a policy within the new managed care environment to allow referrals. Additionally, former Office of Alternative Medicine Director, Wayne Jonas, M.D., and others with specialized complementary and alternative medicine training are on faculty at the Uniformed Services University of the Health Sciences. John F. Mazzuchi, Ph.D., Deputy Assistant Secretary of Defense for Health Affairs, Clinical and Program Policy, testified on behalf of the Department of Defense.

Actress Jane Seymour presented testimony regarding her experiences in integrating natural healing approaches into her life. Ms. Seymour's own father was a conventional physician who late in life developed cancer. After his physicians did all they felt they could for him, Ms. Seymour took her father to an alternative cancer clinic in California where he received vitamins, converted to a Macrobiotic diet, received counseling, and greatly improved his overall well-being.

Brian Berman, M.D., provided testimony on the current status of research and treatment in complementary and alternative medicine. Dr. Berman is the director of the first alternative medicine program in a U.S. medical school. An associate professor at the University of Maryland School of Medicine, Dr. Berman has long been an advisor to the Federal Government on alternative medicine. He also is the director of one of the NIH-funded research centers in alternative medicine. Dr. Berman has conducted clinical research in acupuncture, mind-body and relaxation techniques, and coordinates the complementary medicine field group of the Cochrane Collaboration.

Dean Ornish, M.D., clinical professor of medicine, University of California at San Francisco and Director of the Preventive Medicine Research Institute presented testimony regarding his clinical research in cardiovascular disease. Dr. Ornish developed a lifestyle modification program that has been shown through rigorous clinical trials that heart disease can be reversed and angioplasty and by-pass surgery can be avoided. This program which includes a low-fat diet, moderate exercise, yoga, meditation, and group therapy has been shown to be safe and effective including in an elderly population, as well as providing a tremendous cost-savings. (It is estimated that by avoiding by-pass or angioplasty, there is an immediate cost savings in excess of \$20,000 per patient.) Dr. Ornish's research has been published in numerous peer-reviewed journals.

<sup>26</sup>THE CHCDP was initiated through the National Defense Authorization Act for Fiscal Year 1995.

<sup>27</sup>The Ornish Lifestyle Demonstration Program was initiated through the Omnibus Spending Bill of Fiscal Year 1999.

Approximately 15 hospital-based centers, some at academic institutions, have been certified to offer the Ornish program. As a result of this hearing and with bi-partisan and White House support, the Health Care Financing Administration agreed to conduct a multi-site demonstration project in the Medicare population to determine if the program is viable as a means of avoiding by-pass surgery and improving cardiovascular health, while providing cost-savings.

Ollie and Barbara Johnson of Columbia, SC, presented testimony about their personal experiences with the Ornish Lifestyle Modification Program. Mr. Johnson, retired both from the U.S. Air Force and the State of South Carolina Commission on Aging, was a prime candidate for a heart attack. Both his mother and sister died at 58 from cardiovascular disease. In the 5 years since they began the program, Mr. Johnson has had a reversal of his heart disease, and has avoided both angioplasty and by-pass surgery as well as drastically reducing prescription medication use.

While there was some integration of CAM services within programs provided through HHS, DOD, and VA, there was no organized program in place within any agency to expand access to CAM therapies or practitioners. It appears to have been implemented at facilities where existing health care providers on their own initiative received additional training and gained licensure or certification in a CAM practice such as acupuncture. The full benefit, including cost-savings, and fewer adverse events of CAM therapies has not been realized. Because of long-term patient tracking capabilities, both the VA and DOD are optimum health systems to conduct CAM outcomes research studies including cost-benefit analysis.

*2. Cardiovascular Disease: Is the Government Doing More Harm Than Good? EDTA Chelation Therapy, March 10, 1999.*

The earlier committee investigation indicated that within the Federal Government there remains an institutional bias against some CAM therapies. There is no better example of a therapy that has been safely and effectively used for decades while a tremendous bias exists against it within the medical and Government establishments than EDTA Chelation Therapy. The off-label use of *ethylene diamine tetraacetic acid* [EDTA] Chelation Therapy consists of the intravenous injection into the body of a substance which, after bonding with heavy metals in the bloodstream, is expelled through the body's excretory functions. EDTA is a man-made amino acid and is used by some physicians to treat arteriosclerosis, claudication, and various other circulatory problems. It was originally licensed by the Food and Drug Administration for metal detoxification.

When Congress created the Office of Alternative Medicine at the National Institutes of Health [NIH] it was with the express purpose of generating research interests in the areas of alternative, complementary, and unconventional medical practices; to evaluate and validate therapies; and to make that information known to the public. It has always been stated that the Institutes and Centers of the NIH were to cooperate with OAM and to further their congressional mandate. However, this has not always been the case. There are many alternative therapies that have generated great public debate through the years as well as having been the target



of Federal agencies. In 1998, the Committee on Government Reform heard testimony about the Food and Drug Administrations decade-long attack on Dr. Stanislaw Bryzynski's antineoplaston treatment for cancer. The committee also heard from physicians whose right to practice medicine was threatened because they chose to look at other options for treatment rather than the standards of chemotherapy and radiation. The committee also heard testimony regarding alternative medicine cancer research and the need for more focus on this area.

It has been stated in interviews that everyone in the medical establishment has a bias against EDTA Chelation Therapy, even if they do not admit it. This bias has transcended across Federal agencies as well.

- The Food and Drug Administration fought (and lost) legal battles in the 1970's to prevent a physician from having access to EDTA Chelation.
- In 40 years, the National Heart, Lung, and Blood Institute has never funded any research in EDTA Chelation for cardiovascular and circulatory treatments.
- The National Library of Medicine has refused to index the *Journal for the Advancement of Medicine* in MEDLINE.
- The Federal Trade Commission has launched an attack on the free flow of information from a non-profit professional medical association.
- The FTC additionally has been working with the Federation of State Medical Boards and State Medical Boards to identify physicians who offer EDTA Chelation for off-label use and to remove their licenses.

Dr. Joseph Jacobs made the following statement about Chelation,

In 1992, I became the first director of the Office of Alternative Medicine (OAM) at the National Institutes of Health. The OAM was created by Congressional mandate amidst an atmosphere of scientific skepticism. My staff and I sought to identify therapies in each area of alternative medicine that were deserving of study by virtue of a therapy's possible efficacy or because of the public health implications of the practice. An alternative therapy that caught our attention was EDTA Chelation. EDTA Chelation consists of the intravenous infusion of multiple doses of the agent ethylene diaminetetraacetic acid, usually together with high doses of vitamins and nutritional supplements. In the area of cardiovascular medicine, I came to the conclusion that EDTA Chelation merited study because of the possible truth of the claims made in favor of the therapy and because of the exceedingly large numbers of Americans who seek out and submit to this therapy.<sup>28</sup>

There are several theories on the mechanism of action. Various peer-reviewed articles support the use of EDTA Chelation in heart disease because of the observed effects on the health of the patients. A large retrospective study of 2,870 patients in Brazil

<sup>28</sup> Dr. Joseph Jacobs, Foreword to A Critical Review of EDTA Chelation Therapy in the Treatment of Occlusive Atherosclerotic Vascular Disease, ISBN-0-9668200-0-2, p. i.

showed that 89 percent of the patients treated with EDTA Chelation had marked or good improvement.<sup>29</sup>

In 1978, a U.S. District Court rejected the actions of the FDA when they sought an injunction against a physician that administered Chelation. The court characterized the FDA's actions as "an attempt to compel physicians to practice according to state-sanctioned protocols." Furthermore, the court determined that the weight of the evidence submitted to it supported the practice of Chelation.<sup>30</sup>

In 1981, the Office of Health Technology Assessment to the Health Care Financing Administration called for the safety and efficacy of EDTA Chelation to be established by well-designed, controlled clinical trials. The National Heart, Lung, and Blood Institute [NHLBI] was established in 1948 as the National Heart Institute through the National Heart Act with a mission to support research and training in the prevention, diagnosis, and treatment of cardiovascular disease. In 1962, the National Heart, Lung, and Blood Institute Act mandated the Institute to expand and coordinate its activities in an accelerated attack against heart, blood vessel, lung, and blood diseases. The current mission is to provide leadership for a national program in diseases of the heart, blood vessels, lung, and blood. This Institute plans, conducts, fosters, and supports basic research, clinical investigations and trials, observational studies, and demonstration and education projects. It coordinates with other Federal health programs relevant to activities in heart, blood vessel, lung, and blood diseases.<sup>31</sup>

The NHLBI has never funded any research in the off-label use of EDTA Chelation in vascular disease. The committee learned that researchers from several leading U.S. medical schools approached the NHLBI with a desire to conduct studies in this area and were discouraged from doing so. Additionally, after extensive pre-application discussions with NHLBI leadership, another academic researcher submitted a grant proposal that was rejected by NHLBI in December 1998. In the review process, especially in areas that are not major research priorities for an Institute, getting a score on a grant is important, even if the score is too high for the Institute payroll. The kiss of death to a grant proposal is to be triaged out with the "Not Recommended for Further Consideration" designation. This is what happened to the 1998 chelation proposal. The comments from the reviewers did not indicate anyone with any expertise in chelation having participated in the review.

In the 40 years that EDTA Chelation has been used off-label, various safety issues and toxicology issues have been addressed. According to Dr. Stephen Olmstead, conventional cardiologist in private practice in Washington with a clinical academic appointment at the University of Washington School of medicine, and the author of *A Critical Review of EDTA Chelation Therapy in the Treatment of Occlusive Atherosclerotic Vascular Disease*, "only prospective controlled clinical trials can firmly establish whether EDTA chelation

<sup>29</sup> Alternative Medicine: Expanding Medical Horizons, NIH-Publication 94-066, December 1994, pp. 163-165.

<sup>30</sup> A Critical Review of EDTA Chelation Therapy in the Treatment of Occlusive Atherosclerotic Vascular Disease, ISBN-0-9668200-0-2, p. 105.

<sup>31</sup> NHLBI Fiscal Year 1998 Factbook, p. 9.

is effective for symptomatic coronary artery disease or can alter its natural history.”

In a desire to address this public health need, Dr. Olmstead prepared a research proposal to conduct a clinical trial on EDTA Chelation. However, his own university refused to allow him to move forward with the study. He felt so strongly about the need for a clinical trial, that he assisted an associate of his from another institution in the preparation of a grant proposal that was submitted to NHLBI. This is the grant that NHLBI triaged out and did not even score. St. Mary's Hospital in England is currently developing two protocols in collaboration with a United States researcher to test Chelation in their facility. Additionally an Italian physician is having very good results with Chelation in the treatment of macular degeneration—a disorder for which there are few if any treatments. The problem with his treatment will be in tracking outcomes, for this Italian physician, just as all United States physicians, does not ordinarily conduct research. He does not have a nurse statistician on staff to extract research data from the patient files and track outcomes.

It is estimated that maybe as many as 500,000 people receive off-label use of chelation in a year. While, this may not be the NHLBI's highest priority, it clearly warrants investigation by the premier biomedical research institute in this country. While the new National Center for Complementary and Alternative Medicine now has the ability to conduct research without clearing it through the various NIH Institutes and Centers, NCCAM leadership has stated that they will continue to utilize the expertise of these Institutes. Additionally, a large clinical trial which will be needed to address this therapy will likely cost over \$30 million, which at present is approximately one-half of NCCAM's budget—much more than NCCAM could fund, but well within funding range for NHLBI. If the existing bias continues, it stands in the way of research.

While many individuals within the medical establishment state that there is no research in the use of this treatment, there is in fact a vast repository of research conducted around the world. There have been several books published outlining the existing body of evidence.

- In 1991 there is a retrospective study in Denmark of 470 patients with vascular disease treated with Chelation. Most patients reportedly improved with an 80 to 91 percent response rate depending on the parameter measured. Of 92 patients who had been referred for vascular surgery, only 10 needed surgery after EDTA therapy. Of 30 limbs, 3 were considered saved from amputation. Diabetes-related limb amputation is a major concern and expense within the veteran's population.
- In 1992, another Danish study was published that stated that in a double-blind, prospective, randomized, placebo-controlled trial demonstrates that EDTA Chelation had no beneficial effect on exercise capacity and noninvasive parameters of lower extremity perfusion. This study was conducted by a group of researchers who opposed Danish Governmental funding of EDTA Chelation. It was found by the Danish Committee on Scientific Dishonesty that the researchers violated the blind

in their trial and that they did not follow the ACAM protocol (the accepted protocol known to be safe). This is one of the two “scientifically valid studies” that the NHLBI references as indicating that EDTA Chelation is not effective. During the hearing, Dr. LenFant, NHLBI Director, stated that he was not aware that this study had been deemed invalid due to scientific misconduct.

The Federation of State Medical Boards of the United States established an *ad hoc* committee to research, review, and evaluate questionable health care treatments, procedures, and promotions which may be unsafe and a risk to the public. The committee was charged with making recommendations for State medical boards’ use in evaluating such questionable practices and use in evaluating such questionable practices and taking disciplinary action against such providers. In preparation for their August 28, 1995 initial meeting, they sent the following question out to all State medical boards: “Has your state enacted any legislation or board policy related to the regulation of chelation therapy?” The growing interaction between Federal agencies and the Federation’s obviously biased approach to approaching CAM practices is of concern to the committee and to the public.

In *United States of America, Plaintiff, v. H. Ray Evers, M.D.*, an individual doing business as Ra-Mar Clinic defendant, U.S. District court, Alabama, June 27, 1978, “. . . While weight of medical opinion in United States was that chelation therapy was of no benefit to treatment of arteriosclerosis, there was a school of thought among medical experts of the United States and some foreign countries that arteriosclerosis could be satisfactorily treated with chelation therapy. Complaint dismissed.”

“A physician must be free to use a drug for an indication not in the package insert when such usage is part of the practice of medicine and for the benefit of the patient.”<sup>32</sup>

In 1988, a municipal court in the State of Ohio ruled in favor of providing coverage for chelation as a necessary treatment. The court found that it was a necessary treatment for patient with arteriosclerosis and that chelation was a broadly accepted treatment and that the services were covered under the insurance contract.

The National Library of Medicine [NLM], founded in 1836, is the world’s largest medical library. The Library produces MEDLINE, GenBank, and other online databases that are available free to scientists, health professionals, and the public via the World Wide Web. MEDLINE is NLM’s premier bibliographic database covering the fields of medicine, nursing, dentistry, veterinary medicine, and the preclinical sciences. Journal articles are indexed for MEDLINE, and their citations are searchable, using NLM’s controlled vocabulary, MeSH (Medical Subject Headings). MEDLINE contains all citations published in *Index Medicus*, and corresponds in part to the International Nursing Index and the Index to Dental Literature. Citations include the English abstract when published with the article (approximately 76 percent of the current file).

<sup>32</sup>Federal Food, Drug, and Cosmetic Act, §§301(k), 502(f)(1), 21 U.S.C.A., §§331(k), 352(f)(1). As referenced in 1978 U.S. District Court Case, 1978.

The committee has concerns that physicians and the public who refer to MEDLINE for access to medical information are not gaining access to novel treatments that have not been accepted in mainstream publication. It is widely known that there exists a publication bias, both for alternative medicine in conventional journals and in topics that while not alternative, are not of the mainstream focus. Therefore, specialty journals play an important role in providing information about treatments that do not get published in mainstream journals. Additionally, the bibliographic database of alternative medicine research at the NIH is drawn from MEDLINE. Dr. Donald Lindberg testified on behalf of the NLM.

The Federal Trade Commission [FTC] enforces a variety of Federal antitrust and consumer protection laws. The Commission seeks to ensure that the Nation's markets function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts are directed toward stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the executive branch, other independent agencies, and State and local governments when requested. In addition to carrying out its statutory enforcement responsibilities, the Commission advances the policies underlying congressional mandates through cost-effective non-enforcement activities, such as consumer education.<sup>33</sup>

The FTC filed a complaint against the professional medical association, the American College for Advancement in Medicine [ACAM] stating that even though they are a professional association,<sup>34</sup> the ACAM was under the purview of the FTC. The FTC determined that the ACAM disseminated to the public brochures and other written materials that constitute advertising under the Federal Trade Commission Act. These materials contain statements about chelation therapy. According to the complaint, ACAM distributes its brochures and other written materials to its members who disseminate the material to consumers. Additionally, ACAM disseminates its material to consumers through an Internet web page and to consumers who contacted ACAM through its toll-free telephone number.

FTC determined that these activities constituted commerce, i.e. advertising. Even though there existed a legal precedent that EDTA Chelation therapy had been deemed by a court or law to be an acceptable treatment for arteriosclerosis, the FTC also determined that the statements of benefit for cardiovascular disease were unsubstantiated. The ACAM for fear of financial devastation if attempting to take on the Federal bureaucracy, entered into a consent agreement in December with the FTC. A comment period

<sup>33</sup> <http://www.ftc.gov/ftc/mission.htm>.

<sup>34</sup> <http://www.acam.org/>. Founded in 1973, the American College for Advancement in Medicine is a non-profit medical society dedicated to educating physicians on the latest findings and emerging procedures in complementary/alternative medicine, with special emphasis on preventive/nutritional medicine. ACAM's goals include both improvement of physicians' skills, knowledge, and diagnostic procedures, and enhanced awareness in the public at large of alternative methods of medical treatment.

of 60 days was announced with the press statement. That comment period has been extended until March 31. At the time of our hearing, over 700 statements have been submitted. Of those reviewed by the committee, the vast majority are not “boilerplates,” but personal, supportive statements by patients and physicians who wish to have access to chelation therapy and to information about the potential benefits of chelation therapy. It should be noted that in the publications mentioned, the ACAM clearly states: “The reader is advised that varying and even conflicting views are held by other segments of the medical profession. . . . This information represents the current opinion of independent physician consultants to ACAM at the time of publication.”

Apparently, the standard of evidence that the ACAM relied upon did not meet the standard of evidence the FTC expected. It has not been made clear in the consent order what the level of evidence would need to be. Without the NHLBI’s involvement in research projects for cardiovascular disease, it is unlikely that other research projects would be considered of high enough caliber to be accepted by the FTC. As stated previously, the NHLBI has never funded research and continues to discourage potential grantees and turn down applicants. One researcher stated to the committee when interviewed that there was such a bias against chelation therapy in the medical community, that to delve into this project would be the death of anyone’s career.

The ACAM has stated they felt they could not fight the Federal Government, that it was simply going to decimate the organization, when the FTC would have unlimited resources to wage court battles. Therefore, on December 8 they entered into an agreement that prohibits them from discussing the potential cardiovascular benefits of chelation as well as any part of the human circulatory system. In essence, this consent order restricts a nonprofit professional medical association who have made it their mission to provide information about alternative medicine to health care professionals and the public from doing so. Additionally, this order required the ACAM to notify the 1,000 physician members, if they as physicians in the course of informing their patients about their treatment options provided information about the potential cardiovascular or circulatory benefits of chelation therapy could be prosecuted by the FTC also.

Of additional concern is the increased activity of the FTC in working with other Federal and State agencies to target physicians who utilize alternative therapies and chelation in their practice. In 1997, the FTC sponsored a conference in Dallas, TX, with the National Association of Attorneys General and the Federation of State Medical Boards. The conference, which was closed to the public and media was entitled, “Preventing Healthcare Fraud: Building Partnerships—A National Conference to Explore Practical Solutions.” Two panels that specifically addressed alternative medicine were “Fraudulent Marketing Practices That Must Be Addressed” and “Alternative/Complementary Therapies: Impact on States’ Alternative Medicine Practice Laws on Healthcare.”

The Federation has stated that it will step up disciplinary actions against M.D.s and DOs<sup>35</sup> who utilize “questionable” methods in the treatment of patients and it will try to stop health freedom legislation from passage at the Federal and State levels of government. It should be noted that in attendance and speaking to this private meeting were several anti-alternative medicine advocates. These self-proclaimed experts have made a profession out of attacking everything alternative. The Federation has formed a subcommittee to look into health fraud issues. A report issued in April 1997 by this group, lists the Special Committee on Health Care Fraud. Among its members is at least one anti-alternative medicine advocate whose opinion of alternative medicine is so biased as to render his judgement on these topics entirely unreasonable. This “expert” has stated that he believes 60 percent of chiropractors are quacks, that 10 percent of DOs are quacks, that 80 percent of health food stores sell quack remedies and devices, that 98 percent of homeopaths are quacks, and that 99 percent of the health clinics practicing outside the United States are practicing quackery.

The subcommittee continues to meet and is currently focusing on Chelation therapy. The FTC is working with the Federation on this topic. It should be noted that the Federation of State Medical Boards promotes itself as a national non-profit association with membership consisting of medical licensing authorities in all 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands. It's stated goal is to provide services to its members to help them carry out the responsibilities mandated by State law. The mission of medical boards as stated by the Federation of State Medical Boards is as follows: “The primary responsibility and obligation of a state medical board is to protect consumers of health care through proper licensing and regulation of physicians and, in some jurisdictions, other health care professionals.”<sup>36</sup> Jody Bernstein testified on behalf of the FDA.

Testimony was also received from the following public witnesses:

L. Terry Chappell, M.D., of Ohio, is board certified Family Practice, Chelation Therapy, Pain Management, and Added Qualification in Geriatric Medicine from the American Board of Family Practice. Dr. Chappell received his medical degree from the University of Michigan. Dr. Chappell is the immediate past president of the ACAM.

Theodore Rozema, M.D., of North Carolina is board certified in Family Practice and Chelation Therapy. Dr. Rozema received his medical degree from Northwestern University Medical School. Dr. Rozema is the president-elect of ACAM.

Norman Levin, M.D., of Virginia is board certified in Internal Medicine and Rheumatology. He received his medical degree from Temple University School of Medicine. Dr. Levin began looking into alternative therapies when he realized that he was not equipped in his standard medical practice to provide effective treatments.

Dr. Victor Marcial-Vega of Florida is a physician board certified as an oncologist and medical examiner. He received his medical degree from the University of Puerto Rico School of Medicine and con-

<sup>35</sup> Doctors of Osteopathy.

<sup>36</sup> <http://www.fsmb.org/consumer.htm>.

ducted his internship and residency in radiation oncology at the Johns Hopkins Hospital. Prior to going into private practice, Dr. Marcial-Vega was chief of Head and Neck Cancer Services at Washington University School of Medicine, and a clinical assistant professor, Department of Radiation Oncology, University of Miami School of Medicine.

If shown to be a safe and effective treatment for cardiovascular conditions through high quality clinical research, EDTA would offer an additional treatment that is less costly and less risky than bypass surgery. EDTA Chelation therapy remains one of the most controversial topics in alternative medicine. It is important to remove long-standing bias from our Government agencies to conduct research in areas such as this where there is a need, and to preserve the free flow of information in this country, including that of differing medical opinions.

*3. The Role of Early Detection and Complementary and Alternative Medicine in Women's Cancers, June 10, 1999.*

In the United States, a woman is diagnosed with a reproductive tract cancer every 64 minutes. One in eight women today will get breast cancer. In the 28 years since President Nixon declared the war on cancer, and after tens of billions of dollars in research, victory cannot yet be declared. Each week, 1,355 women in America lose their lives to a reproductive tract cancer. Overall, 10,000 adults and children die each week from cancer.

The purpose of the hearing was to update the committee on the availability and effectiveness of early detection tests and devices, learn about the role of complementary and alternative medicine in the treatment of women's cancers, and explore opportunities to integrate the advances of biomedical research with complementary and alternative medicine in order to reduce cancer incidence and improve the health status of women with cancer.

The National Cancer Institutes [NCI] estimated that for 1998 there would be 180,000 new cases of breast cancer (178,700 of which are in women) and 80,400 new cases of cancers of the female genital organs (cervix, endometrium, ovary, vulva, vagina and other female genital organs.) It is also estimated that there would be 43,900 deaths from breast cancer in 1998 (43,500 women) and 27,100 deaths from cancers of the female genital organs. The medical community recognizes that the earlier a cancer can be detected the better the chances of successful intervention. Surveys have shown that a growing number of cancer patients now include some form of complementary and alternative therapy in their treatment plan. Edward Trimble, M.D., testified on behalf of the NCI. At present the NCI only spends about \$20 million of its \$2.7 billion budget on CAM research.

#### Ovarian Cancer

There is no reliable early detection test for ovarian cancer. The CA125 is currently the best test available and is typically used only in high-risk patients and for relapse testing. Ultra sound can be used and laparoscopy when needed. Of ovarian cancers, 75 percent are not detected until late stage (3 and 4) and there is only a 25 percent survival rate of more than 5 years. However, of the 25 percent that are discovered in early stages, there is a 95 percent sur-



vival rate of more than 5 years. The symptoms of ovarian cancer are vague—bloating, sudden weight gain, gas pressure, lethargy. There is research to indicate that eating lots of meat and animal fats may increase your risk of ovarian cancer. There is also an indication that there can be familial clustering of cancers. That the women in families where the women who have ovarian cancer may be at a slightly higher risk for other cancers for breast and uterine cancer and colon cancer. Additionally, men in the family may be at higher risk for prostate cancer and these cancers may have an earlier onset. There is also epidemiologic data to indicate that the risk of ovarian cancer is reduced by as much as 50 percent for women who have used oral contraceptives for 6 premenopausal years and that the more children a woman has the lower risk for ovarian cancer is. The correlating factor is the increased time that a woman is not ovulating. In 1999, the American Cancer Society estimated that there were 25,200 new cases and 14,500 deaths. The current standard first line treatment is removal of the tumor and a platinum type chemotherapy and taxol.

#### Breast Cancer

More women get breast cancer than any other cancer except skin cancer. And more women die from breast cancer each year than any other cancer except lung cancer (which continues to be the leading cancer killer for men and women). Currently breast tumors are detected through one of three methods:

- (1) The Breast Self Exam [BSE] which every woman should conduct on a monthly basis to check for lumps.
- (2) The Clinical Breast Exam [CBE] in which a physician exams the breast and under arm tissue for lumps and looks for unusual breast discharge.
- (3) The Mammogram which is a special x ray of the breast that can often find tumors that are too small for the patient or doctor to feel. Once a tumor is found, a needle biopsy or similar procedure would be conducted to test the tissue and determine if the mass was benign or malignant.

Unfortunately, the mammogram, as good as it is, is not a perfect system—many tumors go undetected sometimes. Of the three cancer survivors that testified, none had discovered their cancer through mammograms, even those who had annual mammograms. Thermography is a low cost and non-invasive procedure that may detect changes in breast tissue earlier than mammograms. Daniel Beilin, OMD, LAc., testified regarding the advances of cancer treatments involving alternative therapies and the latest developments of the thermography system and how it is being used to improve the diagnosis of breast cancer earlier and thus improve outcomes.

#### Other Gynecological Cancers

Cervical cancer usually affects women between 40 and 55 years of age. The Pap test is a valuable screening tool and has greatly reduced the deaths associated with cervical cancer. However, there are 16,000 cases of invasive cervical cancer each year in the United States and over 50,000 cases of preinvasive carcinoma in situ. There are over 400,000 cases of cervical cancer worldwide. For precancerous lesions of the cervix, the great majority of women are

cured without the need for hysterectomy. Cervical cancer may develop in women who have been infected with the human Papillomavirus [HPV], a sexually transmitted virus.

Endometrial cancer of the uterus (sometimes called uterine cancer) is the most common type of cancer that develops in the pelvic area in women. About 35,000 new cases of endometrial cancer are diagnosed in the United States each year. The average woman who develops this type of cancer is in her early 60's. Most of these cancers are carcinomas that develop in the glandular cells or endometrium lining on the inside of the uterine cavity. This is the same tissue that is shed each month during a normal menstrual period. A small number of endometrial cancers (3 percent) are sarcomas, which grow in the muscular and connective tissue elements of the uterus.

The committee received testimony from the following public witnesses:

Priscilla Mack, a breast cancer survivor and the national co-chair of the Susan B. Komen, National Race for the Cure testified about the importance of early detection. She also presented information on research activities sponsored by the Race for Cure and future research needs.

Michio Kuchi, the world's leading authority on the macrobiotic diet testified about the use of this diet and other complementary and alternative healing methods in the treatment of women's cancer. Mr. Kuchi was honored during 1999 at the Smithsonian's National Museum of American History with an exhibit on the history of Macrobiotics and Alternative and Complementary Health Practices.

Lee Gardener, Ph.D., a survivor of breast cancer from North Carolina, recently was able to return to work and begin using her personal experiences to help others facing cancer. Dr. Gardener used complementary and alternative therapies in her battle with cancer. Dr. Gardener stated during the course of her testimony concerns about preliminary research that indicated that for a small subset of the population, mammograms actually stimulated cancer growth.

Carol Zarycki, a breast cancer survivor took an integrated approach also to treat her breast cancer and discussed the importance of doctors talking to their patients about supporting the immune system through diet. As a survivor, she has also become active in a women's cancer group in New York, SHARE.

Linda Bedell-Logan's sister was a breast cancer victim. During her battle, Ms. Bedell-Logan's sister suffered with lymphadema. Linda, who was involved in health care researched her sister's treatment options and learned about manual lymphatic drainage. She has worked with individuals and the American Lymphadema Association to make this system available to cancer patients. Lymphadema is a serious complication for many cancer survivors which causes swelling, usually in an arm or leg, and sometimes the adjacent trunk quadrant. Anyone who has undergone lymph node dissection and/or radiation in the axillary, groin or neck region is at risk to develop lymphedema. If untreated, chronic lymphadema progresses to a fibrous, brawny texture and significantly impacts quality of life by: 1) acting as a constant reminder of the patient's

cancer experience; 2) frequently causing pain or discomfort; 3) interfering with clothing fit; and 4) requiring lifelong management. Patients also express frustration that health professionals lack knowledge about the disorder and its treatment.

Susan Silver of George Washington University's Integrative Medicine Center testified about the development of integrative approaches to treating women's cancers including the program being developed at George Washington University. Ms. Silver outlined the Quality of Life Program available to cancer patients at the Center for Integrative medicine.

We have asked ourselves this fundamental question: "How can we enhance the quality of life of the person-as-patient?" Traditionally, on assuming the role of patient, a person has willingly surrendered quality of life—her sense of orientation and personal control—in exchange for a cure. But we are beginning to suspect that surrender may be self-defeating. We would suggest that successful medical outcomes are diminished when the patient lacks control, information and support. Conversely, if these inputs are maximized, the patient may recover more quickly and completely, and have a higher quality of life, whatever the ultimate outcome.

Most cancer patients say that from the moment of their diagnosis, everything in life is changed. A life that was going along routinely is suddenly out of control, the entire focus on the "what ifs" of cancer treatment and its outcome.

The Quality of Life Program of the Center for Integrative Medicine can assist the patient throughout the course of her illness. At whatever stage of illness the relationship with the Center is initiated, we help determine and meet the patient's needs and goals in a comprehensive way.

For patients newly diagnosed and awaiting treatment we offer:

- Stress reduction with a focus on personal control and empowerment

- Immune system enhancement to help combat disease

- Relief from symptoms caused by anxiety or depression such as appetite loss, nausea, or sleeplessness

- For patients undergoing aggressive curative treatment:

- Relief from side effects of treatment such as nausea or post-operative pain

- Immune system enhancement to help maximize the effectiveness of treatment

- Relaxation and stress reduction to help restore the mind and body between enervating treatments

- For patients in remission:

- Stress reduction during periods of watchful waiting

- Rebuilding of stamina and flexibility following medical and surgical treatments

- Resumption of healthful diet and nutrition with added emphasis on cancer prevention

- For patients who experience a relapse:

All of the services and objectives of the pre-treatment and treatment phase programs resumed with even greater intensity

For patients whose illness is not responsive to curative treatment:

Control of pain and symptoms of the progressive illness

Mobilization of the powers of the mind to maximize quality of life

Reduction of stress to allow for end of life planning and resolution.

Overall, the Center for Integrative Medicine aims to restore a sense of control and well being and offer the patient the freedom to heal physically, emotionally and spiritually.<sup>37</sup>

During the hearing, it was learned that there are many cancer devices and treatments available in Europe, Canada and other countries that are showing tremendous promise for the early detection and less toxic treatment of cancer which are not currently available within the United States. And example of this is mistletoe. Several good clinical trials were conducted in Europe during the 1980's, but mistletoe is not available in the United States and the NCI had not picked it up as a potential new treatment for cancer. Upon being assured that the NCI was in close communication with its international colleagues and aware of promising treatments, the chairman asked for the NCI to prepare a list of devices, treatments, drugs, and alternative therapies available in Europe and Canada not available in the United States. At the end of 1999, the only thing that had been provided to the committee was a list of five chemotherapy agents licensed in Europe or Canada that were not available in the United States.

While, the NCI created the Office of Cancer Complementary and Alternative Medicine to coordinate CAM activities within the NCI, neither the office, nor the Institute have gathered the data on innovative cancer therapies available outside the United States. One of the major complaints received by the committee from cancer patients, is that they were forced to travel outside the United States in order to have access to many alternative cancer approaches.

*4. Fighting Prostate Cancer: Are We Doing Enough? September 23, 1999.*

This hearing provided an opportunity for the committee to review the current status of prostate cancer issues and illuminate issues regarding prevention, early detection, treatment, research, and the role of nutrition and complementary medicine. Prostate cancer is the most common cancer among men after skin cancer. In 1999 it was estimated that there would be 179,300 new cases of prostate cancer and 37,000 deaths.<sup>38</sup> The National Institutes of Health states in their report to Congress:

Despite advances over the past decade, our treatments for prostate cancer are inadequate, the side effects of treatment are unacceptable, and troubling questions remain

<sup>37</sup>Testimony of Susan Silver, Center for Integrative Medicine, George Washington University, <http://www.house.gov/reform/hearings/healthcare/womens—cancers/Silver.htm>.

<sup>38</sup><http://www3.cancer.org/cancerinfo/documents/overviews/prosover.asp?ct=36>.

about the relative benefit of early detection for the disease. Every day, too many men in the United States hear the life-changing words “You have prostate cancer.” Every day, too many men are faced with the agonizing decision of how to treat their prostate cancer. And every day, too many men are dying too young of this disease.

Prostate cancer is the most common cancer among men after skin cancer and is the second leading cause of cancer death in men. There is a dramatically higher incidence of prostate cancer in African American men, with mortality rates more than twice as high. As with most cancers, the incidence increases with age. More than 75 percent of prostate cancers are diagnosed in men over 65. Genetic studies indicate that only 5 to 10 percent of the cancers are from an inherited predisposition. There are an increasing number of studies that indicate that dietary fat may be a risk factor.

The committee calculated the spending on prostate cancer research per each new case and found a disturbing disparity in research funding. In fiscal year 1999, for HIV/AIDS, the NIH spent on average \$44,960 on research per each new case of HIV/AIDS in the United States. In cardiovascular disease, the NIH spent \$2,019.69 on research per new case of cardiovascular disease. And in prostate cancer in America, the NIH devoted \$941.44 on research on average for each new case of prostate cancer in the United States.

The signs and symptoms of prostate cancer are:

- Weak or interrupted urine flow;
- inability to urinate, or difficulty starting or stopping the urine flow;
- the need to urinate frequently, especially at night;
- blood in the urine;
- pain or burning on urination;
- continuing pain in lower back, pelvis, or upper thighs.

Most of these symptoms are nonspecific and may be similar to those caused by benign conditions such as infection or prostate enlargement.

**Early detection:** It is currently recommended that men over the age of 50 who have at least a 10-year life expectancy should talk with their health care professional about having a digital rectal exam of the prostate gland and a prostate-specific antigen [PSA] blood test every year. The PSA blood test measures a protein (prostate specific antigen) made by prostate cells. PSA blood test results are reported as ng/ml which stands for nanograms per milliliter. Results under 4 ng/ml are usually considered normal. Results over 10 ng/ml are high, and values between 4 and 10 are considered borderline. The higher the PSA level, the more likely the chance of prostate cancer. While PSA levels tell how likely a man is to have prostate cancer, the results do not provide a definite diagnosis. Men with a high PSA result are advised to have a biopsy to find out whether or not they have cancer.

**Current Treatment Options:**

Five kinds of treatment are commonly used:

- surgery
- radiation therapy

- hormone therapy (using hormones to stop cancer cells from growing)
- chemotherapy
- biological therapy (using the body's immune system to fight cancer)

Surgery is a common treatment of cancer of the prostate. Radical prostatectomy is the removal of the prostate and some of the tissue around it. Radical prostatectomy is done only if the cancer has not spread outside the prostate.

Transurethral resection is a procedure in which the cancer is cut from the prostate using a tool with a small wire loop on the end that is put into the prostate through the urethra. This operation is sometimes done to relieve symptoms caused by the tumor before other treatment or in men who cannot have a radical prostatectomy because of age or other illness.

Cryosurgery is a type of surgery that kills the cancer by freezing it.

Radiation therapy is the use of high-energy x rays to kill cancer cells and shrink tumors. Radiation may come from a machine outside the body (external radiation therapy) or from putting materials that produce radiation (radioisotopes) through thin plastic tubes in the area where the cancer cells are found (internal radiation therapy). Impotence may occur in men treated with radiation therapy.

Hormone therapy is the use of hormones to stop cancer cells from growing. Hormone therapy for prostate cancer can take several forms. Male hormones (especially testosterone) can help prostate cancer grow. To stop the cancer from growing, female hormones or drugs called LHRH agonists that decrease the amount of male hormones made may be given. Sometimes an operation to remove the testicles (orchiectomy) is done to stop the testicles from making testosterone. This treatment is usually used in men with advanced prostate cancer. Growth of breast tissue is a common side effect of therapy with female hormones (estrogens). Other side effects that can occur after orchiectomy and other hormone therapies include hot flashes, impaired sexual function, and loss of desire for sex.

Chemotherapy is the use of drugs to kill cancer cells. Chemotherapy may be taken by pill, or it may be put into the body by inserting a needle into a vein or muscle. Chemotherapy is called a systemic treatment because the drug enters the bloodstream, travels through the body, and can kill cancer cells outside the prostate. To date, chemotherapy has not had significant value in treating prostate cancer, but clinical trials are in progress to find more effective drugs.

Biological therapy tries to get the body to fight cancer. It uses materials made by the body or made in a laboratory to boost, direct, or restore the body's natural defenses against disease. Biological treatment is sometimes called biological response modifier [BRM] therapy or immunotherapy.<sup>39</sup>

While there are many advances in prostate cancer treatment, there is much more to the treatment to be considered than just the elimination of cancer. In addition to the side effects that all cancer

<sup>39</sup> <http://cancernet.nci.nih.gov/clinpdq/pif/Prostate—cancer—Patient.html>.

patients may deal with—chemotherapy nausea, hair loss, mouth sores, fatigue, et cetera—prostate cancer patients have to make decisions about treatment that may leave them incontinent and/or impotent.

The committee received testimony from two prostate survivors—Former Senator Robert Dole and Congressman Randy “Duke” Cunningham (R-CA). Both shared personal stories of the agonies of facing cancer as well as the challenges in making decisions. Senator Dole also advocated expanded promotion of PSA testing. Congressman Cunningham compared the emotions generated by his cancer diagnosis to his Vietnam war experience, being shot at as an ace fighter pilot. He also shared information on the importance of dietary considerations such as the inclusion of tomatoes in the diet for lycopene.

Mrs. Betty Gallo, the widow of former Congressman Dean Gallo—a prostate cancer victim—testified. Mrs. Gallo is now the Director for Advocacy and Fundraising of the Dean and Betty Gallo Cancer Institute of New Jersey: Only men can get prostate cancer, but it has a major effect on the women in their lives. Mrs. Gallo shared her perspectives on sharing Congressman Gallo’s journey with cancer.

Jeremy Geffen, M.D., executive director, Geffen Cancer Center and Research Institute, Vero Beach, FL, presented testimony on the human side of treating cancer patients, not only the physical issues of cancer, but the emotions and psychosocial issues. In addition to his oncology training, Dr. Geffen has studied Ayurvedic and Tibetan medicine in India, Nepal, and Tibet. He will outline a seven-step program he developed and uses in the Geffen Cancer Center. Dr. Geffen recently published a book entitled, *The Journey Through Cancer*.

Konraid Kail, N.D., a naturopathic physician in Phoenix, AZ, testified. Dr. Kail is a member of the newly established National Advisory Council for Complementary and Alternative Medicine. Dr. Kail outlined natural therapies that may be used to treat prostate cancer and the coordination of care for patients who desire to include their naturopathic physician as part of their oncology team.

Sophi Chen, Ph.D., associate professor, Brander Cancer Research Institute, New York Medical College, a chemist, testified about PC SPECs, a Chinese botanical compound that research indicates may be effective in slowing cancer cell growth.

Alan Thornton, M.D., of Indiana University testified about proton therapy. This technique, uses protons—elementary particles found in the nuclei of all atoms rather than photons. Higher radiation doses can be delivered to the tumor by proton beam methods because the physical characteristics of protons mean that for many anatomic situations there can be a higher concentration of dose in the target and lesser doses to adjacent normal tissues.

Richard Kaplan, M.D., testified on behalf of the National Cancer Institute. He presented National Institutes of Health’s Five Year Plan for prostate cancer research.

The minority called several witnesses. They included:

Andrew C. vonEchenback, M.D., the executive vice president and chief academic officer of the Department of Urology at M.D. Ander-

son Cancer Center of Houston, TX, testified on behalf of the American Cancer Society.

Dr. Ian Thompson, Col., M.D., University of Texas Health Science Center at San Antonio testified about ongoing research on prostate cancer prevention.

*5. Improving Care at the End of Life With Complementary Medicine, October 19, 1999.*

As the Committee investigated cancer therapies, it became obvious that end-of-life care in the United States needs improvement. Hospice care has become increasingly popular in the United States. Most individuals state they would prefer to die at home, or in a home-like setting, with their family and loved ones around them rather than in a hospital setting. Increasing discussion of euthanasia or physician-assisted suicide points to the severity of the problems with end-of-life care.

The graying of America will accelerate dramatically between 2010 and 2030, as baby boomers turn 65 years old. By the year 2030, 75 million Americans will be over 65, more than 20 percent of the population. In addition, there are 40 million Americans living now with chronic illness. It is estimated that this figure may triple by 2050. Each month, 32,000 World War II veterans die, many alone and with inadequate pain management.

While the graying of America accelerates, private caregiving resources within Americans' individual networks of relatives and close friends are rapidly falling. Social trends, including geographic mobility, smaller families and families in which both adults are working have all contributed to this decline. Specifically, in 1970 there were 21 healthy adults representing potential caregivers for every person 85 years or older. In 2030, there will be just six such potential caregivers for the aged and just four by the middle of the next century.

Informal caregiving provided by relatives and close friends represents the unrecognized backbone of care in America. It is an enormous resource that can be supported and expanded as we grapple with the crisis of how badly Americans now die. A survey conducted in 1996 by the National Alliance for Caregiving and AARP found that nearly one quarter of all households contained at least one caregiver.<sup>40</sup> It is estimated that 25.8 million Americans spend an average of 18 hours per week caring for frail relatives. The economic impact of such care is extraordinary. It amounts to \$196 billion per year, more than formal home health care (\$32 billion) and nursing home care (\$83 billion) combined.<sup>41</sup>

Americans have come to fear the dying process. Studies have shown that Americans are afraid they will suffer and be in pain, that they will be alone at death, and that their family will be left destitute from exorbitant medical expenses. The Institute of Medicine's report, *Approaching Death*, details the severity and pervasive nature of this crisis and concludes that there are serious deficiencies in medical education, health systems financing, attitudes and culture, and extensive errors of omission and commission in

<sup>40</sup> Family Caregiving in the U.S., Findings from a National Survey, National Alliance for Caregiving and the American Association of Retired Persons, 1997.

<sup>41</sup> Arno, P.S., Levine, C., Memmot, M.M., The economic value of informal caregiving. *Health Affairs*, 18(2): 182-188.



clinical practice.<sup>42</sup> Even in otherwise excellent medical institutions, pain and physical suffering among dying Americans remains inadequately treated—or even recognized. Up to 40 percent of dying patients receive grossly inadequate analgesia.<sup>43</sup> Being of minority ethnicity, older than 80, or having dementia seriously increase the risk of having one's pain untreated. In addition, most Americans still die in institutions, approximately 60 percent in hospitals and 20 to 25 percent in nursing homes.

Patients' preferences for care often are not honored, even when those choices are clearly conveyed.<sup>44</sup> Our health system as it exists today routinely pauperizes people and their families for being chronically ill and not dying quickly enough. In one large research study, one third of families of dying patients reported losing most or all of the family's major source of income; a third reported losing the family's life savings, and 20 percent said that a family member had to either move or delay their own medical care, education, or career to meet the basic needs of their dying loved one.<sup>45</sup>

This hearing provided an opportunity to review the current status of end of life care across the United States including within the Veterans Administration and to discuss the role of improving care with complementary medicine. Death is not a subject most people like to discuss, but it is a necessary topic to cover when looking at improving health care.

The importance of adequate and compassionate care is immeasurable. There are many challenges for physicians and health care workers today, including providing adequate pain management. The Veterans Administration has been looking at ways to improve care for dying veterans. A conference was held 2 years ago to discuss this and to set up programs to assure that all veterans' facilities could provide quality and compassionate end of life care. We will hear about the progress to date and learn how complementary medicine can play a role at improving care.

The Health Care Financing Administration oversees the Medicare program. Currently Medicare will reimburse up to 6 months of hospice care. Hospice is a special kind of care designed to provide comfort and support to patients and their families in the final stages of a terminal illness. Hospice care seeks to enable patients to carry on their remaining days in an alert and pain-free manner, with symptoms under control, so that those last days may be spent with dignity, at home or in a home-like setting, surrounded by peo-

<sup>42</sup> *Approaching Death: Improving Care at the End of Life*. Committee on Care at the End of Life, Institute of Medicine, ed: Field, M.J., Cassel, C.K., National Academy Press, Washington, DC, 1997.

<sup>43</sup> Knaus, W.A., Lynn, J., Teno, J., et. al. A controlled trial to improve care for seriously ill hospitalized patients, *JAMA* Nov. 22, 1995, Vol. 274, No. 20. pp. 1591–1598; Cleeland, C.S., Gonin, R., Hatfield, A.K., et al. Pain and its treatment in outpatients with metastatic cancer. *NEJM* Vol. 330 (9) Mar. 3, 1994 pp. 592–596; Breitbart, W., Rosenfeld, B.D., Passik, S.D., et al. The undertreatment of pain in ambulatory AIDS patients, *Pain* 65: 243–249, 1996; Bernabei, R., Gambassi, G., Lapane, K., Landi, F., Gatsonis, C., Dunlop, R., Lipsitz, L., Steel, K., Mor, V., Management of Pain in Elderly Patients with Cancer, *JAMA* June 17, 1998, Vol. 279, No. 23, 1877–82.

<sup>44</sup> Danis, M., Mutran, E., Garrett, J., Stearns, S., Slifkin R., Hanson, L., Williams, J., Churchill, L., A Prospective Study of the Impact of Patient Preferences on Life-Sustaining Treatment and Hospital Cost, *Crit Care Med* 1996, 24(11), pp. 1811–1817.

<sup>45</sup> Covinsky, K., Goldman, L., Cook, E., Oye, R., Desbiens, N., Reding, D., Fulkerson, W., Connors, A., Lynn, J., Phillips, R., The Impact of Serious Illness on Patients' Families, *JAMA*, Dec. 21, 1994 Vol. 272, No. 23. pp. 1839–1844.

ple who love them. Mrs. Kathy Buto testified on behalf of the Health Care Financing Administration.

Hospice neither speeds up nor slows down the dying process. It does not prolong life and it does not hasten death. It merely provides its presence and specialized knowledge of medical care, psychological, emotional and spiritual support during the dying process in an environment that includes the home, the family and friends. Bereavement care is critical to supporting surviving family members and friends. Volunteers play an important role in supporting the family. Volunteers are there when the professional staff cannot be there.

Hospice services are provided by a team of trained professionals—physicians, nurses, counselors, therapists, social workers, aides, and volunteers—who provide medical care and support services not only to the patient, but to the patient's family and caregivers. The patient is usually referred to hospice by the primary physician. Referrals can also be made by family members, friends, clergy, and health professionals.

The National Institutes of Health [NIH] has funded projects in palliative and end of life care. At the Warren Grant Magnuson Clinical Center, patients have access to acupuncture when pain becomes unbearable. The Clinical Center also provides access to vibroacoustic chairs and mats for stress relief for patients and family members. These specially designed chairs and mats, deliver music to the entire body and are very effective in stress reduction. In March 1998, the National Institute of Nursing Research issued a report on managing symptoms at the end of life. Dr. Patricia Grady, Director of the Nursing Institute, testified about the research funded by the National Institutes of Health on palliative medicine and end of life care including complementary therapies. Dr. Grady indicated that a combination of music therapy and guided imagery had proven to be effected in improving pain management.

Mrs. Carolene Marks of San Francisco, CA, testified about her personal insights on caring for someone at the end of life and the role of complementary therapies at this time. Mrs. Marks served on the Alternative Medicine Program Advisory Committee for 4 years, is a cancer survivor and an alternative medicine educator and advocate. She is the wife of the late California State senator, Milton Marks.

Ira Byock, M.D., also testified. Dr. Byock is the director of the Palliative Care Service, Missoula, MT, and is a recognized authority on palliative and end of life care. He is also the author of the book *Dying Well Peace and Possibilities at the End of Life*. Dr. Byock testified about the need to improve pain management and end of life care.

Xiao-Ming Tian, M.D., L.A.C., Bethesda, MD, is a physician trained in acupuncture and Traditional Chinese Medicine. He is also a Qi Gong Master. Dr. Tian testified about his personal experiences being called upon to treat intractable pain and relieve suffering for almost 10 years at National Institutes of Health. Among the experiences shared was that of treating Charles Harkin, brother of Senator Tom Harkin. Charles was being treated at the NIH for thyroid cancer and suffered unresolved hiccups as a result of medi-

cations he was given. He also was in a great deal of pain. Through the use of acupuncture and Qi Gong, Dr. Tian was able to resolve Charles' hiccups and help him to rest.

Mr. Dannion Brinkley, Aiken, SC, (and Los Angeles, CA), chairman of the board of Compassion in Action testified. Compassion in Action is a non-profit organization that trains hospice volunteers as well as provides community and professional education about death and dying issues. Mr. Brinkley has served tirelessly for over 20 years recruiting and now training hospice volunteers. As the author of two international best sellers (*Saved by the Light* and *At Peace in the Light*), and a motivational speaker, Mr. Brinkley travels the world sharing his personal story, and helping others overcome their fear of death. He has been credited over the years with recruiting over 20,000 volunteers. Through his own personal experiences and research, Dannion has become an advocate of the importance of integrating complementary and alternative medicine into the U.S. health care system. Compassion in Action trains hospice volunteers and provides volunteers to Veterans Facilities in 17 cities across the Nation. Their National Office is housed at the West Los Angeles Veterans Administration campus.

Particular focus at the hearing was on improving end of life care for veterans. As Congress grapples with veterans issues such as Agent Orange and Gulf War Syndrome, it is necessary that we remember those who served in the World wars earlier in this century. These heroes that stormed the Normandy beaches on D-Day and raised the flag atop Mount Suribachi on the island of Iwo Jima. Thirty-two thousand World War II veterans die each month. Is the Veterans Health Administration providing quality and adequate care? Dr. Thomas Holoran testified about VA programs and was accompanied by Dr. Judy Salerno. It was learned that there are pockets within the VA where hospice care is done very well and the goal within the VA is to develop processes to insure that every veteran receives quality end of life care.

Some of the concerns raised at the hearing about inconsistency in quality hospice care for veterans follow:

- Because of the frequent rotation of interns and residents, there is a serious discontinuity in patient care within Veterans facilities.
- Pain management is less than optimal, and there have been times when veterans have died in unnecessary pain.
- The dying are kept in rooms where the noise level is so high—radios and televisions blaring—that these individuals cannot die peacefully.
- Inadequate discharge planning often leaves veterans and their loved ones unsupported.
- Well-intentioned nurses cannot serve their patients adequately due to serious under-staffing.
- Patients are moved either within the hospital or to a facility off the grounds of the hospital when they are actively dying.

There are many complementary therapies that can be helpful for end of life care. They include music therapy, acupuncture, aromatherapy, massage, and guided imagery. Improving end of life care also includes focusing on life review, spiritual, physical, emotional, and relationship issues.

The week of the hearing, Congress was scheduled to vote on H.R. 2260, the Pain Relief Promotion Act of 1999—a bill that recognizes the importance of good pain management and the necessary and legitimate use of controlled substances in pain management and palliative care. The bill called for the Department of Health and Human Services to develop and advance the scientific understanding of palliative care, the development of practice guidelines and better education on these issues. Through increased research and education, we can find better and more compassionate ways of relieving pain for those in terminal conditions—including complementary therapies.

*d. Legislation.*—As a result of these oversight activities, Chairman Burton introduced several pieces of legislation which were referred to a variety of committees. A brief summary these bills are attached here.

1. H.R. 3305 Dietary Supplement Fairness in Labeling and Advertising Act.

Introduced November 10, 1999, with two co-sponsors, H.R. 3305 was referred to the Commerce Committee. A bill to amend the Federal Trade Commission Act to provide that certain types of advertisements for dietary supplements are proper was introduced to provide balance in the dispute process regarding FTC actions with dietary supplements.

2. H.R. 3306.

Introduced on November 10, 1999 with four co-sponsors, H.R. 3306 was referred to the Committee on Ways and Means. A bill to amend the Internal Revenue Code of 1986 to provide that amounts paid for foods for special dietary use, dietary supplements, or medical foods shall be treated as medical expenses.

3. H.R. 3304 Food Stamp Vitamin and Mineral Improvement Act of 1999 (Senate companion bill S. 1307).

Introduced on November 10, 1999, with one cosponsor, H.R. 3304 was referred to the Committee on Agriculture. A bill to amend the Food Stamp Act of 1977 to permit participating households to use food stamp benefits to purchase nutritional supplements providing vitamins or minerals.

4. H.R. 2635 Access to Medical Treatment Act (Senate companion bill S. 1955).

Introduced on July 29, 1999 with 43 co-sponsors, H.R. 2635 was referred to the Commerce Committee. A bill to allow patients access to drugs and medical devices recommended and provided by health care practitioners that are not approved by the Food and Drug Administration.

5. H.R. 2092 Inclusion of Alternative Approaches in Cancer Research Act.

Introduced on June 9, 1999 and referred to the Commerce Committee. A bill to require that the membership of advisory bodies serving the National Cancer Institute include individuals who are knowledgeable in complementary and alternative medicine.

6. H.R. 3677 Thomas Navarro FDA Patient Rights Act.

Introduced in February 16, 2000 with 48 co-sponsors, H.R. 3677 was referred to the Commerce Committee and testimony was heard at the Subcommittee on Health and the Environment in August 2000. A bill to amend the Federal Food, Drug, and Cosmetic Act

to restrict the authority of the Food and Drug Administration to issue clinical holds regarding investigational drugs based on other existing treatments rather than safety concerns or to deny patients expanded access to such drugs.

*6. Dietary Supplement Health and Education Act: Is the FDA Trying to Change the Intent of Congress? March 25, 1999.*

There have been numerous complaints to the committee that the FDA's interactions with various supplement manufacturers have been less than helpful. One small manufacturer shared with staff that he was told by an inspector who showed up unannounced at his facility, "we just want to get rid of all you little guys and only deal with the large manufacturers." Another manufacturer was forced into a long court battle when the FDA decided their botanical product was a drug not a dietary supplement. The manufacturer recently won this case. This product that has been shown in high quality research to have a beneficial health effect and is a good example of FDA's prejudice against supplements. The FDA has recently appealed another case they lost in which it was determined that in not allowing health claims on supplements they were violating first amendment rights.

As part of the DSHEA legislation, a Presidential Commission was appointed to provide recommendations for the regulation of label claims and statements of dietary supplements, including the use of literature in connection with the sale of dietary supplements and procedures for evaluation of such claims. Their report was finalized in November 1997. FDA published their response to this report in April 1998 including a rulemaking that will take effect within 2 years after the report's issuance. Congressional intent clearly expressed that FDA authorize dissemination of more truthful and non-misleading health information about supplements on labels and in labeling, not less. FDA's proposed rule redefines "disease or health-related condition," a key term in the agency's definition of "health claims." This redefinition would so expand the scope of what a disease or health-related condition would include as to drastically reduce the amount of information allowed in a health claim. This action clearly contradicts the will of Congress and undermines the scope of protected speech under Section 6 of the DSHEA. Moreover, the proposed rule would render a structure function claim an impermissible health claim if it contained references to health components that could be used to diagnose a disease state by clinical or laboratory measures. This prohibition affects statements on liver tissue health, PMS, menopausal hot flashes, and other "non-disease" states.

Of particular concern to the committee is the failure of the FDA to approve claims. Congress has found on several occasions that the Significant Scientific Agreement Final Rule violates congressional intent and results in suppression of the very health information Congress expected FDA to authorize. In Senate Report 105-43, it was noted that "the failure of the current system to give adequate weight to the statements of . . . authoritative bodies, coupled with the prohibitive economic burden that permits only the largest food companies and trade organizations to file a health claim petition to gain approval of a new health claim, has deprived the public of the

full disease prevention benefits health claims were intended to provide.”

The primary focus of the hearing was the FDA’s Proposed Rule on Structure/Function Statements. DSHEA was explicit in allowing for manufacturers to include information on labels regarding the benefits of a supplement on the structure or function of the body, while specifically not allowing for disease claims to be made. The FDA’s proposed rule on Structure/Function was counter to congressional intent and specifically moved to redefine the term “disease” to make most, if not all, structure/function claims in violation of the rule.

All systems of healing, except Allopathic medicine, including Ayurveda, Native American healing, or Traditional Chinese Medicine, have two parallel currents—the importance of spirituality in healing and the important role of botanical products and nutrition in healing. In earlier hearings the committee learned about the importance of herbal products and other dietary supplements in maintaining good health. The committee also received testimony from research experts about the importance of research into the use of dietary supplements such as Glucosamine to help Americans with arthritis and ginkgo biloba in delaying the onset of Alzheimer’s disease. The potential cost savings to the Federal Government in these two debilitating illnesses is enormous, and justifies more research funding.

Prior to the passage of DSHEA, the FDA relied principally on the 1938 Federal Food Drug and Cosmetic Act [FFDCA], to regulate dietary supplements. Under the FFDCA, any product that claimed to prevent, treat or mitigate a disease—or to affect the structure or any function of the body—was regulated as a drug by FDA, requiring pre-market approval and a substantial research investment. In today’s research environment, bringing a new drug to market is estimated to cost upwards of \$300 million.

During the 1960’s, as Americans increasingly began to look to natural health methods, including recognizing the role of diet in health, and as the work of individuals such as Dr. Linus Pauling was published, dietary supplements began to play an increasing role in the U.S. diet. FDA continued to adhere to the regulatory precepts of the 1938 statute. In the early 1970’s, FDA attempts to limit the potencies of vitamins and minerals met with huge popular opposition, leading to the enactment of Section 411 of the FFDCA, known as the “Proxmire Amendments.”

The FDA then began to treat most health-related claims for dietary supplements as illegal drug claims. The FDA resisted efforts to allow Americans to receive health claims on labels on foods, including dietary supplements, in the early 1980’s, which led to the passage of the Nutritional Labeling and Education Act of 1990 [NLEA]. That act carved out health claims—essentially, claims that eating certain foods will reduce the risk of onset of chronic diseases—as an exception to the “drug” definition. At the same time, in Section 403(r)(5) of NLEA, Congress gave FDA the opportunity to permit more information about advances in science to be communicated to consumers by adopting a different health claims evaluation process for supplements. However, the FDA declined that opportunity. In addition, the FDA determined that herbs were not

“nutritional” in the sense that they did not have a recommended daily allowance or daily reference value, and thus leaving manufacturers unable to obtain health claims. These FDA pronouncements spawned a second consumer effort, this time to pass the Dietary Supplement Health and Education Act.

The media, fueled by statements from FDA officials, frequently represent the passage of DSHEA as having stripped the FDA of the power to regulate dietary supplements and thus to remove unsafe supplements from the market. However, the FDA has seven points of authority to regulate dietary supplements. The FDA has the power to:

- Refer for criminal action any company that sells a dietary supplement that is toxic or unsanitary [Section 402(a)].
- Obtain an injunction against the sale of a dietary supplement that has false or unsubstantiated claims [Section 403(a),(r6)].
- Seize dietary supplements that pose an “unreasonable or significant risk of illness or injury” [Section 402(f)].
- Sue any company making a claim that a product cures or treats a disease [Section 201(g)].
- Stop a new dietary ingredient from being marketed if FDA does not receive enough safety data in advance [Section 413].
- Stop the sale of an entire class of dietary supplements if they pose an imminent public health hazard [Section 402(f)], and
- Require dietary supplements to meet strict manufacturing requirements (Good Manufacturing Practices), including potency, cleanliness, and stability [Section 402(g)].

Additionally, industry self-regulatory efforts supplement these governmental powers, as do Federal Trade Commission powers over advertising and state safety laws.

In their zealous regulatory efforts against dietary supplements, the FDA claimed that dietary supplements were “food additives” like chemicals added to foods for processing. For example, the agency argued that ginseng capsules were foods; that ginseng is added to a ginseng capsule; and that ginseng is therefore a “food additive.” The reason the FDA pursued this theory was that it could not lose such a case. If the FDA called ginseng a food, the FDA had to prove it was unsafe. If the FDA said it was a food additive, all that the FDA had to prove was that a scientific expert, even an FDA staff member, had to state they thought that the ingredient was not “generally recognized as safe” among experts in the field. Then the manufacturer had to try to disprove a negative: no amount of evidence by the manufacturer could overcome the FDA expert’s conclusory statement. In 1993, two Courts of Appeals invalidated the FDA’s food additive theory, and Congress confirmed in DSHEA that dietary supplements were not food additives. DSHEA thus did not change the FDA’s burden to prove its adulteration cases—that burden already existed.

Recent Court of Appeals decisions have struck down FDA efforts to regulate free speech by pharmaceutical companies in promoting prescription drug products and by dietary supplement manufacturers in making health claims. [Washington Legal Foundation and Pearson v. Shalala.]<sup>46</sup>

<sup>46</sup>Testimony of I. Scott Bass, JD, before the Government Reform Committee, Mar. 25, 1998.

This was one of Dr. Henney's first opportunities to discuss at length her vision for implementing dietary supplement regulations and to explain specific steps that have been taken to rectify the bias against supplements among FDA personnel and policy. During the hearing, Dr. Henney informed the committee that the FDA had all the authority necessary to adequately regulate dietary supplements.

Actress, Raquel Welch provided a public perspective on the importance of dietary supplements in maintaining good health. As part of her testimony, Ms. Welch stated:

My understanding is what the FDA proposes is to expand the Definition of disease to the point that virtually all "Structure/Function Statements" would be discouraged or outlawed. I know there are instances where label statements are beyond the explicit limits stated in the dietary supplement act. But I believe that even FDA records will show that these claims are found on an infinitesimal number of products, less than 1 percent. As a consumer, it seems to me that FDA should use its enforcement powers to eliminate these questionable and unsubstantiated dietary supplement claims. That they be understandable and logical. However, instead, the Agency is proposing virtual elimination of an entire category of consumer information, with broad restrictions and confusing rules. I'd say that's killing a flea with a cannon. Mr. Chairman, millions of consumers like me have and will benefit from learning more about these supplements from "Structure/Function Statements." What the FDA is proposing seems like a regulatory slight-of-hand to stifle such statements. I implore you and the members of this committee to urge the FDA to withdraw its proposed rule. The language in the existing dietary supplement act already gives sufficient direction and establishes explicit limitations on "structure/function statements" and it gives the FDA the authority it needs to chase down delinquent companies and their products. The FDA's proposal ignores congressional intent and flies in the face of the best interest of the 100 million Americans who take dietary supplements every day.<sup>47</sup>

Also testifying were:

I. Scott Bass, J.D., adjunct professor, Georgetown University Graduate School of Public Policy, Washington, DC, as well as leading food and drug attorney for Sidley & Austin, Mr. Bass was a key advisor to the drafting of the Dietary Supplement Health and Education Act. He is the author of *Dietary Supplement Health and Education Act: A Legislative History and Analysis*, published by the Food and Drug Law Institute in 1996. Mr. Bass presented a brief review of the history of legislation in dietary supplements and offered an explanation of the legal implications of the proposed FDA rules.

Daniel Kracov, J.D., attorney, Patton Boggs, LLP presented testimony regarding Pharmanex's interactions with the FDA regarding

<sup>47</sup>Testimony of Raquel Welch, <http://www.house.gov/reform/hearings/healthcare/supplement3-25-99/Welch.htm>.



the red yeast powder product, Cholestin. In 1999, a Salt Lake City judge ruled that Pharmanex was correct in marketing this product as a dietary supplement.

Edward M. Croom, Jr., Ph.D., and ethnobotanist, is the coordinator of the Phytomedical Project, National Center for the Development of Natural Products Research Institute of Pharmaceutical Sciences at the School of Pharmacy for the University of Mississippi presented testimony about the status of research in botanical products and the level of information currently known about potential health benefits of botanical products.

Robert S. McCaleb, president of the Herb Research Foundation of Boulder, CO, served on the President's Commission on Dietary Supplement Labels. Mr. McCaleb testified regarding the Commission and the development of their report as well as concerns regarding the FDA's proposed regulations. He stated:

The future of dietary supplement regulation in the United States is uncertain, because of the FDA's proposed rules for implementation of DSHEA. These appear to be an attempt to circumvent the language of DSHEA by preventing the very type of claims which DSHEA was designed to allow. The FDA rules (Docket No. 98N-0044) suggest sweeping changes to the regulation of supplements, including a proposed redefinition of the term "disease." By changing the definition of disease, the FDA in effect changes what type of supplement label statements can be made about a health condition. For example, under the proposed FDA new definition, any deviation from the normal function of any combination of parts, organs and systems of the body would be classified as "disease," even if that deviation is universal, such as menstruation or menopause in women. By this proposed new definition, any dietary supplement with virtually any effect on the body could be classified as a drug. This runs counter to the letter, spirit and intent of the Dietary Supplement Health and Education Act of 1994.

James Turner testified on behalf of Citizens for Health regarding the importance of access to quality dietary supplements and increased information on labels and labeling.

Dr. Annette Dickinson, vice president, Scientific and Regulatory Affairs, Council for Responsible Nutrition and Professor Margaret Gilhooley, Seton Hall University School of Law testified on behalf of the minority.

After this hearing, and reviewing over 200,000 comments to the docket, the FDA opted not to attempt to change the definition of disease.

*7. How Accurate is the FDA's Monitoring of Supplements Like Ephedra? May 27, 1999.*

The committee called a hearing to look at a disturbing attempt to promulgate the first regulation on a specific ingredient of a dietary supplement based on non-scientific data unveiled disturbing information about the monitoring of adverse events at the FDA as well as fueling concern that such bias continues within the agency

regarding dietary supplements that a fair and scientifically based regulation is not in development.

The FDA is responsible for tracking adverse events for many health related products, pharmaceutical products, medical devices, over the counter products, cosmetics, some types of foods, dietary supplements, and even veterinary drug products. The Special Nutritionals/Adverse Events Monitoring System [SN/AEMS] was established in early 1993 following the establishment of the Office of Special Nutritionals. Reports are received from FDA's MedWatch program, FDA's field offices, other Federal, State, and local public health agencies, letters and phone calls from consumers and health professionals. The objective of the hearing was to discuss the accuracy and effectiveness of the FDA's Special Nutritionals Adverse Events Monitoring System [SN/AEN], using the dietary supplement ephedra as an example. Through our investigation on the FDA's implementation of the Dietary Supplement Health and Education Act, concerns of the accuracy and effectiveness of the current monitoring of adverse events for dietary supplements have been raised.

According to the FDA's website, adverse event monitoring systems serve as warnings for identifying emerging public health problems associated with use of marketed products:

- (1) Adverse event monitoring systems are designed to identify unanticipated or unintended safety problems with use of marketed products.
- (2) Patterns of adverse events help FDA identify the need for further investigation to determine whether public health actions are needed.

In our March 25 hearing, Commissioner Henney testified that in the incidences where a manufacturer is erroneously listed in a report for a product they do not manufacture, the erroneous listing is not removed from the website, but a correction is listed as a footnote. We also learned that policymaking at a national an international level is based on this system while the FDA clearly admits that the system is fraught with errors. Through our investigation we have identified six problem areas:

1. Timely updates to website: Adverse reactions are not promptly posted on the FDA website. Several months pass between site updates, leaving anyone outside the FDA unaware of potential clusters of adverse reactions. As of May 21, the site had not been updated since October 1998. This is of particular concern in light of the recent public alert that FDA issued regarding GBL, stating that 55 adverse events and 1 death had occurred. Most of these cases have not yet been posted on the website.

2. Brand and corporate name identification without confirmation: Companies may find their corporate name and brand name posted on the FDA website with an adverse reaction about which they are not aware, with no evidence as to whether the patient actually consumed their product, or a determination as to whether the symptoms observed were likely to have resulted from the product.

3. Time lag for Freedom of Information requests: The established process for a manufacturer or trade association that desires to follow-up on an investigation of an adverse event is to request through the Freedom of Information Act, information about the

case. A frequent excuse from the FDA to FOIA requestors is that they do not have the resources to purge the case reports of personal information in order to provide this information to the requestor in a timely fashion. We have received numerous reports of a lack of responsiveness by the FDA through this mechanism. In at least one case, a requestor is still waiting after 12 months for information requested under the FOIA. If the industry is to be responsive to adverse events, it is imperative they have access to information regarding adverse events in a timely fashion.

4. Incorrect information not purged: On occasion, a product or ingredient is incorrectly stated in a report. However, the initial report remains on the website unchanged even when errors are identified. The FDA Commissioner eluded to this problem in response to questions at the March 25 hearing. We have learned that it is a monumental task to have the FDA make any corrections to the system—and that as Dr. Henney stated, corrections and purging does not occur, rather footnotes are added.

5. No classification of seriousness of event: There is no classification of adverse reactions as mild, moderate, or serious. The impression is sometimes given that there are hundreds of “serious” adverse reactions in a given year, when only a fraction of the reports actually involve serious reports. Additionally, MedWatch, the FDA’s program for reporting serious reactions and problems with medical products such as drugs and medical devices, states that a reaction is considered serious if the product caused:

- death,
- a life-threatening situation,
- admission to a hospital or a longer than expected hospital stay,
- a permanent disability,
- a birth defect, or
- the need for medical or surgical care to prevent permanent damage.

The SN/AEM’s explanation of a serious adverse event is simply stated as an illness or injury associated with use of a special nutritional product: dietary supplements, infant formulas, and medical foods.

6. Causality not established: There is no analysis of possible causal relationships between products and adverse reactions for dietary supplements. The principles of assessing possible cause are well established within the FDA and are applied in other arenas such as veterinary drugs. For example, in the Veterinary Medicine Reporting System, FDA evaluates reports to assess in terms of likely relation to use of the product. In 1997, of 3,000 adverse effects reports to the Center for Veterinary Medicine, only 1 percent were definitely associated with product, 31 percent probably were associated, 45 percent possibly were associated, 12 percent were definitely not reported to the product, and 11 percent lacked adequate information to determine association.

With the increased use of dietary supplements by Americans and with concerns of adulterated products, drug interactions, and the need to identify public health concerns, an accurate and effective reporting system for dietary supplements should be a high priority for the FDA.

### Ephedra as an Example

In January the FDA published its priority list for 1999. Ephedra was listed at the top of the Dietary Supplement “A” list. In June 1997, the FDA posted a proposed rule on dietary supplements containing ephedrine alkaloids. A proposed rule by the FDA has the same force and effective as law.

The Food and Drug Administration (FDA) is proposing to make a finding, which will have the force and effect of law, that a dietary supplement is adulterated if it contains 8 milligrams (mg) or more of ephedrine alkaloids per serving, or if its labeling suggests or recommends conditions of use that would result in intake of 8 mg or more in a 6-hour period or a total daily intake of 24 mg or more of ephedrine alkaloids; require that the label of dietary supplements that contain ephedrine alkaloids state “Do not use this product for more than 7 days”; prohibit the use of ephedrine alkaloids with ingredients, or with ingredients that contain substances, that have a known stimulant effect (e.g., sources of caffeine or yohimbine), which may interact with ephedrine alkaloids; prohibit labeling claims that require long-term intake to achieve the purported effect (e.g., weight loss and body building); require a statement in conjunction with claims that encourage short-term excessive intake to enhance the purported effect (e.g., energy) that “Taking more than the recommended serving may result in heart attack, stroke, seizure or death”; and require specific warning statements to appear on product labels. FDA is proposing these actions in response to serious illnesses and injuries, including multiple deaths, associated with the use of dietary supplement products that contain ephedrine alkaloids and the agency’s investigations and analyses of these illnesses and injuries. FDA is also incorporating by reference its Laboratory Information Bulletin (LIB) No. 4053, that FDA will use in determining the level of ephedrine alkaloids in a dietary supplement.<sup>48</sup>

The committee considered the following questions: If this proposed rule is based on an inadequate reporting system, then is the rule appropriate? Is it appropriate to establish law based on flawed information? Ephedra or Ma Huang has been used safely for thousands of years in Traditional Chinese Medicine. It is reported that over 15 billion servings of ephedra were consumed in the United States last year. Is the ratio of use to adverse events strong enough to warrant such a drastic regulation? Would a guidance document be more appropriate than a rulemaking, especially since several States have mandated regulations regarding ephedra at the State level?

It is important to note that part of the problem with the ephedra issue was that a small number of companies marketed products specifically for purposes of abuse. There is the potential for a criminal element in every industry, including health care and dietary

<sup>48</sup>Federal Register: June 4, 1997 (vol. 62, No. 107) proposed rules pp. 30677–30724 <http://vm.cfsan.fda.gov/?lrd/fr97064a.html>.

supplements. These euphoric products were a gross abuse of the system that responsible members of the supplement industry have worked diligently with the FDA to remove from the marketplace.

Joseph A. Levitt, Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration presented testimony on the development of the Special Nutritionals Adverse Events Monitoring System. He outlined how this system functions and how it compares to other monitoring systems within the FDA and other HHS organizations. During the hearing, Mr. Levitt, admitted that the program was fraught with errors, that the FDA staff had not paid enough attention to responding to the FOIA requests and that a contractor had recently been hired to respond to the requests.

R. William Soller, Ph.D., senior vice president and director of scientific and technical affairs, Consumer Health Care Products Association presented testimony regarding the elements of an effective monitoring system. Dr. Soller has extensive experience with non-prescription drugs and dietary supplements and offered viable solutions for the problems that have been identified.

Theodore M. Farber, Ph.D., principal, ToxaChemica, is a pharmacologist and a board-certified toxicologist. Dr. Farber testified regarding the concern of some regarding FDA's misuse of adverse events reporting for policy setting. Dr. Farber conducted an extensive evaluation of the published adverse events on ephedra. He presented testimony about the scientific value of information gleaned from these reports. He reviewed the FDA's handling of the dietary supplement ephedra and the development of policy regarding its regulation. He showed a history of mishandling of this issue that points to the continued institutional bias against dietary supplements at the FDA.

Daniel B. Mowrey, Ph.D., president, American Phytotherapy Research Laboratory presented testimony on the use of ma huang or ephedra historically. He discussed the level of scientific research in ephedra and what is already known through scientific evaluation on usage, serving size, side effects, and adverse events. Dr. Mowrey, has pioneered basic and clinical research in medical botany with an emphasis on safety and efficacy of whole plant materials, standardized extracts, and guaranteed potency herbs for 25 years.

Annette Dickinson, Ph.D., vice president for scientific and regulatory affairs, Council for Responsible Nutrition returned to testify about the development of a good monitoring system. Also testifying were Mrs. Karen Schlendorff, the mother of a young man who while on spring break in 1996 took Ultimate Exphoria and died; Mrs. Barbara Michal, the founder of H.E.A.T.—Halt Ephedrine Abuse Today—a nonprofit organization whose mission is to increase public awareness about the dangers of ephedrine and its related drugs, and to promote the prevention of abuse of ephedrine and its related drugs; and Dr. Raymond Woosley, a professor of pharmacology and medicine at Georgetown University.

The initial concern with ephedra was raised when several, less-than-scrupulous companies marketed illicit street drugs containing high doses of ephedrine. It is the committee's understanding that these illegal products have been removed from the market. If such

illegal products remain in the marketplace, the FDA clearly has the authority to seize them.

The FDA admits that the SN/AEMS is flawed, but has made no move to correct the problems. The FDA took an additional 12 months to provide FOIA information to requestors. Research conducted after the May hearing has shown that ephedra can be used safely and effectively for weight loss.

8. *Cancer Care for the New Millennium—Integrative Oncology* (June 7–8, 2000).

During this two-day hearing, the committee received updates from the Food and Drug Administration, the National Cancer Institute, the National Center for Complementary and Alternative Medicine, and the Health Care Financing Administration regarding research focus and access to an integrative approach to cancer care. The committee also received testimony from Congresswoman Deborah Pryce and Michael and Raphael Horwin—parents who have lost children to cancer. Also testifying was James Navarro, father of Thomas Navarro, a 4-year-old child with medulloblastoma who has become the focal point of a grass roots cry for medical freedom. H.R. 3677 was introduced to remedy problems at the FDA which have prevented Thomas and thousands of other Americans from receiving access to clinical trials without first having failed standard therapies that have unacceptable risks.

9. *Ethnic Minority Disparities in Cancer Treatment: Why the Unequal Burden?* (September 25, 2000).<sup>121</sup>*Cancer strikes all socio-economic, cultural, and ethnic groups in America. But it often takes the deadliest toll among minorities.*

Although many ethnic minority groups experience significantly lower levels of some types of cancer than the majority of the U.S. white population, other ethnic minorities experience higher cancer incidence and mortality rates. Some examples of this include:

- The incidence and mortality rates for multiple myeloma rose sharply in the United States from the 1950's to the 1980's, then leveled off. The rates for African Americans were twice as high as for whites.
- Asian-Americans are five times more likely to die from liver cancer associated with Hepatitis.
- Vietnamese women suffer cervical cancer at nearly five times the rate of white women.
- Hispanics have two to three times the rate of stomach cancer.
- Breast cancer occurs less often in African American women than white women, but it is typically detected later.
- African-American men develop cancer 15 percent more frequently than white males.

The issues surrounding racial disparities in cancer are complex and not well understood. They can be related to a higher incidence of cancer, to later detection, and to cancer not being treated as well. Research has shown that all three of these factors contribute to the disparity in mortality.

#### *Other Health Issues*

a. *Summary.*—The acne drug Accutane, manufactured by Roche Pharmaceutical, has been linked to numerous serious adverse events. Through its adverse events monitoring system, the FDA

has received reports of 66 suicides and 1,373 reports of depression and suicide ideation related to the drug Accutane. Accutane was licensed by the Food and Drug Administration [FDA] in 1982 as an oral prescription drug for the treatment of severe acne. Current recommendations indicate that the drug should only be used when a patient has not responded to other treatments including antibiotics. The committee learned that Accutane was intended to be used as a treatment of last resort, but that increasingly dermatologists are using it for less severe forms of acne. According to Roche Pharmaceutical, the manufacturer of Accutane, the number of domestic and foreign reports of serious adverse events in the post-marketing adverse events database for Accutane as of April 30 was 5,665. The largest percentage of these reports were psychiatric problems. Almost 19 percent of the adverse events reported to Roche were psychiatric. Also, the most recent Periodic Adverse Drug Event Report for Accutane includes, for a 12-month period, over 750 new psychiatric adverse event reports (foreign and domestic), including 200 that were coded as serious events, nine reports of suicide attempts, and six reports of completed suicides.

More aggressive patient education is needed. A Medguide is in development that will provide clear warning about depression and suicide. The existing patient informed consent document is being expanded to fully inform patients of all potential side effects.

*b. Benefits.*—As a result of the raised awareness, Americans who are considering taking the drug Accutane will be better informed of all of the potential side effects. The manufacturer and FDA are finalizing a broader informed consent document that fully explains both the concerns about birth defects as well as the concern about depression and suicide. A Medguide will be developed and given to every patient by their pharmacist at the time they pick up their prescription. The committee learned that health care professionals, especially dermatologists that typically prescribe Accutane, need to more earnest in their actions to discuss possible side effects regarding Accutane and other drugs.

*c. Hearings.*—One hearing was conducted.

*Accutane—Is this Acne Drug Treatment Linked to Depression and Suicide? (December 5, 2000).*

The committee conducted a hearing to receive testimony from families directly affected by suicide and suicide attempts as well as medical experts and the FDA. Two families testified whose sons committed suicide while taking Accutane. Additionally, the committee received testimony from Amanda Callais, a suicide-attempt survivor. While recovering from a suicide attempt, she continued on Accutane until the FDA's Talk Paper was issued warning families of concern about the link between Accutane and suicide. Shortly after ceasing the medication, she fully recovered from major depression and is now a senior in high school in an honors program.

*i. A Review of Vaccine Safety Concerns, Policy Issues, and Concerns of Links to Autism and Other Chronic Conditions.*

*a. Summary.*—Expanding on the vaccine investigations initiated in the Subcommittee on Criminal Justice, Drug Policy, and Human Resources, and the Subcommittee on National Security, Veterans

Affairs, and International Relations the full committee began a review of vaccine safety, policy, and concerns about adverse effects of vaccines, including autism and other chronic conditions.

Vaccines have been heralded as one of the most important public health advances of the 20th century. Indeed, vaccines have been instrumental in virtually wiping out many devastating childhood illnesses, such as polio. However, vaccines also have serious and unpredictable side effects for a small percentage of people who receive them. Each State establishes a mandatory childhood immunization schedule based on the recommendations of the Federal Government. Every child in the United States is required to receive these mandated vaccines prior to entry into day care and schools. Additionally, many adults are required to receive immunizations, in particular the Hepatitis B vaccine, as a condition of employment. Each State has established guidelines regarding medical and religious exemptions. Some States have established philosophical exemptions as well.

Vaccines are the only medications that Americans are mandated to receive. Any policy that mandates a medical intervention to benefit the public at large creates an inherent conflict between the interests of the individual and the community. The tension between individual risks and public benefit is the classic ethical dilemma for public health. Some have described the current mandating of an increasing number of vaccines to children to be a good intention gone too far. The recommendations of the National Vaccine Immunization Committee now suggest that children receive at least 20 injections against 11 diseases by 6 years of age. If the current recommended schedule is followed, at 2 months of age, a child will be given four injections for six diseases in one medical visit. The same series would be repeated at 4 and 6 months. Between 12 and 18 months, a child will receive six injections in one visit for 10 diseases. Vaccines on the Childhood Immunization Schedule recommended for all children are for the following diseases: polio, diphtheria, pertussis (whooping cough), tetanus, hepatitis B, hemophilus influenza B, measles, mumps, rubella, and chicken pox. The Hepatitis A vaccine is recommended for children in certain geographic areas.<sup>49</sup> The rotavirus vaccine had been included in this schedule and was removed when the manufacturer removed the rotashield vaccine from the U.S. market after serious adverse events occurred. The number of immunizations is expected to grow as new vaccines are licensed by the FDA.

During the course of the committee investigation, it was learned that there is a significant lack of science investigating long-term safety effects of vaccines, the interactions of multiple vaccines in a single day, the connection between the increased rates of immunization and the upswing in rates of autism, attention deficit disorder, diabetes, and pediatric cancers. Vaccines contain numerous live viruses, bacterial agents, and numerous ingredients that raise concern—including aluminum, mercury, formaldehyde, animal and plant RNA, and dyes.

Many vaccines use the preservative Thimerosal, which is a mercury derivative. Mercury is a known neurotoxin. Mercury toxicity

<sup>49</sup> <http://www.cdc.gov/nip/recs/child-schedule.PDF>.



results in symptoms that are parallel to the symptoms seen in autistic children.<sup>50</sup> In 1999 the FDA evaluated the amount of mercury children received through their immunizations and learned that the amount of mercury injected into infants exceeded Federal safety guidelines. Many children are receiving 40 or more times the amount of mercury than what is considered safe from their mandated immunizations. Repeated requests for thimerosal-containing vaccines to be removed from the market have been rejected by the FDA and the Department of Health and Human Services. The FDA has asked vaccine manufacturers to voluntarily reduce or remove thimerosal from vaccines without mandating such action. Other mercury-containing medications have been removed from the market, including topical ointments, but the FDA maintains that no proof of harm has been shown.

During the course of the investigation, the committee learned that the whole-cell pertussis vaccine continues to be used, even though the recommendation is for a-cellular pertussis vaccines are to be used. Whole-cell pertussis vaccines are known to cause adverse reactions 50 percent of the time. Many of the reactions are mild. However a significant number of these reactions are severe, brain-related reactions that cause death or disability. Because FDA did not recall the whole-cell pertussis vaccine, physicians, HMOs, and clinics continue to use their stock pile of vaccine rather than purchase newer, safer vaccines.

Autism rates have risen dramatically in the last 20 years. What once was considered a rare disease affecting 1 in 10,000 children, has now become all too common. Current estimates in the United States range from 1 in 500, to 1 in 150 children being affected with autism. California has reported a 273 percent increase in children with autism since 1988. Florida has reported a 571 percent increase in autism. Maryland has reported a 513 percent increase between 1993 and 1998. While some increases in rates can be attributed to an expanded definition of autism and better reporting rates, the dramatic, near-epidemic levels far exceed what would be expected, and what is seen in other conditions over the same timeframe. The U.S. Department of Education reports dramatic increases in autism rates in every State. The State of California estimates an additional \$2 million tax burden for each child diagnosed with autism in the State.

Autism displays two distinct patterns—classical autism is typically recognized at birth, and late-onset or acquired autism typically develops in otherwise normal children in the second year of life. There has been no research to date to determine if acquired autism is completely genetic or whether environmental factors such as severe food allergies, immunizations, Vitamin A deficiencies, and environmental pollutants cause autism. Many of the children who develop autism after vaccination, when tested, have high levels of aluminum and mercury in their system. Because the Federal Government has not funded the research, many families and parent-driven organizations are now raising research funds to have these studies conducted.

<sup>50</sup> Autism a Unique Type of Mercury Poisoning <http://www.cureautismnow.org/sciwatch/autismandmercury4400.rtf>.

The committee received an overwhelming response to the investigation from families with autistic children. Mrs. Shelly Reynolds, the founder of End Autism Now collected thousands of pictures of autistic children from families across the United States. She testified, that when queried, 47 percent of the parents felt that vaccines contributed to their child's development of autism. We heard from physicians that oftentimes, children with acquired autism, would begin to recover if treated for the myriad of medical issues that arose with the onset of autism. Many of these children, when tested have high levels of mercury in their body, some have high levels of aluminum, copper, and tin as well. When these metals are removed through chelation therapy, the children will often calm and recover speech. Dr. Stephanie Cave, who testified, spoke of children who spoke almost immediately after the medical treatment. The committee also received testimony from physicians who have had success treating autistic children with a protocol that includes anti-fungal, anti-viral, and serotonin uptake medications as well as dietary approaches that include the exclusion of cassien and gluten products. The HHS position to date has been that no evidence of a link between autism and vaccines exists. However, HHS has neglected to focus any research on this issue. In fact, when researchers with history of obtaining NIH research funds, have submitted grant proposals to the NIH for studies to research vaccine adverse events, the studies are repeatedly rejected. Relevant clinical research showing evidence of measles in the bowel of autistic children has repeatedly been rejected by HHS while an epidemiologic review of children's immunization records that may have been flawed has been repeatedly touted as proof that there is not connection.<sup>51</sup> Both researchers testified during the April 2000 hearing. Dr. Taylor, to date, has been unwilling to share the data from the research for independent evaluation.

The committee also initiated an investigation into the level of influence the pharmaceutical industry plays in the decisionmaking process at the FDA and the Centers for Disease Control and Prevention [CDC]. The committee found significant evidence to indicate that the conflict-of-interest waivers on two key advisory committees are issued too easily and that concerns about real or apparent conflicts need to be taken more seriously. The committee reviewed the records of the FDA's Vaccines and Related Biological Products Advisory Committee [VRBPAC], which makes recommendations on the licensing of new vaccines. The committee also reviewed the records of the CDC's Advisory Committee on Immunizations Practices [ACIP], which makes recommendations on which vaccines should be included on the Childhood Immunization Schedule.

The committee focused its investigation on the evaluation of the Rotashield vaccine, which was approved by the FDA for use in August 1998 and recommended for universal use by the CDC in March 1999. Serious problems cropped up shortly after it was introduced. Children started developing serious bowel obstructions. The vaccine was pulled from the U.S. market in October 1999. The

<sup>51</sup>Dr. Andrew Wakefield and Dr. Brent Taylor of the Royal Free and University College Medical School, London, England.

committee sought to determine if evidence existed at the time of licensing to indicate that the rotashield vaccine could cause intersusception, a life-threatening bowel disorder that often requires corrective surgery. The committee found evidence to indicate that the intersusception concern had been raised and been discounted. There were also concerns about children failing to thrive and developing high fevers. Even with all of these concerns, the VRBPAC committee voted unanimously to approve it. The ACIP discussion centered around the cost-benefit ratio, yet unanimously to approve it as well. A number of problems were identified regarding conflict of interest and were detailed in a staff report.<sup>52</sup>

The committee learned that members, including the Chair, of the FDA and CDC advisory committees own stock in drug companies that make vaccines. Individuals on both advisory committees own patents for vaccines under consideration or affected by the decisions of the committee. Three out of five of the members of the VRBAC who voted for the rotavirus vaccine had conflicts of interest that were waived. Seven individuals of the 15 member VRBAC advisory committee were not present at the meeting, two others were excluded from the vote, and the remaining five were joined by five temporary voting members who all voted to license the product. The CDC grants conflict-of-interest waivers to every member of the ACIP a year at a time, and allows full participation in the discussions leading up to a vote by every member, whether they have a financial stake in the decision or not. The ACIP has no public members—no parents have a vote in whether or not a vaccine belongs on the childhood immunization schedule. The VRBPAC has only one public member.

*j. Review of Vaccine Safety and Policy.*

*a. Summary.*—In 1997, President Clinton directed Secretary Shalala to work with the States to develop an integrated immunization registry system and to require that all children in federally subsidized child care centers be immunized. This mass tracking of childhood vaccinations has created State registries that are tracking children from birth to grave. With these State systems reporting back to the Federal level, this administration has back-doored the initiation of national medical tracking, something the American people have vehemently opposed.

One report stated that the long-term tracking strategy had three steps—first to notify families with a post card when their child was late for a vaccine. Second, if they did not comply, then a Government official would call them on the telephone and remind them, and third, if they still did not comply, a Government official would visit their home.

*b. Benefits.*—The committee's investigation has raised awareness nationwide about the need to be fully informed prior to immunization. The committee learned that because vaccinations were required, many health care providers give sick children vaccines to meet immunization guidelines. Parents have not been receiving adequate information prior to vaccinations and their concerns

<sup>52</sup> Conflict of Interest in Vaccine Policy Making, Government Reform Committee Majority Staff Report, <http://www.house.gov/reform/staff—report1.doc>.

about adverse events are often discounted. HHS has initiated an Institute of Medicine review of vaccine safety concerns beginning in 2001. The first question to be reviewed will be concerns about a potential Vaccine-Autism connection. A large meeting on research-needs to determine vaccine safety was conducted by the FDA in November 2000. NIH institutes are expanding research into the causes of autism.

*c. Hearings.—*

*1. Vaccines—Finding the Balance Between Public Safety and Personal Choice, August 3, 1999.*

As a result of the ongoing activities of the subcommittees and concerns raised to the full committee, a hearing was conducted to take a step back and look at the development of vaccine policy overall and to address numerous concerns about the short and long-term safety concerns with vaccines.

U.S. Surgeon General, Dr. David Satcher, also serves as Assistant Secretary of Health for the Department of Health and Human Services [DHHS] to which office all vaccines programs within Department report. Dr. Satcher, former Director of the Centers for Disease Control and Prevention and a survivor of a childhood bout with whooping cough (pertussis) provided a review of the vaccine development and use in the United States.

#### Vaccine Injury Compensation Program

Congress enacted the National Vaccine Injury Compensation Program as a no-fault alternative to the tort system for resolving claims resulting from adverse reactions to mandated childhood vaccines. Enacted in 1988, the program has received over 5,000 claims (85 percent were retroactive). This program is designed to provide compensation to those injured or killed by a vaccine, liability protection for vaccine manufacturers and administrators, and vaccine market stabilization. In 1986, 255 lawsuits were brought against vaccine manufacturers for DTP injuries. That number dropped to just 4 in 1997. Claimants now must first have their case adjudicated and rejected through the Vaccine Injury Compensation Program before they can file a vaccine injury lawsuit against a physician who administers the vaccine or manufacturer.

The Department of Health and Human Services has modified the injury table several times since Congress enacted the program. Some feel changes to this table have been specifically to exclude those cases that Congress specifically intended the program to cover. The Department states that these changes are science-based. The program is administered by the Health Resources and Services Administration within HHS.

#### Vaccine Adverse Event Reporting

The Vaccine Adverse Event Reporting System [VAERS] is managed by the Food and Drug Administration. Licensed manufacturers are required to report adverse events. Health care providers are encouraged to report adverse events. Members of the public who have experienced an adverse event may also report this event. Unfortunately, it is estimated that only 1 in 10 events is actually reported. Physicians and health care providers may not be ade-

quately trained to recognize events or may not be diligent in making connections between illnesses and immunizations.

Through subcommittee hearings, we learned that the Department of Defense filters their VAERS prior to submission to FDA. One DOD employee wrote us and said,

I often read with interest the Anthrax statistics that are published in various printed media both DOD and non-DOD. The most recent article I read cited only 34 individuals were adversely effected by the Anthrax vaccine out of hundred of thousands that have received the vaccination. I have 12 employees that are required to submit to the Anthrax vaccine as a condition of employment. Of the 12, three have had adverse reactions and were deemed by the DOD physician not to be able to continue the series of shots.

It is suggested that the vast majority of adverse events with this shot are not being reported.

#### Vaccine Safety Datalink

This CDC program is a partnership with four large health maintenance organizations to continually evaluate vaccine safety. While the VAERS system is passive, this system is active surveillance encompassing 2 percent of the U.S. birth cohort. The program is examining potential associations between vaccines and 34 serious conditions.

#### Research and Development

Biomedical researchers, with funding from the National Institutes of Health and the pharmaceutical industry, are increasingly looking to vaccines as a mechanism of preventing disease. Recent news article touted that we may one day have a vaccine to prevent Alzheimer's Disease. There are over 100 vaccines in development for a myriad of diseases at this time. The basic premise that vaccines work under is to introduce a weakened version of a disease into the body, and stimulate an immune response, that should develop immunity to the disease.

#### Immunization Schedule

Currently, it is recommended that children from birth to 6 years of age receive 22 doses of 7 vaccines and another 4 in the teen years.<sup>53</sup> Each State sets its own policy as to which shots will be mandated and under what circumstances that someone may be exempted (medical exemption, religious exemption, et cetera.) Unfortunately, the committee heard numerous accounts of families who are being bullied by school officials who refuse to accept exemptions.

#### Information

When interviewing parents about the vaccination process, we learned that there is no real conversation with a health care pro-

<sup>53</sup> Recommended Childhood Immunization Schedule, United States, January-December 1999, as Approved by the Advisory Committee on Immunization Practices [ACIP], the American Academy of Pediatrics [AAP], and the American Academy of Family Physicians [AAFP].

vider at the time a child is vaccinated. It appears that no thorough medical background is taken to determine the likelihood of an adverse event. It appears that the medical profession has become complacent by blindly trusting that licensure by the FDA assures that products are safe and that they can be given without any review and discussion. However, some package inserts of vaccines list ingredients including lactose and state not to give the vaccine if a patient is allergic to any of the ingredients of the vaccine.

Witnesses included: Mrs. Tonya and Mr. Jerry Nelson, Indianapolis, IN, shared their experience of losing their daughter Abby to a vaccine reaction that was mislabeled as Sudden Infant Death Syndrome [SIDS]. Ronald Kennedy, Ph.D., University of Oklahoma, recently published a paper in the January 1999 issue of *Scientific American* on DNA vaccines. With so many vaccines in development, and the need to make safer, more effective vaccines, Dr. Kennedy presented testimony on where the science is leading us in vaccine development. He also discussed the need for more discussion at the time of vaccination. During questioning, Dr. Kennedy stated that the DTP vaccine had a known adverse event rate of 50 percent, including mild and serious events. It was discovered during the hearing that while the DTaP vaccine is now recommended, that the DTP vaccine has never been recalled and is still being used in the United States.

Carola Zitzman, Salt Lake City, UT, a board member of Voice of the Retarded and is a strong advocate for immunization. Carola's first son was born in 1964 with severe mental retardation due to gestational exposure to rubella. Mrs. Zitzman discussed the realities of raising a child with severe mental retardation and the role vaccines play in preventing disease birth defects. Mrs. Zitzman raised concerns about institutional care for children and adults with mental and physical handicaps including concerns about parents and custodians losing choices in housing. While the current trend is for group housing for the handicapped, there is concern that may be regulatory loop holes in providing insuring quality care.

Ann Spaith, Falls Church, VA, is a Department of Defense civilian employee who received numerous vaccines at the request of her employer testified regarding the deleterious effects on her health of receiving work-related vaccines. Among these vaccines was anthrax and Bot Tox (an experimental vaccine). Ms. Spaith, was fit and healthy prior to vaccination, and was cleared for vaccination with blood work. As a result of her vaccinations, Ms. Spaith has a severe thyroid disorder that will require medication the rest of her life and may require removal of her thyroid. Additionally, she has suffered numerous other health maladies as a direct result of the vaccines, and is not taking the third dose. Along with Marines being court martialed for refusing the anthrax vaccine, other military members being discharged with dishonorable, or other than honorable discharges, reserve members who are resigning rather than risk a life of pain or illness from the anthrax vaccine, DOD civilian employees are now being fired for refusing the vaccine. This presents a serious military readiness issue. Ms. Spaith later filed a complaint with the committee that she was mistreated at work as a result of testifying before the committee.

Marcel Kinsbourne, M.D., is a pediatric neurologist who has reviewed many vaccine injury compensation medical records. Dr. Kinsbourne will discuss the importance of vaccines as well as the injuries.

Mr. Rick Rollens, California, a former employee of the California State Legislature, has a son that developed autism as a result of an adverse reaction to vaccines. The connection between autism and the MMR and DTP vaccine is very controversial. Mr. Rollens discussed a new California initiative that is tracking the upsurge in autism in California.

Rebecca Cole, PKIDS, Chapel Hill, NC, and Keith Bergen Van Zandt, M.D., PKIDS, Winston-Salem, NC, and Samuel L. Katz, M.D., American Academy of Pediatrics, and the Infectious Disease Society of American, Durham, NC, testified in support of vaccines.

*2. Autism—Present Challenges, Future Needs—Why the Increased Rates? April 6, 2000.*

The committee received testimony regarding the dramatic rise in autism rates, the challenges families of autistic children face, including making treatment choices, paying for selected treatments, the lack of research in some new treatments, and educational challenges. The committee also received testimony from British researchers regarding concerns that the MMR vaccine is causally connected to autism in some children. At the conclusion of the hearing, Chairman Dan Burton asked HHS Secretary Donna Shalala to assemble a panel of preeminent scientific experts, who are free of conflicts of interest to:

- Evaluate the existing literature and research regarding autism, vaccines, and any possible adverse event that could lead to the onset of autism.
- Determine if there is enough existing science to make a clear determination about a possible link between autism and vaccines.
- Provide a systematic evaluation to the quality of the existing body of research.
- Provide recommendations regarding the research that would be needed to conclusively determine where or not any vaccines can be linked to the onset of autism.

*3. FACA: Conflicts of Interest and Vaccine Development—Preserving the Integrity of the Process? (June 15, 2000).*

The committee examined conflict-of-interest concerns with two HHS committees involved with recommending the licensing and universal use of vaccines. Significant concerns were raised about the influence the pharmaceutical industry has on the approval and recommendation process. A staff report is available on the committee website.

*4. Mercury in Medicine—Are We Taking Unnecessary Risks? (July 18, 2000).*

The committee examined concerns that mercury-based preservatives in childhood vaccines, which may have serious health effects, are not being removed from the market fast enough. A report was presented to the committee entitled Autism—a Unique Type of Mercury Poisoning. This report reviewed the existing body of scientific knowledge on mercury poisoning and compared the symptoms to those of autism and found alarming similarities. Testimony from William Egan, PhD, Acting Office Director, Office of Vaccine

Research and Review, Center for Biologics Evaluation and Review, FDA, determined that while the FDA has asked vaccine manufacturers phase out the use of the main mercury-based additive (thimerosal), the FDA has not used its authority to remove this product from the market.

*k. The Department of Defense's Handling of the Anthrax Vaccine Immunization Program.*

*a. Summary.*—The Department of Defense's [DOD] mandatory Anthrax Vaccine Immunization Program [AVIP] has been fraught with problems since its inception. After the Gulf war, over 100,000 of the 700,000 military members who served became ill. Over 20,000 have died. The symptoms of the condition, now known as Gulf War Syndrome or Persian Gulf Illness, are vague and often hard to treat. They include malaise, body aches, rashes, memory loss, and difficulty in concentrating. While environmental toxins may play a role in this condition, the experimental drugs and vaccines given to the troops have been cited as a potential contributing factor. Non-classified Intelligence briefings have indicated that several countries have or are suspected of having biological and chemical warfare capabilities including weaponized anthrax. The committee has received conflicting testimony as to the actual level of the threat and the ease with which anthrax can be weaponized.

Secretary Cohen, when establishing the AVIP, gave four preconditions that were to be completed prior to the establishment of the program: supplemental testing of the vaccine; assured tracking of immunizations; approved operational and communications plans; and review of the health and medical aspects of the program by an independent expert. The DOD failed to successfully complete all of these preconditions before beginning the mandatory program.

Additionally, adverse event rates in several of the initial Phase I recipients were significantly higher than expected. Pilots and flight crews at Dover Air Force Base suffered numerous adverse events such as heart lesions, dizzy spells, unresolving flu-like symptoms, malaise, difficulty in concentrating, arthritis, and Guillian Barre syndrome. Similar reports have been received from other bases as well. The prospective studies indicate adverse events in about 20 percent of those who take the vaccine. Five to 35 percent will have a systemic reaction and women suffer adverse events at twice the rate of men.

Many active duty and reserve service members raised serious concerns about the legality of the order to take the vaccine, since the vaccine was licensed for cutaneous exposure to anthrax and intended for use by veterinarians and mill workers who handled the skins of goats and sheep.

Additionally, the sole manufacturer of the vaccine, Bioport, closed for remodeling rather than face an FDA enforcement action for repeated quality control violations. This has resulted in a serious shortage of the vaccine. At present all vaccine available for use comes from a stockpile of vaccine produced prior to 1998. After finishing renovations, Bioport has been slow to gain FDA approval to restart manufacturing. The DOD provided extraordinary financial relief to the company to keep it viable during the FDA approval



process. Due to ongoing supply problems, the program continues to be slowed.

*b. Benefits.*—While the DOD refused to halt the AVIP, DOD leadership have admitted that mistakes in implementing the program have been made and that communication with service members has improved. The committee continues to be disturbed at the effect on morale and readiness the AVIP program is having and the difficulty many vaccine injured have in obtaining adequate medical care.

*c. Hearings.*—Three hearings were conducted:

1. *“Defense Vaccines: Force Protection or False Security?”* October 12, 1999.

The full committee examined the overall picture of vaccines for defense. As part of our ongoing investigation into vaccines, the committee examined the safety, efficacy, the importance of informed consent, the concerns about vaccine ingredients, purity, and the long-term safety concerns. The committee looked into the role of vaccines as a defense mechanism for biological warfare. Is it viable and appropriate to use vaccines as a defense mechanism? Will it be possible and practical to develop vaccines to protect against all known and potential biological threats.

Chairman Burton made the following comments at the opening of this hearing:

Much has been said by numerous Government officials about the biological warfare threat. We have been told in previous hearings and in testimony prepared for today that “at least 10 nation-states and two terrorist groups are known to possess, or have in development, a biological warfare capability.” Are all these nation-states our enemies? How many are confirmed to actually have weapon-dispensable anthrax poised and ready to launch? Intelligence and military officials have testified that it is relatively easy to develop and produce chemical and biological weapons. However, they have also testified that it is much more difficult to successfully deploy chemical weapons. For instance, the Deputy Commander of the Army’s Medical Research and Materiel Command testified in 1998 that, “an effective mass-casualty producing attack on our citizens would require either a fairly large, very technically competent, well-funded terrorist or state sponsorship.” And in March 1999 another expert stated, “the preparation and effective use of biological weapons by potentially hostile states and by non-state actors, including terrorists, is harder than some popular literature seems to suggest.

We’ve also been told that anthrax is the most likely candidate for a biological warfare threat. What is the basis for that determination? With the aggressive information offensive the Department has launched to its military members and the American public, it’s made to sound like the equivalent of the Cuban Missile Crisis. If that is so, then those who are in harms way, and the American public, deserve to know the whole story. A State Department fact sheet on chemical and biological warfare states, “The Department of State has no information to indicate that there is a likeli-

hood of use of chemical or biological agent release in the immediate future. The Department believes the risk of the use of chemical/biological warfare is remote, although it cannot be excluded.”

There are several issues that need clarification regarding the current anthrax vaccine program. Including answering why the United States is the only member of NATO that mandates this vaccine? The Defense Department would have us believe that the concerns raised about the anthrax vaccine are minor and by a “small and vocal group.” In fact, on their website, Major Guy Strawder, states, “Much of the hand-wringing and bizarre allegations about the vaccine is coming from a vocal minority of people who think the ‘field’ is where a farmer works and ‘Gortex’ is one of the Power Rangers. Most of these folks have never spent a single moment in harm’s way and have no appreciation of what that sacrifice means.” How does that measure up to the following statements that have been sent to us:

- “I have served my country with honor and total dedication since 1970. To have this unsafe and unproven vaccine put an abrupt end to my service is a travesty of justice. I have constantly received excellent appraisals for the past three decades and had nothing in mind but to continue receiving these favored appraisals. We in the military have been told too many false statements about this vaccine. We have been misled about the safety, the long-term effects associated with this vaccine, the proper number of adverse reactions, and the attrition and refusals in our total force. Many will leave the military because of this vaccine and its problems. Many of these folks will give up a career dedicated to service to their country.”
- Or the Pilot from Maine who said, “I will be forced out of the Air National Guard and lose my retirement. I have put in 15 good years as a pilot and have enjoyed every one of them. I will not however, put my health and my future ability to take care of my family on the line for a DOD that refuses to examine their own programs for the safety and cohesion of our military.”
- Or the F-16 fighter pilot who stated, “I personally have over 22 years of faithful service in the Air Guard. My record is exemplary. I was not planning to retire for at least two to three more years but the anthrax vaccine program has expedited my retirement plans. The commander of my unit will not allow me to stay in until March 7, 2000, when I will have three years time and grade to keep my LTC rank into retirement. After almost 23 years of faithful service to my country I will not be allowed to stay in for the 67 additional days needed to carry Lieutenant Colonel into retirement.”

Either the Defense Department is being less than forthcoming about objections being raised, or they have their heads buried in the sand. A lot of the concerns have been raised about the actual number of adverse events from the

anthrax vaccine. The numbers vary greatly. Every thing from 0.0002 percent reported in the media in February, to 0.2 percent on the package insert, to 20 percent in the one active surveillance currently underway. (Attachment). If the Department is not doing active follow-up and tracking of health concerns service-wide, then how will we ever garner an accurate representation of adverse events?

Vice Admiral Richard A. Nelson, Medical Corps Surgeon General, U.S. Navy, stated, "I am aware of the controversy associated with AVIP and the concern our troops have regarding potential side effects. The vaccine is safe. . . . Of the over 82,000 Marines and Sailors inoculated, only eight reactions have been reported via the Vaccine Adverse Reporting System. All have returned to full duty." In cross-examination, one medic from 29 Palms had no knowledge of the existence of a Vaccine Adverse Events Reporting System form. Adverse event reports are difficult to file when the medical personnel are not even aware that such a thing exists.

The Defense Department states that it requires their medical personnel to report all adverse events that cause a loss of duty of greater than 24 hours or hospitalization. Are these the only types of events that are truly adverse? How is it that the Defense Department has been allowed to determine what constitutes a reportable adverse event? The former FDA Commissioner stated that adverse events are dramatically underreported, only one in ten typically. We also know from previous statements made by the Defense Department that military reporting is one-seventh of the civilian rate. Given these figures, less than 2 of every 100 systemic adverse event are being reported. And for those who have an adverse event, is adequate care being provided? Why is it that many individuals who have been suffering for a very long time with adverse events, are still waiting for appointments with appropriate specialists? Or the statement from one Sergeant from Georgia who suffered with memory loss, swelling, dizziness, a rash, muscle twitching, and a month of diarrhea, "the doctors repeatedly ignored my statement that I became sick after taking the anthrax vaccinations." And the Master Sergeant from Michigan who was told that his symptoms showed that he had the flu for an entire year. This diagnosis from a military doctor who chose only to talk to him and did absolutely no blood work or examination. And what about plans for more vaccines? Just how many vaccines can one human being safely receive in their lifetime? The Federal Government currently recommends a total of 26 doses of vaccines for children. The typical twenty-year career military member can expect an additional 37 doses of vaccinations, plus the anthrax and other deployment vaccinations that would total at least 40 doses over twenty years. There are currently another 18 vaccines in development under the Joint Vaccine Acquisition Program. And if all the potential biological warfare threats are developed into vac-

cines, these numbers will skyrocket. Are we going to vaccinate our military to death?

Maybe we need to look at other approaches to dealing with the biological threat. For instance, with good detection equipment and protective gear, the use of products like the orphan drug that we have just learned is currently in development that causes the anthrax spores to explode rather than synthesize and can also be used to decontaminate equipment and clothing.

I hope that we can find solutions to these issues, get the full story on issues raised, and by doing so, take action to begin to restore trust in the ranks and restore and preserve the careers that have been destroyed.

This hearing provided an opportunity to review the development of policy regarding protection from biological warfare through the use of vaccines. The Subcommittee on National Security, Veterans Affairs, and International Relations has conducted five hearings on anthrax vaccine issues. Anthrax is an infectious bacterial disease spread by contact with infected animals, handling infected products, eating infected meat, or breathing weapon-dispersed anthrax spores. The Department of Defense has stated that anthrax is a confirmed threat and that the licensed vaccine is the only known protection for this threat. What is the role of detection devices, protection gear, and other vaccines? With increased concerns about the safety of the vaccine as well as concerns about military readiness, it is vital that all concerns be appropriately addressed and resolved.

As part of our ongoing investigation, we learned that numerous vaccines are in development to protect the military against biological warfare agents. If implemented, these vaccines will equal about 300 shots for an individual during their military career, in addition to the routine immunization schedule they already comply with. Do we have scientific evidence to indicate that the human body can safely receive so many vaccinations? Do we have a well-developed policy in place for decisionmaking criteria?

The Department of Defense categorizes the Persian Gulf war delivery of vaccines as the "pre-modern era," stating that since that time, vast advances have been made in the tracking of vaccinations and of adverse events. They also have stated that no one has ever gotten anthrax that had received two vaccines. The Department stated that during the Persian Gulf war it was confirmed that Iraq had the capability to use anthrax as a weapon of mass destruction. It was stated that leaders in the field had the authority to use anthrax, but chose not to. The Department also stated that it was confirmed that North Korea has weapon-dispensable anthrax and, by flying close to the de-militarized zone at sunset, they could spray from airplanes enough anthrax that by dawn the next day, the entire South Korean population would be exposed to anthrax. If these statements are accurate, has the Department of Defense implemented an effective policy to insure the safe and appropriate delivery of protection to its members?

The development of policy involves several Government agencies including the Department of State and the Food and Drug Administration. The Department of State is currently in discussion with

DOD regarding the purchase of anthrax for dependents. The Food and Drug Administration is responsible for licensing manufacturers, inspecting facilities, for monitoring adverse events, and for monitoring Investigational New Drugs [INDs] of which the DOD has an IND for changing the shot delivery from subcutaneous to intramuscular and from a six shot cycle to a three shot cycle.

Sue Bailey, M.D., Assistant Secretary for Health Affairs, Department of Defense, Major General Randall L. West, Special Assistant to the Secretary of Defense for Biological Warfare and Anthrax Department of Defense, and Lt. Col. Randy Randolph, Director, Anthrax Vaccine Immunization Program Agency testified on behalf of the Defense Department, presenting an outline of vaccine policy and adverse events monitoring.

Cedric E. Dumont, M.D., medical director, Office of Medical Services, Department of State testified regarding State's consideration of making the anthrax vaccine available to dependents who reside in high-threat areas. Extensive discussion took place regarding the lack of research indicating safety for minors and the elderly. Dr. Dumont stated,

Pre-exposure immunization against infectious diseases is an integral part of Foreign Service life. Our communities are often exposed to exotic infectious agents and pre-exposure administration of vaccines is the most effective means to protect against infectious health risks. Good examples are the hepatitis and yellow fever vaccines. Anthrax exposure, from our point of view, is just one additional health risk. Placed into this context, the anthrax vaccine has been added to the Department's immunization armamentarium. Like all our vaccines, it is offered on a strictly voluntary basis. Aimed at protecting the workplace, this vaccine is offered to eligible individuals overseas. It is administered following strict FDA guidelines. The mobility of the Foreign Service community and the worldwide risk of a biological attack against our missions compel us to make this vaccine available worldwide. Recognizing the limited supplies of the vaccine, we are implementing this program in a stepwise manner, beginning at Posts where we previously pre-positioned the vaccine. As the vaccine becomes more available, we plan on expanding the program to all our missions throughout the world. Protection of the Ineligible Population. One of the most difficult challenges we face is how to protect those individuals presently ineligible for the vaccine (less than 18 or over 65 years of age or pregnant). The family members of Foreign Service employees while arguably at a lower risk of exposure to anthrax when its target is the work place are still at risk of exposure especially at missions where embassy housing is clustered near USG offices and where services commonly used by family members are located within the chancery (example: commissary, medical services, etc. . . .). Sensitive to this concern, the Department of State is engaged in a dialogue with the Food and Drug administration and the manufacturer of the vaccine, Bioport, in exploring the feasibility of providing the vaccine on a voluntary basis to

presently ineligible individuals through a Food and Drug Administration approved clinical investigational new drug [IND] study. The purpose of the IND study is to determine the safety and immunogenicity of the vaccine in those individuals otherwise ineligible.

Kathryn C. Zoon, Ph.D., Director, Center for Biologics, Evaluation and Research, Food and Drug Administration testified regarding the FDA's role in the licensing and monitoring of vaccines and its interactions with the Defense Department regarding the Anthrax Vaccine Immunization Program. Dr. Zoon stated:

In May 21, 1987, FDA entered into the current MOU with DOD. This replaced the previous MOU signed in 1974. The 1987 agreement established procedures to be followed by DOD and FDA regarding the investigational use of drugs, biologics and medical devices. The MOU affirms that clinical testing of new drugs will be done in accordance with application regulations concerning INDs and IRBs. The MOU addressed the possibility of a need for expedited review of an IND by FDA to meet DOD requirements concerning National defense considerations. Under the MOU, DOD is responsible for classifying medical research and development as it relates to information that may be made public under Freedom of Information Act regulations. It should be stressed that this agreement, however, does not allow DOD to perform research on humans without submitting an IND and it requires DOD to comply with all FDA regulations. FDA has not had an official role in the development or operation of the Department of Defense's Anthrax Vaccine Immunization Program, including the AVIP tracking system or the program's adverse event reporting system. In March 1997, DOD briefed FDA about their draft plan for the possible use of the anthrax vaccine to inoculate U.S. military personnel according to the FDA approved labeling for six doses administered on a specified schedule over eighteen months. Subsequently, FDA learned that the DOD plan had been adopted. In July 1998, DOD requested that CDC, in conjunction with the Health Resources and Services Administration, National Vaccine Injury Compensation Program [VICP], organize and coordinate a program to evaluate VAERS reports for the anthrax vaccine. In response to the request by DOD, a group of non-government medical experts was convened by the VICP in the fall of 1998 as the Anthrax Vaccine Expert Committee [AVEC]. AVEC, coordinated by VICP, has met eight times since 1998. These experts have been reviewing all VAERS reports for the anthrax vaccine. Representatives of VICP, FDA, CDC and DOD have attended meetings, and FDA has provided information to assist the committee in its deliberations. AVEC is unique in that it provides an independent civilian expert assessment of adverse events reported for the anthrax vaccine. Upon learning that some DOD personnel may be receiving their anthrax vaccine doses significantly

later than the FDA approved schedule, both Dr. Jane E. Henney, Commissioner of the Food and Drug Administration, and I, recently sent letters to DOD. In the letters we asked DOD to expeditiously investigate this matter as we are unaware of any data demonstrating that any deviation from the approved intervals of doses found in the approved labeling will provide protection from anthrax infection. We will continue to monitor this issue.

John B. Classen, M.D., MBA, Baltimore, MD, raised concerns regarding the increased incidence of diabetes in veterans and the potential that this is linked to vaccines.

Major Sonnie Bates, pilot, USAF was invited to testify before the committee to detail his observations and experiences with regards to the Anthrax Vaccine Immunization Program. Major Bates had intended to be inoculated with the anthrax vaccine as a part of his duties. After arriving at Dover Air Force Base, he learned of the unusually high rate of illnesses in otherwise healthy individuals who all had one common factor—receiving the anthrax vaccine. Major Bates raised his concern during an initial meeting with his squadron commander, who was open and objective about the issue and recommended that Major Bates research the issue further in order to make an informed decision regarding inoculation. The information provided to the committee is a result of Major Bates' research. It is important to note that at the time of the hearing Major Bates had not yet been ordered to take the vaccine. At no time during the hearing did Major Bates indicate his decision to not take the vaccine. After the hearing, Major Bates felt retaliated against and felt that the order for him to take the vaccine was moved up. As a result of these actions, Major Bates refused the vaccine and eventually was granted a discharge from the Air Force.

Major Bates learned 12 people, in his squadron alone, have unusual or disabling illnesses that did not exist prior to the anthrax vaccine and the causes are unknown. They included medically diagnosed conditions of thyroid damage, liver damage, external and internal cysts (including cysts around the heart), autoimmune disorders, crippling bone/joint pain, seizures, memory loss, vertigo, and inability to concentrate have been documented. In addition, there are as many as 60 cases of such unusual illnesses at DAFB. It is important to remember that in the military, physical fitness is a must, health status is rigorously monitored. If Major Bates' squadron health figures represented the norm, then approximately 4.4 percent of our military force would be disabled due to these strange illnesses. Major Bates expressed concern that the military leadership seems desensitized to the illnesses at Dover Air Force Base.

Major Thomas L. Rempfer, Pilot, USAF Reserves offered the following testimony,

I open my testimony with the core values of the US Air Force.

"Integrity first, service before self, and excellence in all we do."

I am not here today to speak about the safety and efficacy of the anthrax vaccine. Instead, I am here to discuss

another reason for the growing retention problem generated by the anthrax vaccination policy: it is integrity, and its relationship to doctrine. After exhausting all avenues within my chain of command, and communicating with hundreds of service members over the past year, I have concluded that the root cause of the negative reaction to the anthrax vaccination policy is a sense that the professional standards demanded of military personnel have been consistently violated by those implementing this policy. It is not, as DOD officials assert, simply a failure to educate, but instead a failure to communicate the truth, the whole truth, and nothing but the truth. Here are just a few examples:

- First, when the anthrax vaccination policy was announced on December 15, 1997, a senior officer, who refused to be named, told reporters: "It's been licensed since 1970, [and has a] proven safety record. It's been documented."
- The whole truth is that in April 1998, Dr. Kathryn Zoon of the FDA stated in a letter that, "data for clinical studies conducted on the long term health effects of taking the anthrax vaccine have not been submitted to the FDA."
- The General Accounting Office reiterated this fact on April 30, 1999.
- Just last week the Army announced they would now conduct such a study.
- Next, the Assistant Secretary of Defense for Health Affairs, who is a physician, told Congress on March 24th that "the safety of our AVIP was also confirmed by an independent review of the program."
- She was referring to a report by a Yale University Medical School professor who was selected by DOD to review the health and medical aspects of the anthrax vaccination policy before its implementation. The whole truth is that the doctor our DOD repeatedly cited for over a year as their independent expert is really an obstetrician and gynecologist. He wrote Congress, upon being requested to testify last April, that he had informed DOD at the time of the review that he had "no expertise in anthrax."
- DOD has never acknowledged this admission by their "expert" or explained why they asked an OB/GYN to review a biological warfare immunization program. As a result DOD's independent review is perceived as a sham.
- Next, the Assistant Secretary of Defense for Public Affairs speaking about the vaccine in January said, "It's safe and reliable . . . It works and has no side effects."
- On June 29th he ridiculed the idea of adverse reactions to the vaccine when he told reporters: "I've had three shots. My hair is growing more robust than ever. I sleep better. I eat better, run farther. It's been nothing but a great experience."
- The whole truth is that DOD physicians met at Ft. Detrick, MD, on 25 to 27 May, 1999 to discuss adverse reactions to the vaccine, including the case of an Air Force



pilot who developed an auto-immune disorder after receiving the vaccine and had been grounded since November 1998.

- On September 30th the Army Surgeon General admitted to 72 cases of adverse reactions that had required hospitalization—while he continued to minimize the risk of the vaccine.
- Next, the Assistant Secretary of Defense for Public Affairs has also asserted for months that the number of anthrax refusals is only about 200 service members, inferring no significant impact to readiness. Yet, on September 30th a DOD spokesman finally acknowledged that DOD had made a conscious decision not to track refusals.
- The whole truth is that DOD crafted a “no bad news” tracking system that only tracks the administration of shots, but does not track adverse reactions or refusals. The Deputy Secretary of Defense admitted to Congress on September 30th, “he was reluctant to count refusals through a central tracking system because it would undermine command authority.”
- He did not elaborate why telling the truth would undermine the chain of command. Next, the Assistant Secretary of Defense for Reserve Affairs stated on August 17, 1999: “before Secretary Cohen authorized the use of a single dose, he ordered supplemental testing of the vaccine, doubly ensuring the vaccine’s safety and far exceeding any pharmaceutical industry standards. Supplemental testing, combined with the ongoing supervision of the FDA, demonstrates that the vaccine is safe and effective.”
- The whole truth is that on April 29, 1999, BG Eddie Cain admitted that DOD had suspended the supplemental testing after “inconsistencies” were found in the procedures being used by the manufacturer, Bioport, despite supervision by another DOD contractor hired to oversee the testing.
- Additionally, the GAO reported that supplemental testing couldn’t compensate for a flawed manufacturing process.
- Next, the Assistant Secretary of Defense for Reserve Affairs additionally testified to Congress on September 29th, after being reminded he was under oath, that if someone is going to resign over anthrax, “they are certainly not going to be subject to any penalties. This is one of the points of the Guard and Reserve.” The whole truth is that five days later the commander of the 184th Bomb Wing, Kansas Air National Guard, issued a written warning to a B-1 bomber pilot threatening a \$500 fine and six months in jail, because the pilot had asked to transfer in lieu of submitting to the vaccine.
- Next, the Deputy Secretary of Defense wrote *Newsweek Magazine* on April 3, 1998 about the anthrax vaccine manufacturer, stating, “no shutdown was ever directed or contemplated as a result of any FDA inspection.”

- Additionally, on August 5, 1999, a senior officer who refused to be named told reporters that a threatened FDA shutdown of the manufacturer's production line was an "urban legend."
- The whole truth is that the FDA sent a "notice of intention to revoke" the manufacturer's license on March 11, 1997 after "significant deviations" discovered during previous inspections remained uncorrected. (20) A follow-up FDA report in February 1998 found that, "the manufacturing process for Anthrax Vaccine is not validated."
- The manufacturer subsequently "voluntarily" suspended anthrax vaccine production. All of the vaccine used on service members to-date was manufactured during the period of repeated significant deviations from FDA manufacturing standards. Next, in September 1998, the Secretary of the Army wrote a letter indemnifying the anthrax vaccine manufacturer.
- It stated: "The obligation assumed by [the manufacturer] under this contract involves unusually hazardous risks associated with the potential for adverse reactions in some recipients and the possibility that the desired immunological effect will not be obtained by all recipients." When that letter surfaced in June, DOD called it "a misreading of a routine contracting procedure."
- The whole truth is that the last vaccine to receive similar indemnification was the swine flu vaccine in 1976—a health care fiasco that was supported by the health care community as the anthrax vaccine appears to be today.
- Next, the Director of the Air National Guard testified under oath on September 29, 1999, that only one member of the Air National Guard had left over the anthrax vaccine. The whole truth is that eight pilots from the Connecticut ANG resigned or transferred specifically because of the anthrax vaccine, as did seven pilots in the Wisconsin ANG who are now grounded while awaiting out-processing. Four days after this testimony denying attrition, 22 of 50 pilots in the Tennessee ANG unit in Memphis quit—along with 38 other service members. These are just a few examples of the current attrition and pale in comparison to the expected losses to a program just beginning in the reserves. Finally, the Secretary of Defense has stated that he would be "derelict" in his duty if he did not mandate use of the anthrax vaccine.
- The whole truth is that weaponized anthrax has been available since World War II and the anthrax vaccine has been available since 1970. Additionally, the GAO has testified that, "the nature and magnitude of the military threat of biological warfare has not changed since 1990."
- Accepting the Secretary's statement means that every other Secretary of Defense in the post-Cold War era has been derelict for not mandating the vaccine. Framing the anthrax vaccination as a moral imperative has precluded an intellectually honest debate about this policy and has resulted in punishment of those who question it.

### Analysis:

These ten lapses of our core values are merely the beginning in the unraveling of the truth. They have placed military commanders at all levels in an untenable position: either implement a questionable policy or sacrifice their careers. Consequently, the anthrax vaccine policy has turned into a biological loyalty test. The anthrax vaccine is no longer a health policy. Instead, it has become an issue of “good order and discipline” and the ability of the military’s leadership to impose its will on subordinates. Loyal service members now must express their fealty to the chain of command by submitting to the vaccine. For those who don’t, there is arbitrary discipline—incarceration and court-martial for some, dismissal and disgrace for others.

Each of these examples demonstrates a breakdown of intellectual honesty, which is the linchpin of integrity and doctrine. Without honesty doctrine is merely dogma. Congressman Shays has referred to the anthrax vaccination policy as a “medical Maginot Line.”

It requires the tacit cooperation of our adversaries to use the only biological agent against which we have invasively defended ourselves. It requires our adversaries to not use chemical agents at all. It requires our adversaries to attack only the one percent of Americans who are vaccinated. Recognizing the logical long-term implications of this façade of force protection former deputy director of the Soviet biological weapons programs, Dr. Ken Alibek, told the Joint Economic Committee of Congress that: “In the case of most military and all terrorist attacks with biological weapons, vaccines would be of little use.”

Further, he recently stated: “We need to stop deceiving people that vaccines are the most effective protection and start developing new therapeutic and preventive approaches and means based on a broad-spectrum protection.” Service members have discovered an acute dichotomy between what defense officials are telling Congress and the information readily available in government documents, Congressional testimony, medical research and news reports. This contrast creates an ethical dilemma for service members whose core values require the questioning of immoral orders. Consequently, out of our respect for the Constitutional imperative of civilian control of the military we have reluctantly and repeatedly asked Congress to intercede and stop the corrosive impact the anthrax vaccination policy is having on our nation’s military. If Congress is not proactive in response to DOD’s absence of intellectual honesty, the unfortunate reality is that those members of the all-volunteer military who do embody its core values will simply leave.

I close with an excerpt from *The Soldier and the State*, by noted Harvard military scholar, Samuel Huntington. He rhetorically asked, “what does the military officer do when he is ordered by a statesman to take a measure which is militarily absurd when judged by professional

standards and which is strictly within the military realm without political implications?" Huntington answered, "the existence of professional standards justifies military disobedience." Our professional standards have been made very clear: Integrity first, service before self, and excellence in all we do. Therefore, I believe I would be derelict in my duty if I did not take this opportunity to express my adamant professional dissent toward the Anthrax Vaccine Immunization Policy. As well, it would be unconscionable for me not to seek redress for all Service members, dedicated to the profession of arms, who have been inexorably drawn into this professional military dilemma.

Neal A. Halsey, M.D., director, Institute for Vaccine Safety, Johns Hopkins University presented testimony supporting vaccine safety.

Kwai-Cheung Chan, Director, Special Studies and Evaluation, U.S. General Accounting Office, presented the findings of the ongoing GAO investigation of the anthrax issues. The GAO's investigation has uncovered a higher than expected adverse reaction rate, including evidence that females have reactions at twice the rate that males do. Concerns raised by the GAO included the viability of the Anthrax Vaccine Immunization Program, concerns that the actual threat has not increased in 10 years and is being misrepresented, and concerns that the program is having a deleterious effect on retention and morale.

William J. Crowe, Jr. (Adm, USN Ret.) testified regarding the development of defense policy for biological warfare during his tenure as chairman of the Joint Chiefs of Staff and his role as part owner of Bioport, the anthrax vaccine manufacturer with a sole-source contract to sell anthrax vaccine to the Department of Defense to inoculate 2.4 million members of the military. Admiral Crowe testified,

BioPort monitors all reports of any unusual reaction. The company is dedicated "first and foremost" to producing a safe vaccine. Since the takeover of the laboratory in 1998, BioPort has installed an enhanced quality system and made extraordinary efforts to ensure the continued safety and efficacy of the vaccines. I should note in this regard that not a single dose of this vaccine has ever been released without FDA approval. Frankly, there is no question in my mind that we should bend every effort to protect our forces against anthrax attacks. Believe me, the descriptions of people dying from the anthrax spore are horrifying. It is an agonizing way to die. The effect is very similar to that of the Ebola virus. I suspect if we had had more experience with anthrax deaths, we would better appreciate what the Department of Defense is trying to do. The argument as to whether the military program should be voluntary or mandatory is outside my purview. I have little desire to enter that argument but, again, I have chosen personally to protect myself by taking the vaccine. Before closing let me discuss one peripheral issue. It would be naïve of me not to mention some of the vague and rath-

er misinformed criticisms of my association with BioPort. It has on occasion been rumored that the decision to inoculate all service personnel was made to benefit the BioPort Corporation and indirectly me, presumably because of my past associations with the military and the Administration. If this charge were not so ridiculous, it would be offensive. It outrageously exaggerates my influence. I didn't have that much influence when I was Chairman and I certainly don't have it now. Let me be completely clear. I never, repeat never, solicited any official of this Administration to install or promote a mandatory inoculation program. Secretary Cohen's announcement of the mandatory vaccine requirement was made on May 18, 1998. The Steering Group's deliberations took place many months before this date. Actually, a Washington Post article reported in late 1996 that such a policy was being considered. At the time of the official announcement, the group I was associated with was engaged in a spirited competition with a number of other bidders to privatize the old Michigan Laboratory. The bid winner was not selected until June 1998 and the decision was made by the State of Michigan. The Department of Defense maintained a neutral position throughout this process. Frankly, the May 18 announcement made the final bidding phase of the competition more intense. The attempt to link me with the Secretary's decision is pure fantasy.

Jack Melling, the Salk Institute, Biologics Development Center, Stroudsburg, PA, testified regarding the development of the British program on biological defense and presented a comparison of the two programs including the use of the anthrax vaccine.

Milton Leitenberg, senior scholar, Center for International and Security Studies at Maryland, University of Maryland, a policy expert on the proliferation of biological warfare testified regarding the current level of threat for anthrax to be used in war time situations.

*2. The Anthrax Vaccine Immunization Program—What Have We Learned? Part One (October 3, 2000).*

Congressman Metcalf presented his findings regarding the discovery of the additive Squalene in the anthrax vaccine. The committee also received testimony from numerous injured military members who feel their life-changing injuries are due to the anthrax vaccine.

*3. The Anthrax Vaccine Immunization Program—What Have We Learned? Part Two (October 11, 2000).*

This hearing reviewed the DOD's implementation of the anthrax vaccine program, including concerns about retention and readiness problems developing in the National Guard and Reserve forces due to seasoned military members, in particular pilots, leaving the military or transferring out of flight positions to avoid risks associated with the vaccine. The committee sought clarification from DOD witnesses on conflicting statements made under oath to Congress and to the troops.

*d. Legislation.*—In July 1999, Congressmen Walter Jones and Ben Gilman introduced legislation in response issues raised

through the committee's investigation. Both bills were referred to the Armed Services Committee.

1. H.R. 2548 Department of Defense Anthrax Vaccination Moratorium Act.

Congressman Gilman introduced this bill to suspend further implementation of the Department of Defense anthrax vaccination program until the vaccine is determined to be safe and effective and to provide for a study by the National Institutes of Health of that vaccine. There were 44 cosponsors.

2. H.R. 2543 American Military Health Protection Act.

Congressman Walter Jones introduced this bill to make the Department of Defense anthrax vaccination immunization program voluntary for all members of the Armed Forces. There were 40 cosponsors.

*l. Missing White House E-mails: Mismanagement of Subpoenaed Records, March 23, March 30, May 3, and 4, 2000.*

On day one of these hearings, the committee heard testimony from six employees of Northrop Grumman Corp.—an outside contractor that provides technology support services to the Executive Office of the President [EOP]—and one EOP employee responsible for the Automate Records Management System [ARMS]. The witnesses testified about a technical failure in ARMS that prevented the White House from completely searching archived e-mail in response to various congressional and grand jury subpoenas, about the White House's knowledge of the failure dating back 2½ years to the summer of 1998, and about the threats and secrecy requirements from White House officials Mark Lindsay and Laura Crabtree. The committee also heard testimony from Mark Lindsay and Laura Callahan who each denied the allegations against them.

On day two of these hearings, the committee heard testimony from Counsel to the President Beth Nolan and Deputy Attorney General Robert Raben. Beth Nolan testified about her and her office's knowledge of the ARMS failures and why it had never informed the committee about its inability to search archived e-mail records. Robert Raben testified about the criminal investigation launched by the Justice Department following the committee's first hearing on the e-mail matter and the refusal of the Department to make Civil Division attorneys available for interviews with committee staff.

During days 3 and 4 of the hearings, the committee continued its investigation of alleged threats and obstruction of justice regarding the White House's failure to produce hundreds of thousands of e-mails potentially responsive to subpoenas from Congress, the Justice Department and the Office of the Independent Counsel. During the first panel of the May 3, 2000 hearing, the committee heard testimony from Karl Heissner, Branch Chief for Systems Integration and Development at the Office of Administration, as well as Michael Lyle, Director of the Office of Administration. The committee learned that, although the reconstruction project was handed over to Heissner, he received no direction from Office of Administration officials—including Mark Lindsay—to move forward with the project. During the second panel of the hearing, the committee

heard from Assistant Attorney General Robert Raben on the Justice Department's criminal investigation of the e-mail matter.

On May 4, 2000, the committee also heard two panels, the first comprised of Mark Lindsay, Assistant to the President for Management and Administration, Charles F.C. Ruff, former White House Counsel, and Cheryl Mills, former Associate White House Counsel. Mr. Ruff testified that he was ultimately responsible for a faulty comparison test that the White House relied on to conclude that there was not a problem with searches for e-mails. In the second panel, the committee received testimony from Beth Nolan, White House Counsel, and Dimitri Nionakis, Associate White House Counsel. Nolan argued that the e-mails generated for the comparison test were not responsive to the committee's investigation, but the White House nevertheless produced the documents.

*m. Contacts Between Northrop Grumman Corporation and the White House Regarding Missing White House E-mails, September 26, 2000.*

At this hearing, the committee received testimony from Deputy Attorney General Alan Gershel of the Justice Department. The committee asked Mr. Gershel to testify to help the committee determine the extent to which the Justice Department was taking its criminal investigation into the e-mail matter seriously. However, Mr. Gershel was unwilling to disclose how many attorneys have worked on the Campaign Task Force's criminal investigation of the e-mail matter and was unable to cite any legal authority or written policy for refusing to provide the staffing levels to the committee.

Also, Mr. Gershel conceded that he misspelled the name of Daniel Barry, a key individual implicated in the e-mail matter, in a letter notifying him that he was not a target in the Justice Department's investigation. And, despite that Mr. Gershel supervises the Campaign Financing Task Force, at the hearing, he was unable to identify individuals central to even that investigation.

*n. The Committee's Oversight of the Department of Justice's Campaign Finance Investigation.*

The committee's investigation of campaign finance irregularities and violations of law in the 1996 Federal elections led the committee to conduct oversight of the Department of Justice's parallel investigation. The committee became concerned about the Justice Department's handling of the campaign finance investigation when it learned through media reports that Director of the FBI Louis J. Freeh, wrote a November 24, 1997, memorandum to the Attorney General recommending that an independent counsel be appointed. The committee subpoenaed a copy of the memorandum and Attorney General Reno declined to produce it. Eight months later, Supervising Attorney of the Task Force Charles G. La Bella wrote a July 16, 1998, memorandum to the Attorney General Reno recommending the appointment of an independent counsel. The committee subpoenaed the La Bella memorandum, and again, Attorney General Reno declined to provide it to the committee.

For 2½ years, the committee struggled to obtain copies of the Freeh and La Bella memorandum from the Justice Department. During that period of time, the committee issued four different sub-

poenas for the memos, in addition to a number of additional formal requests for the documents. In May 2000, the Justice Department finally relented, and provided copies of the Freeh and La Bella memos, and a number of other memoranda relating to the Attorney General's independent counsel decisionmaking process, to the committee. The committee released those documents to the public a short time later, on June 6, 2000.

The memoranda showed that both Director Freeh and Supervising Attorney La Bella believed that an independent counsel should have been appointed to investigate the campaign finance investigation. Furthermore, they agreed that the Department of Justice was applying the Independent Counsel Act in a manner that almost ensured that one would not be appointed. Both believed that there was a higher standard for initiating an investigation of individuals covered under the Independent Counsel Act. The committee found the memoranda troubling in that they painted a bleak picture of the Justice Department's handling of the campaign finance investigation. In August 2000, the committee learned through the media that the new Supervising Attorney of the task force, Robert Conrad, recommended that the Attorney General appoint a special counsel to investigate Vice President Gore. The Independent Counsel Act expired on June 30, 1999, therefore, only a special counsel could be appointed. The committee subpoenaed the Conrad memorandum in August 2000, however, the Attorney General has refused to produce it.

In the course of its oversight investigation, the committee sought to ascertain what information and evidence the Justice Department's Campaign Financing Task Force was collecting. In so doing, the committee subpoenaed from various entities and individuals the document requests or subpoenas they had been issued by the Department of Justice. The committee found that the Justice Department failed to pursue key individuals in the investigation. For example, the task force waited years to request from the White House information on people who played major roles in the investigation. In addition, the Democratic National Committee refused to comply with the committee's subpoena for Department of Justice requests or subpoenas.

The committee conducted its oversight investigation to ensure that the Attorney General was carrying out her responsibilities as the chief law enforcement officer in situations where it was apparent that she had a conflict of interest. The committee found that the Attorney General did have a conflict in investigating the campaign finance matter, and her decision to retain control of the investigation of her superiors and her political party showed an unacceptable indifference to the appearance of impropriety. The committee held several hearings related to its oversight investigation of the Department of Justice's handling of the campaign finance investigation and issued a report as well.

*o. The Role of Yah Lin "Charlie" Trie in Illegal Political Fundraising, Part I, March 1, 2000.*

The committee held a hearing with Yah Lin "Charlie" Trie, a major figure in the campaign finance investigation. Mr. Trie was questioned about his links to various foreign governments and



businessmen, his contributions to the Democratic National Committee [DNC], and his access to President Clinton and the White House. Mr. Trie testified about his relationships with several powerful overseas businessmen who have ties to the Chinese Government, including Ng Lap Seng (a.k.a. Mr. Wu) and Tomy Winata. Mr. Trie used money from Ng Lap Seng to funnel illegal foreign contributions to the DNC. Mr. Trie and his companies contributed approximately \$230,000 to the DNC. Mr. Trie admitted that the hundreds of thousands of dollars he received from overseas was not reported on his U.S. income tax returns. Mr. Trie then worked with DNC officials to invite several foreign nationals to join the a DNC donor program in exchange for political contributions. Mr. Trie also testified about his relationships and business dealings with various employees of the Lippo Group, including John Huang and James Riady. Mr. Trie confirmed that he solicited, and illegally reimbursed, contributions for DNC fundraising events where John Huang was in charge. The DNC returned \$645,000 in contributions solicited by Mr. Trie.

*p. The Justice Department's Implementation of the Independent Counsel Act, June 6, 2000.*

The committee called this hearing after it received numerous memoranda regarding the implementation of the Independent Counsel Act from the Department of Justice. The committee heard the testimony of Lee Radek, Chief of the Public Integrity Section, U.S. Department of Justice; William Esposito, former Deputy Director, Federal Bureau of Investigation; Neil Gallagher, Assistant Director for Terrorism, Federal Bureau of Investigation. The committee questioned the witnesses about a meeting which took place between them on November 20, 1996, at which Mr. Radek told Mr. Esposito that there "was a lot of pressure on him" regarding the campaign finance investigation, and that "the Attorney General's job could hang in the balance." Mr. Radek was also questioned about his role in the campaign finance investigation and the various memoranda he had written regarding the implementation of the Independent Counsel Act.

*q. Has the Department of Justice Given Preferential Treatment to the President and Vice President, July 20, 2000.*

The committee questioned four top Justice Department officials—Assistant Attorney General James Robinson, Deputy Assistant Attorney General Alan Gershel, Assistant Attorney General Robert Raben, and the Campaign Financing Task Force Supervising Attorney Robert Conrad—about disparate treatment President Clinton and Vice President Gore received in the campaign finance investigation. The Justice Department provided the President and Vice President copies of their April 2000 interviews with the task force, which the President and Vice President subsequently released, without giving copies to the committee because the release of the interviews would harm ongoing criminal investigations. The Justice Department officials would not comment on videotape evidence where Vice President Gore appeared to tell Indonesian gardener Arief Wiriadinata that they should show DNC issue advertisements to James Riady, who resided in Indonesia, for the purpose of solic-

iting political contributions. The Justice Department officials would also not comment on subpoenas issued by the Justice Department to various government agencies, including the White House, which showed that records relating to key individuals in the investigation were either just recently subpoenaed or not subpoenaed at all.

*r. Felonies and Favors: A Friend of the Attorney General Gathers Information from the Department of Justice, July 27, 2000.*

At this hearing, the committee received evidence that Rebekah Poston, a prominent Florida attorney who was also a friend of the Attorney General, was involved in potentially illegal conduct, and had also obtained highly unusual favors from the Justice Department. The evidence showed that Ms. Poston, who was representing Soka Gakkai, a prominent Buddhist sect, had hired private investigators who illegally obtained National Crime Information Center [NCIC] arrest record information on Nobuo Abe, the leader of a rival Buddhist sect. The evidence also showed that Ms. Poston tried to obtain this same information legally through the Freedom of Information Act [FOIA] process. When her FOIA request was rejected, she approached high-level political appointees in the Justice Department, including John Hogan, the Attorney General's Chief of Staff, and John Schmidt, the Associate Attorney General. As a result of these contacts, Ms. Poston obtained a reversal of Justice Department policy, and obtained the information she sought from the Justice Department. The committee heard testimony from Rebekah Poston, Richard Lucas, a private investigator who had worked for Ms. Poston, and Philip Manuel, another private investigator who worked for Ms. Poston. The committee also heard testimony from Justice Department witnesses John Schmidt, the former Associate Attorney General, John Hogan, the former Chief of Staff to the Attorney General, and Richard Huff, the co-Director of the Office of Information and Privacy at the Justice Department.

*s. Russian Threats to United States Security in the Post Cold War Era.*

On January 24, 2000 the committee held a field hearing in Los Angeles, CA to inquire about the threat of Soviet arms caches left in the United States after the cold war. Witnesses included: Congressman Curt Weldon; Congressman Tom Campbell; Stanislav Lunev, former GRU agent; Dr. Peter Pry, author of War Scare; Dr. William Green, California State University-San Bernadino; a representative from the CIA; and a representative from the FBI.

The committee heard testimony from Congressman Curt Weldon on how he has questioned members of our government and the Russian Government. Stanislav Lunev gave compelling testimony about how the Soviet government asked him to find locations in the Washington, DC area to hide weapons of mass destruction. Dr. Pry and Dr. Green explained the current state of the Russian military and how they still pose a threat to the United States. The CIA and FBI provided testified under a closed session of the hearing.

*t. Rising Fuel Prices and the Appropriate Federal Response.*

On June 28, 2000 the committee held a hearing to examine the causes for rising gasoline prices, the impact on the U.S. economy, and the administration's response to the situation. Witnesses included: Mr. Scott Schneider, vice president of sales, "Mister Ice"; Mr. Mark Hrobuchak, CEO/president of MPH Transportation & Logistics; Elaine Oberweis, CEO of Oberweis Dairy; Doug Wilson, farmer and member of NGCA; Charles Bailey, an electrician; Secretary Bill Richardson, Department of Energy; Administrator Carol Browner, Environmental Protection Agency; and Chairman Robert Pitofsky, Federal Trade Commission.

Midwestern citizens told the committee heard the impact of the high price of gasoline in the summer 2000 on their personal lives and businesses. The committee asked Secretary Richardson why the price of gasoline rose so dramatically and what steps the Department of Energy was taking to reduce the cost of fuel. Administrator Browner responded to questions on the impact of reformulated gasoline and other EPA policies on the price of fuel. Chairman Pitofsky explained to the committee the FTC investigation into possible price fixing by the oil companies in the Midwest.

On September 20 and 21, 2000, the committee held hearings on the potential energy crisis in the winter of 2000. Witnesses on September 20 included: Mr. John Santa, Chief Operations Officer, Santa Fuel; Mr. Ray Tilman, former president, Montana Resources; Mr. David Pursell, vice president of Upstream Research, Simmons & Company International; Mr. Steve J. Lane, senior facilities engineer, SDL, Inc.; Mr. David Hamilton, policy director, Alliance to Save Energy; Mr. Bob Slaughter, general counsel and director of public policy, National Petrochemical Refiners Association; Mr. Curt Hildebrand, vice president of project development, Calpine Corp.; Mr. Steve Simon, president of Worldwide Refining and Supply, Exxon Mobil Corp.; and Mr. David Hawkins, director of Air and Energy Programs, Natural Resources Defense Council. Witnesses on September 21 included: Secretary Bill Richardson, Department of Energy; Administrator Carol Browner, Environmental Protection Agency; and Chairman James J. Hoecker, Federal Energy Regulatory Commission.

Industry experts told the committee that clear signs of strain have emerged across the U.S. energy markets, raising concerns about the ability to deliver reliable supplies of energy to major markets. The market is experiencing electricity price spikes because of greater demand and a lack of transmission capacity; home heating shortfalls due to the lack of refining capacity; and concerns over the natural gas industry's ability to meet the Nation's current and future needs due to greater demand, lack of new production and government restrictions on drilling and exploration. The committee asked Secretary Richardson about the administration's energy policy and what steps the Department is taking to assure the reliability of the Nation's energy supplies. Administrator Browner responded to questions regarding the impact of new EPA regulations on the domestic oil refining industry and their effects on energy markets. Chairman Hoecker responded to the committee's questions on natural gas pipeline capacity and FERC's investigation into electricity price spikes in California.

*u. Further Investigation Into the Events Near Waco, TX in 1993.*

The Committee on Government Reform conducted a year-long investigation of the actions of the Federal Bureau of Investigation, the Department of Justice, and the Department of Defense with regard to the standoff which occurred at the Mt. Carmel Center outside Waco, TX, from February 28, 1993, through April 19, 1993, as well as actions taken after the tragic end of the standoff.

Attorney General Reno, along with other Department of Justice and FBI officials, had been emphatic in their public statements about the means by which the FBI inserted gas into the Branch Davidian residence on April 19, 1993 were non-pyrotechnic. However, it was publicly disclosed in late summer, 1999 that pyrotechnic tear gas rounds had been used. As a result, the committee began its investigation and Attorney General Reno appointed John Danforth as Special Counsel to conduct a Justice Department investigation.

In addition to questions about why the use of pyrotechnic devices was not disclosed to Congress and the American people, the committee investigated allegations that: (1) government personnel may have fired weapons at the Branch Davidian compound; (2) Department of Defense personnel may have violated the Posse Comitatus Act; and (3) the Department of Justice did not conduct a thorough investigation of its own actions following the tragedy.

The committee's investigation was limited to resolving these new allegations, thereby building on, but not replacing, the report issued in 1996 by this committee's Subcommittee on National Security, International Affairs, and Criminal Justice and the Committee on the Judiciary's Subcommittee on Crime. The committee found no reason to revise the major findings of the 1996 report.

*v. Oversight of the Drug Enforcement Administration: Were Criminal Investigations Swayed by Political Considerations? December 6-7, 2000.*

The committee held 2 days of hearings regarding a DEA investigation of a suspected drug trafficker in Houston that was curtailed, apparently as a result of political pressure. The investigation, which had produced more than 20 convictions, was shut down in 1999 following a letter of complaint to Attorney General Janet Reno from Representative Maxine Waters. Shortly following this intervention, the Special-Agent-in-Charge of the DEA's Houston Field Office called a meeting of the investigating officers and informed them that the investigation was being closed down due to political pressure, according to the testimony of four DEA and Houston Police Department officers who were present.

The Special-Agent-in-Charge, Ernest Howard, testified that he had never shut down the investigation. However, his testimony was contradicted by internal e-mails he sent to the DEA's Washington headquarters in March 2000. Those e-mails stated, in part,

Now we bow down to the political pressure anyway. . . . it is over now. The Houston Division will terminate all active investigation of Rap-A-Lot, except for those persons who have already been arrested/indicted.

Those e-mails followed by 2 days a visit from Vice President Gore to a church in Houston which receives substantial financial support from the target of the investigation—James Prince. That same week, the lead DEA investigator was re-assigned to a desk job. In effect, an unsubstantiated complaint by the target of a drug investigation, made through a Member of Congress, resulted in the investigation against him being curtailed.

On Wednesday, December 6, the committee heard testimony from one DEA agent and three Houston Police Department officers who were participating in the joint investigation. The committee also heard testimony from Special-Agent-in-Charge Howard, DEA Deputy Administrator Julio Mercado, and DEA Chief Inspector R.C. Gamble. On Thursday, December 7, the committee again heard testimony from the witnesses listed above, as well as DEA Administrator Donnie Marshall.

Administrator Marshall stated that he had been unaware that the investigation was shut down, and that it should not have been. He stated that the Justice Department's Inspector General has been asked to conduct an internal investigation into the agency's handling of the case. The committee's inquiry into the matter is ongoing.



## II. Investigations

### A. INVESTIGATIONS RESULTING IN FORMAL REPORTS

#### FULL COMMITTEE

Hon. Dan Burton, *Chairman*

1. "The FALN and Macheteros Clemency: Misleading Explanations, a Reckless Decision, a Dangerous Message," House Report No. 106-488, December 10, 1999, Third Report by the Committee on Government Reform, together with Dissenting and Additional Views.

*a. Summary.*—This report detailed the committee's findings and conclusions in its investigation into President Clinton's grant of executive clemency to 16 individuals who were members of the terrorist groups FALN and Macheteros. The committee found that, although the President has the Constitutional authority to grant clemency to anyone, several individuals working in the White House saw a political benefit in releasing the terrorists. In addition, the Justice Department, Office of the U.S. Attorneys, and the Federal Bureau of Investigation all recommended against granting clemency to the 16 individuals. The report detailed the background of the convictions of the 16 individuals, the process leading up to the clemency offer, and the actual offer and acceptance of the clemency by 14 of the individuals. The President claimed executive privilege over numerous documents relevant to the investigation.

*b. Benefits.*—The committee's investigation outlined the clemency process generally and provided insight into this particular grant of executive clemency to the American public.

*c. Hearings.*—The committee held a hearing entitled, "Clemency for the FALN: A Flawed Decision?," on September 21, 1999.

#### *Investigation of the President's Decision to Grant Clemency to 16 Convicted Terrorists*

The Committee on Government Reform conducted an investigation of the President's decision to offer clemency to 16 FALN and Macheteros terrorists. On August 11, 1999, President Clinton extended offers of clemency to these terrorists incarcerated in Federal prison. Prior to these offers, he had offered clemency to only three Federal prisoners. Thus, offers of clemency to so many members of a terrorist organization came as a great surprise. In an attempt to understand the justification for the offers of clemency, this committee subpoenaed documents from the White House and the Department of Justice (including, the Federal Bureau of Investigation, the Office of the Pardon Attorney, and the Bureau of Prisons). The President responded by claiming executive privilege over critical documents from all departments relating to his decision. In claim-

ing executive privilege, the President refused to provide this committee with material that would allow Congress an opportunity to see what recommendations were made to the President prior to his decision.

Granting clemency to violent terrorists is a matter of national significance. At least two of the individuals granted clemency were captured on videotape making bombs. Half of the individuals granted clemency were arrested in a van, along with an arsenal of weapons. The terrorist organizations to which these individuals belonged, the FALN and Macheteros, were responsible for hundreds of bombings in which U.S. citizens were killed and wounded. Nevertheless, the President granted them clemency. During its investigation, the committee found that there were serious discrepancies between the public statements about the clemency made by the President and his staff, and the documents and information reviewed by the committee. Documents showed that White House aides were actively supporting the clemency since the initial petition. In fact, White House staff assisted in organizing an outside campaign to support the clemency.

When the lives of American citizens are endangered and the victims of violent crime are treated with contempt, the oversight function of Congress is never more important. This is particularly true because the President of the United States withheld information from the American people. In such a situation, Congress is obligated to exercise its oversight authority. The committee held a public hearing regarding the clemency matter on September 21, 1999, and a report was issued on December 10, 1999. The hearing was entitled, "Clemency for the FALN: A Flawed Decision?" Two Members of the House of Representatives testified before the committee on the first panel, the Honorable Vito Fossella and the Honorable Carlos Romero-Barceló. Representative Fossella spoke about his opposition to the grant of clemency. He explained that one of his concerns was the message, that the United States was not serious about punishing terrorists, that clemency would send. Representative Romero-Barceló testified that although he did oppose the unconditional release of the terrorists, he was able to support a conditional release. On the second panel, several victims of FALN violence testified: Detective Anthony Senft (retired NYPD); Detective Richard Pastorella (retired NYPD); Mr. Thomas Connor; and, Mrs. Diana Berger Ettenson. Each individual testified about how the FALN's violence had affected their lives. Detectives Senft and Pastorella were severely wounded and left crippled by an FALN bomb. Mr. Connor lost his father and Mrs. Berger Ettenson lost her husband in the FALN bombing of Fraunces Tavern in New York City. All of the victims were unconditionally opposed to the President's grant of clemency.

The third panel of the hearing consisted of: Jon Jennings, Acting Assistant Attorney General for Legislative Affairs, Department of Justice; Michael B. Cooksey, Assistant Director for Correctional Programs, Bureau of Prisons; and, Neil Gallagher, Assistant Director for National Security, Federal Bureau of Investigation [FBI]. Mr. Cooksey testified about the role the Bureau of Prisons plays in the clemency process, as it maintains all of the records on Federal prisoners. Mr. Gallagher testified about the FBI's role in clemency.



He made clear that the FBI believed that the individuals to whom the President granted clemency were violent criminals, members of a terrorist group that continued to pose a threat to the United States.

The committee continued to receive documents relating to the clemency from the White House, Department of Justice, Bureau of Prisons and FBI, even after the hearing. From the documents, it became clear that both the Department of Justice and Federal Bureau of Investigation opposed the grant of clemency, and communicated their views to the White House. White House documents made it clear that several staffers on the President's Interagency Working Group on Puerto Rico were strongly advocating clemency for the FALN and Macheteros terrorists. They referred to the terrorists as "political prisoners" and organized outside groups to lobby the White House for clemency. However, the President continues to claim executive privilege over numerous documents relating to the clemency, making it impossible for the committee to come to any solid conclusions about the clemency.

2. "The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions," House Report 106-1023, December 4, 2000, Eighth Report of the Committee on Government Reform, together with Minority and Additional Views.

*a. Summary.*—Since February 2000, the committee has been investigating allegations of threats and obstruction of justice regarding the White House's failure to produce hundreds of thousands of e-mails potentially responsive to subpoenas from Congress, the Justice Department and the Office of the Independent Counsel. The committee's investigation also focused on the complete loss of about a year's worth of potentially responsive e-mail at the Office of Vice President.

This report detailed the committee's work to date, and contained a number of new facts uncovered through the committee's work. For example, in the report, the committee found that the White House's e-mail problem was explained to senior White House staff but that the White House's management of the problem obstructed numerous investigations. The report also attributed the loss of a year's worth of potentially responsive e-mail at the Office of the Vice President to its decision not to store its e-mail in a way that would permit subpoena compliance. The committee also found that the White House failed to cooperate with its investigation into the committee's e-mail investigation and concluded that a special counsel must be appointed to investigate the e-mail matter. The committee also concluded that a special master should be appointed to supervise the review, reconstruction, and production of responsive White House e-mail.

*b. Benefits.*—The committee's investigation into the White House's failure to produce subpoenaed e-mail revealed an affirmative attempt by the White House not to disclose to Congress, the Justice Department and the Office of the Independent Counsel, the existence of a massive universe of e-mail potentially responsive to subpoenas issued by those investigative bodies. The committee's investigation also showed that handling of the matter by the White House Counsel's Office was either grossly negligent or purposefully

inadequate. Because of the committee's investigation, prosecutors at the Justice Department and the Office of the Independent Counsel opened investigations into the e-mail matter. Generally, the report highlights the White House's refusal to appreciate the legitimate exercise of the committee's oversight jurisdiction.

*c. Hearings.*—The committee held the following hearings entitled, “Missing White House E-Mails: Mismanagement of Subpoenaed Records, Days 1 and 2,” March 23 and 30, 2000; “Missing White House E-Mails: Mismanagement of Subpoenaed Records, Days 3 and 4,” May 3–4, 2000; and “Contacts Between Northrop Grumman Corporation and the White House Regarding Missing White House E-mails,” September 26, 2000.

3. “Janet Reno’s Stewardship of the Justice Department: A Failure to Serve the Ends of Justice,” House Report 106–1027, December 13, 2000, Tenth Report of the Committee on Government Reform, together with Minority Views.

*a. Summary.*—This report detailed the committee’s findings and conclusions in its investigation of the Justice Department’s handling of the investigation into campaign financing irregularities and violations of law during the 1996 Federal elections. The committee found that Attorney General Reno had a conflict of interest in conducting an investigation into activities relating to President Clinton, who appointed her, Vice President Gore, and her own political party. The Attorney General ignored her conflicts and disregarded the Independent Counsel Act by refusing to request the appointment of an independent counsel for the campaign finance matter. The report details facts which support the conclusion that the Department of Justice did not conduct a thorough investigation, and that the country would have been better served if an independent counsel or special counsel had been appointed to conduct the investigation.

*b. Benefits.*—The committee’s investigation brought to light the failures of the Department of Justice’s investigation.

*c. Hearings.*—The committee held the following hearings related to the investigation: “The Role of Yah Lin ‘Charlie’ Trie in Illegal Political Fundraising, Part I,” March 1, 2000; “The Justice Department’s Implementation of the Independent Counsel Act,” June 6, 2000; “Has the Department of Justice Given Preferential Treatment to the President and Vice President,” July 20, 2000; and, “Felony and Favors: A Friend of the Attorney General Gathers Information from the Department of Justice,” July 27, 2000.

4. “The Tragedy at Waco: New Evidence Examined,” House Report 106–1037, December 28, 2000, Eleventh Report of the Committee on Government Reform, together with Minority Views.

*a. Summary.*—This report details the committee’s findings, conclusions and recommendations after a year long investigation of the actions of the Federal Bureau of Investigation, the Department of Justice, and the Department of Defense with regard to the standoff which occurred at the Branch Davidian compound outside Waco, TX, from February 28 through April 19, 1993, as well as the actions taken after the tragic end of the standoff. The committee found no evidence that any FBI agent, or others, fired their weap-

ons at the Davidians on April 19th, and, although pyrotechnic tear gas grenades were fired at the compound by FBI agents, there was no evidence found that these grenades contributed to the conflagration. Additionally, the committee found no evidence that any military members involved with the Waco events violated the Posse Comitatus Act. The committee further found that the Department of Justice did not conduct a thorough investigation of its action as directed by the President.

*b. Benefits.*—The committee’s investigation reviewed new and additional information built upon and did not replace the Waco report issued in 1996 by this committee’s Subcommittee on National Security, International Affairs, and Criminal Justice and the Committee on the Judiciary’s Subcommittee on Crime. This investigation of new evidence provided the committee the opportunity for an enhanced review of the evidence of events surrounding the tragedy at Waco.

#### SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

Hon. John L. Mica, *Chairman*

1. “The Vaccine Injury Compensation Program: Addressing Needs and Improving Practices,” House Report 106–977, October 12, 2000, Sixth Report by the Committee on Government Reform.

*a. Summary.*—Since the 105th Congress, the committee has been conducting an investigation of vaccination policies and practices, with a special focus on childhood vaccine related injuries and the national vaccine injury compensation program. In the 106th Congress, the Subcommittee on Criminal Justice, Drug Policy, and Human Resources, chaired by Representative John L. Mica (R–FL), conducted hearings and an intensive investigation regarding some of these topics. On October 5, 2000, Chairman Mica submitted to the Committee on Government Reform a report that had been prepared by the subcommittee, with the assistance and support of members and staffs of the majority and minority of both the subcommittee and full committee. This report was presented by subcommittee Chairman Mica and approved by the full committee without objection on October 12, 2000, with supportive statements from Chairman Burton and Ranking Member Waxman. Mr. Mica and others noted that the report resulted from bipartisan subcommittee hearings and investigations. The report addresses reforms to the program that Congress established to compensate fairly, adequately and efficiently persons who are injured or die as a consequence of our universal childhood vaccination policy. The report recognizes that childhood vaccines now protect millions in this Nation. However, in a relatively small number of cases, they cause serious injuries or even death. This report identifies ways to improve the system for compensating those who are harmed. This report recommends several key reforms that are needed to improve the National Vaccine Injury Compensation Program, which is administered by HHS with legal assistance from the Department of Justice. The report supports reforms to make the program more efficient, fair and less adversarial—as was originally envisioned by

Congress. Primary recommendations presented in this report include the following reforms and improvements: (1) review the Vaccine Injury Table (the table) to ensure that it reflects current science and knowledge; (2) continue developing and implementing speedy and fair informal dispute resolution practices; and (3)—determine a reasonable standard for deciding cases that are not covered under the “table.” The first recommendation calls for additional efforts to evaluate types of injuries and circumstances that deserve presumed benefit coverage using the table. This review should acknowledge that deficiencies exist in the study of causes of vaccine-related injuries. The second recommendation promotes practices to assist in the informal resolution of claims whenever possible. This is intended to prevent unnecessary, prolonged and adversarial litigation. The third recommendation calls for an alternative standard to be determined that would replace the “causation” requirements now applied in deciding which cases are compensated.

*b. Benefits.*—Congress has always intended that claimants whose injuries do not fall squarely within coverage of the table be given a realistic opportunity to demonstrate that their injuries are vaccine-related. This report reflects the strong bipartisan interest in Congress to support sound and reasonable reforms that will promote fairer and improved vaccine injury compensation practices. This report is intended to ensure that our Government is fulfilling its duties and obligations to those families in need of help as a consequence of our universal childhood vaccination policies.

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND  
TECHNOLOGY

Hon. Stephen Horn, *Chairman*

1. “A Citizen’s Guide on Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records,” House Report No. 106–50, March 11, 1999, First Report by the Committee on Government Reform.

*a. Summary.*—The Freedom of Information Act [FOIA], enacted in 1966, presumes that records of the executive branch of the U.S. Government are accessible to the public. The Privacy Act of 1974 is a companion to FOIA and regulates Government agency record-keeping and disclosure practices. The Freedom of Information Act provides that citizens have access to Federal Government files with certain restrictions. The Privacy Act provides certain safeguards against an invasion of privacy by Federal agencies and permits individuals to see most records pertaining to them maintained by the Federal Government.

“*A Citizen’s Guide to Using the Freedom of Information Act and Privacy Act of 1974 to Request Government Records*,” explains how to use the two laws and serves as a guide to obtaining information from Federal agencies. The complete texts of the Freedom of Information Act, as amended (5 U.S.C. 552), and the Privacy Act, as amended (5 U.S.C. 552a), are reprinted in the committee report.

*b. Benefits.*—Federal agencies use the Citizen’s Guide in training programs for Government employees who are responsible for ad-

ministering the Freedom of Information Act and the Privacy Act of 1974. The guide enables those who are unfamiliar with the laws to understand the process and to make requests. The Government Printing Office and Federal agencies subject to the Freedom of Information Act and the Privacy Act of 1974 distribute this report widely.

*c. Hearings.*—In its continuing oversight of this issue, the subcommittee held the following hearings during the 106th Congress.

- (1) *“H.R. 88, Regarding Data Available Under the Freedom of Information Act,” July 15, 1999.*

The Omnibus Consolidated and Emergency Supplemental Appropriations Act For Fiscal Year 1999 (Public Law 105–277) contains a provision (the Shelby Amendment) that would allow the public, for the first time, to obtain and review research data collected through federally funded grants and agreements with universities, hospitals, and other non-profit organizations. The amendment, sponsored by Senator Richard C. Shelby, R-AL, called for procedures established in the Freedom of Information Act [FOIA] to be used as the mechanism by which a third party could obtain these data.

H.R. 88, introduced by Representative George Brown, D-CA, on January 6, 1999, sought to amend Public Law 105–277 and repeal the Shelby amendment. Those who favored the amendment’s repeal were concerned that extending FOIA to include federally funded research would create a significant loss of voluntary participation in public health and bio-medical research. There was also concern that the Shelby amendment could facilitate the theft of intellectual property. Overall, proponents of H.R. 88 who testified at the subcommittee hearing were concerned by the amendment’s broad language and the lack of clarity in the Office of Management and Budget’s proposed revisions to the amendment.

The amendment, introduced by Senator Richard D. Shelby, R-AL, requires the Director of the Office of Management and Budget to amend Section 36 of Circular A–110 to require that all data produced under a Federal award be made available through the procedures established in the Freedom of Information Act [FOIA]. The amendment also allows an agency that is obtaining data solely at the request of a private party may charge a reasonable user fee equal to the cost of obtaining the data. Federal research data that fall within any of the nine exemptions under FOIA, which relate to privacy, national security, trade secrets, commercial information, and law enforcement, would also be exempted under the Shelby amendment.

While Circular A–110 sets the administrative requirements for grants and agreements between Federal agencies and institutions of higher education, hospitals, and other nonprofit organizations, Section 36 of Circular A–110 gives the Federal Government the right “to obtain, reproduce, publish, or otherwise use the data first produced under an award.” Until passage of the Shelby amendment, agencies were given the discretion over whether or not to distribute the data.

The underlying rationale of the Shelby amendment is the premise that the public should be able to obtain and review tax-

payer-funded research information, which is often used to support Federal policies, regulations and findings. Witnesses testified that citizen groups, businesses, and others who are impacted by these Government policies and regulations are often unable to obtain the research data to verify the Government's conclusions.

(2) *"Agency Response to the Electronic Freedom of Information Act," June 14, 2000.*

Witnesses at this hearing testified that agencies are not posting their most commonly requested records online, as the Electronic Freedom of Information Act of 1998 [EFOIA] requires.

The Office of Information and Regulatory Affairs within the Office of Management and Budget [OMB] exercises broad authority for coordinating and administering various aspects of government-wide information policy, but the subcommittee's examination found that the Department of Justice, rather than the OMB, is providing policy guidance and overseeing agency compliance with the EFOIA. In addition, witnesses testified that although Federal departments and agencies have generally established specific offices for processing EFOIA requests, program implementation is lagging.

Witnesses, representing reporters and several agencies involved in implementing EFOIA, including the Justice Department, Department of Defense, and the Office of Management and Budget, testified that most agencies were not complying with the law. According to agency representatives, part of the problem involved insufficient financial resources, which left them unable to fill requests for information within the mandatory 20-day timeframe. In addition, many agencies still do not have electronic reading rooms, and frequently requested records are difficult to access. The subcommittee will continue to monitor the progress of agency compliance with the Electronic Freedom of Information Act.

(3) *"Government Compliance with the Nazi War Crimes Disclosure Act," June 27, 2000.*

The subcommittee held an oversight hearing on the findings of the Interagency Working Group regarding compliance with the Nazi War Crimes Disclosure Act. The subcommittee heard testimony from Representative Tom Lantos, D-CA, a holocaust survivor and sponsor of several human rights declassification bills, who discussed the importance of the Interagency Working Group's efforts to declassify these records. Representative Lantos also discussed legislation he introduced that would expand the Interagency Working Group's effort to include the disclosure of Japanese war crimes.

Members of the Interagency Working Group discussed the thousands of documents that have been declassified without any congressional appropriations. However, members testified that they would need funding to continue the declassification effort. Subsequently, the subcommittee worked with Representative Carolyn Maloney, D-NY, who introduced legislation that would appropriate \$5 million for the declassification effort.

2. "Making the Federal Government Accountable: Enforcing the Mandate for Effective Financial Management," House Report 106–170, June 7, 1999, Second Report by the Committee on Government Reform, Together with Minority Views.

*a. Summary.*—Billions of taxpayer-provided dollars are being lost each year to fraud, waste, abuse, and mismanagement in hundreds of programs within the Federal Government. Audits continue to show that most agencies have significant weaknesses in controls and systems. As a result of these weaknesses, Federal decision-makers do not have reliable and timely performance and financial information to ensure adequate accountability, manage for results, and make timely and well-informed judgments.

In the late 1980s, Congress recognized that one of the root causes of this loss was that the Federal Government's financial management leadership, policies, systems, and practices were in a state of disarray. Financial systems and practices were obsolete and ineffective. They failed to provide complete, consistent, reliable, and timely information to congressional decisionmakers and agency management.

In response, Congress passed a series of laws designed to improve financial management practices and to ensure that tax dollars are spent for the purposes that Congress intends. Each executive agency covered by the Chief Financial Officers Act of 1990 (CFO Act) or specified by the Office of Management and Budget [OMB] is required to prepare and have audited a financial statement covering all accounts and associated activities of each office, bureau, and activity within the agency. In addition, consolidated governmentwide financial statements must be prepared and audited annually. Federal agencies are required to conform to promulgated Federal Government accounting and systems standards, and to use the Federal standard general ledger.

Despite the passage and implementation of these laws, there has been limited progress. Much remains to be done before the Federal Government's financial management systems and practices provide reliable, timely financial information on a regular basis.

March 31, 1998, marked a significant milestone in the implementation of financial management reform legislation. The CFO Act, Public Law 101–576, as expanded by the Government Management Reform Act of 1994 [GMRA], Public Law 103–356, required for the first time the preparation and audit of consolidated financial statements of the Federal Government for fiscal year 1997, and each year thereafter. GMRA required that the General Accounting Office [GAO] issue an audit report no later than March 31 of each year on the consolidated financial statements for the preceding fiscal year.

GMRA also required that, starting March 1, 1997, and each year thereafter, all 24 Federal agencies that are subject to the requirements of the CFO Act must submit audited financial statements to the Director of OMB. These 24 agencies were responsible for approximately 97 percent of the total Federal outlays during fiscal year 1997.

Fiscal year 1997 also marked the first year of implementation of the Federal Financial Management Improvement Act of 1996, Public Law 104–208. The purpose of FFMIA is to ensure that agency

financial management systems comply with Federal financial management system requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger (standard general ledger) in order to provide uniform, reliable, and useful financial information. FFMIA required that beginning with the fiscal year ending September 30, 1997, auditors for each of the 24 major departments and agencies named in the CFO Act must report, as part of their annual audits, whether the agency's financial systems comply substantially with Federal financial systems requirements, if applicable, Federal accounting standards, and the standard general ledger at the transaction level. FFMIA also required the GAO to report on agency implementation of FFMIA by October 1, 1997, and each year thereafter.

It is imperative that these acts are implemented successfully. They form the basis for the data used in measuring program performance under the Government Performance and Results Act, Public Law 103-62 (Results Act). Thus, at a minimum, strong congressional oversight is needed to achieve the primary goal of all these laws—a Federal Government that is accountable to American taxpayers.

*b. Benefits.*—Billions of taxpayer-provided dollars are lost each year to fraud, waste, abuse, and mismanagement in hundreds of programs within the Federal Government. Audits continue to show that most agencies have significant weaknesses in controls and systems. As a result, Federal decisionmakers do not have reliable and timely performance and financial information to ensure adequate accountability, manage for results, and make timely and well-informed judgments.

*c. Hearings.*—The subcommittee held 15 hearings examining the status of financial management in the executive branch of the Federal Government during the 106th Congress. In 1999, subcommittee hearings focused on the Internal Revenue Service, the Federal Aviation Administration, the Department of Justice, the Health Care Financing Administration, and the Department of Defense. Collectively, these agencies accounted for more than 98 percent of the Federal Government's annual revenue and a majority of the costs (excluding interest on the national debt held by the public and the Social Security program). In addition, the Department of Defense accounted for a significant portion of the assets held by the Federal Government. Consequently, these agencies play a significant role in the production of governmentwide statements, and they significantly affect the audit results.

The hearings explored the audit results for fiscal year 1998, the second year of full implementation of GMRA. The subcommittee examined the consolidated audit results for the entire executive branch of the Federal Government in addition to the individual audit reports of the five agencies noted above. Each of these agencies has experienced problems with their financial management, and has had varying degrees of success in resolving those problems.

The subcommittee considered what, if any, additional congressional action might be necessary to improve financial management in the executive branch, and reviewed options for possible congress-



sional actions needed to ensure the successful implementation of Federal financial management reforms.

- (1) *"Oversight of the Internal Revenue Service's Fiscal Year 1998 Financial Statements," March 1, 1999, and*
- (2) *"Clinton-Gore v. The American Taxpayer," April 15, 1999.*

The IRS collects more than 95 percent of the Federal Government's \$1.7 trillion in annual revenue. In fiscal year 1998, the IRS issued its first set of financial statements covering both its custodial and administrative activities. Prior to 1998, the IRS had issued two sets of financial statements; one set for its custodial operations—the revenues collected, refunds paid, and related taxes receivable and payable—and another for its appropriated funds. The IRS' financial data were then incorporated into the agencywide statements prepared by the Department of the Treasury.

The IRS is responsible for enforcing tax laws in a fair and equitable manner, but the agency has long been criticized for the perceived abuse of its broad enforcement powers. In response to this criticism, Congress established the Commission on the Restructuring of the IRS. Led by Representative Rob Portman of Ohio and Senator Bob Kerrey of Nebraska, the bipartisan commission released a comprehensive report in June 1997, proposing several changes in the IRS' management. The Commission's recommendations were the basis of H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1997, which was signed into law by the President on July 22, 1998. The underlying theme of the act is one of creating a cultural change within the IRS. In the broadest terms, the act shifts the emphasis within the IRS from its self-defined role as an enforcement agency to a role more closely resembling a financial service organization.

Also at congressional urging, the Clinton administration appointed a new Commissioner with extensive experience in managing large organizations. Charles O. Rossotti, founder of a firm in the management systems and technology industry, was appointed Commissioner of the IRS in September 1997. Since his appointment, Commissioner Rossotti has proposed a sweeping reorganization of the IRS that exceeded the changes mandated in the legislation. Testifying before the subcommittee, Commissioner Rossotti stated that he plans on "shifting the entire focus of the agency from one which focuses solely on conducting our own internal operations to one which puts far more emphasis on trying to see things from the point of view of taxpayers and emphasizing service and fairness to taxpayers."

For the second consecutive year, the IRS was able to reliably report on its financial activity covering the collection and refunds of taxes in 1998. This achievement, however, required extensive, costly, and time-consuming ad hoc procedures to overcome pervasive internal controls and systems weaknesses. The ability to provide reliable year-end data is an important first step for the IRS, but it is not an end in itself. The GAO audit report stated that the "IRS continues to face significant financial and other management challenges and risks." These weaknesses must be addressed before the

IRS can make any significant improvement in the area of financial management.

The IRS was unable to report on its administrative activities in fiscal year 1998. The GAO report found that “pervasive weaknesses in the design and operation of IRS’ financial management systems, accounting procedures, documentation, recordkeeping, and internal controls prevented IRS from reliably reporting on the results” of these activities.

The subcommittee’s oversight hearings on March 1, 1999, and April 15, 1999, highlighted the need for better computer systems to improve the IRS’ debt management. At the time of the hearings, the IRS estimated that it collects only 11 percent of the \$222 billion in debts the agency claims are owed by delinquent taxpayers. The hearing also illustrated the need for better controls over refunds. According to the GAO, the IRS does not have the preventive controls it needs to reduce the amount of inappropriate payments being disbursed for tax refunds.

- (3) *“Oversight of Financial Management Practices at the Department of Justice and the Federal Aviation Administration,” March 18, 1999.*

The Department of Justice, under the direction of the Attorney General, is charged with protecting society against criminals and subversion, and upholding the civil rights of all Americans. In addition, the Department is responsible for ensuring healthy competition among businesses, safeguarding the consumer, enforcing environmental, drug, immigration, and naturalization laws, and representing the American people in all legal matters involving departments and agencies within the executive branch of Government.

In 1998, the Department of Justice was again unable to provide reliable financial information to decisionmakers. Again this year, auditors were unable to render an opinion on Justice’s financial statements. In addition, auditors reported significant weaknesses in internal controls and cases in which the law-enforcement department failed to comply with financial laws and regulations.

At the March 18 hearing, the subcommittee learned that the weaknesses reported in the Department’s consolidated financial statements were also prevalent in most of the Department’s component entities. The audit report stated that weaknesses exist in the controls over computer security at the U.S. Marshals Service, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

The Federal Aviation Administration [FAA] operates the Nation’s air traffic control system and regulates aviation safety, security, and the U.S. commercial space industry. In its position on the front line of aviation safety, the FAA works with the air transportation industry, other agencies at the Federal, State, and local level, and with its international counterparts.

Due to long-standing and unresolved problems, the GAO designated financial management at the FAA as a high-risk area in its January 1999 report. The GAO report stated that “financial management weaknesses continue to render FAA vulnerable to waste, fraud, and abuse; undermine its ability to manage its oper-

ations; and limit the reliability of financial information provided to the Congress.”

The subcommittee examined these weaknesses at a hearing on March 18, 1999. Because of the results of the Department’s 1998 financial statement audit, the subcommittee also discussed the findings with the Inspector General of the Department of Transportation. The Inspector General was unable to render an opinion on the 1998 financial statements. In addition, the Inspector General reported significant weaknesses in FAA’s internal controls. These weaknesses included more than \$9 billion in property, plant and equipment that could not be verified. The FAA also could not reliably report on the costs of its operations. The combination of poor accounting and control over assets and costs are especially troubling, considering that the agency has an air traffic control modernization plan that is projected to cost more than \$42 billion by the year 2004.

In 1981, the FAA had initiated earlier air traffic control modernization program. This effort involved acquiring new air traffic control facilities and a vast network of radar, automated data processing navigation, and communications equipment. The program, which was poorly managed, was shut down, costing taxpayers \$4 billion for a system that did not work. The FAA’s current modernization program has been put on the GAO high-risk list, due in large part to the agency’s financial management problems, such as poor cost-accounting practices and lack of accountability over acquisitions.

(4) *“Can the Federal Government Balance Its Books? A Review of the Federal Consolidated Financial Statements,” March 31, 1999.*

The General Accounting Office released its audit report on the financial status of the Federal Government at the subcommittee’s March 31 hearing. The financial audits for fiscal year 1998 were required under the Chief Financial Officers Act of 1990, as expanded by the Government Management Reform Act of 1994 and amended by the Federal Financial Management Improvement Act of 1996. The audits are intended to provide a more effective, efficient, and responsive Federal Government. To that end, the Government Management Reform Act specifically requires that consolidated governmentwide financial statements be prepared and audited, and that each executive branch agency prepare and have audited a financial statement covering all accounts and associated activities of each office, bureau, and activity within the agency.

The subcommittee examined the results of this audit at its March 31 hearing. The 1998 audit report, the second annual report on the Government’s financial management, once again provided a concise description of the myriad problems faced by the executive branch.

In addition, the subcommittee released its second annual financial report card at the hearing. This report card measures the effectiveness of financial management in the 24 Cabinet departments and independent agencies with audited financial statements. The grades were based on the results of the audits prepared by the agencies’ Inspectors General, independent public accountants, and

the General Accounting Office. The report card is a gauge for Congress to see where attention is needed to prod agencies toward getting their financial affairs in order.

The National Aeronautics and Space Administration and the National Science Foundation demonstrated they could effectively manage their finances. Both agencies received "A's." The General Services Administration, the Department of Labor, and the Social Security Administration all earned commendable "B's."

These agencies were the exception rather than the rule. Seven of the 24 agencies—29 percent—had not filed reports by the subcommittee's March 31 hearing, 1 month after their March 1st reporting deadline established by the Government Management Reform Act of 1994, and 6 months after the close of the Government's fiscal year—the Department of Commerce, the Department of Education, the Environmental Protection Agency, the Department of the Interior, the Small Business Administration and the Department of State, and the Department of Transportation.

(5) *"Oversight of the Financial Management Practices at the Department of Defense," May 4, 1999.*

The General Accounting Office, the Defense Inspector General, and the Department's audit agencies have long reported problems in the Department of Defense's [DOD's] financial management systems and practices. Each year, numerous reports are issued with virtually the same problems as the prior years.

The DOD's reported financial management problems include: inadequate control over assets such as real property, capital leases, construction in process, and inventories; the understatement of costs associated with environmental clean-ups; liabilities, including military retiree benefits, that are not covered by current budgetary resources; and instances of noncompliance with laws and regulations. Because of these problems, the Inspector General was unable to render an opinion on the DOD's financial statements for fiscal year 1998. The GAO disclaimed an opinion on the Consolidated Governmentwide Financial Statements of the Federal Government, largely due to the Defense Department's inability to provide complete and verifiable information on its finances.

The issues that need to be resolved cross operational lines within the DOD and the military services. Thus, action is needed at the top levels of DOD management to ensure that these long-standing problems are resolved.

The subcommittee's May 4 hearing examined the results of the fiscal year 1998 audits at the DOD, and the status of the Department's plans to address its long-standing and severe problems. The GAO and DOD's Acting Inspector General highlighted the most serious financial management weaknesses at the Department. The subcommittee heard that the DOD remains unable to account for and properly report on billions of dollars worth of inventory and property, plants, equipment, and national defense assets, primarily weapons systems and support equipment. Nor could the Department estimate and report material amounts of its environmental and disposal liabilities, and related costs. In addition, the Department was unable to determine the liability associated with post-retirement health benefits for military employees, report the net

costs of its operations, produce accurate budget data, or determine the full extent of improper payments.

These weaknesses in DOD's financial management operations continue to result in wasted resources. Furthermore, they undermine the DOD's ability to manage an estimated \$250 billion budget and \$1 trillion in assets, all of which limit the reliability of financial information provided to Congress.

During 1998, witnesses said that Department of Defense has taken these weaknesses more seriously than in previous years. The GAO testified before the subcommittee on March 4, stating that "while in the past we have questioned the Department's commitment to fixing these long-standing problems, DOD has started to devote additional resources to correct its financial management weaknesses. The atmosphere of 'business as usual' at DOD has changed to one of marked effort at real reform." The GAO went on to say, "this commitment is imperative, as it will take considerable effort, time, and sustained top management attention to turn reform efforts into day-to-day management reality."

(6) *"Oversight of Financial Management Practices at the Health Care Financing Administration," March 26, 1999.*

The Health Care Financing Administration [HCFA] accounts for more than 18 percent of all Federal budget outlays and pays for one-third of the health-care costs throughout the United States. The growth of HCFA's Medicare and Medicaid payments has far exceeded the growth in the Consumer Price Index for medical goods and services. Yet, the agency is unable to provide timely or reliable financial information. The GAO has cited HCFA's Medicare program as a high-risk area for fraud, waste, and abuse.

HCFA's fiscal year 1998 financial statements received a qualified opinion. The Inspector General of the Department of Health and Human Services was unable to find sufficient documentation to complete the Medicare accounts receivable. HCFA released its audited financial statements for fiscal year 1998 at the subcommittee's March 26, 1999, hearing.

Based on the last 2 years of audit results, the hearing focused on the actions HCFA is taking to resolve its financial management problems, including excessive Medicare payments. There has been marked improvement in the agency's annual overpayments, but the overpayment amount remains unacceptable. The estimated amount of overpayments for Medicare dropped from \$23.2 billion in 1996 to \$20.6 billion in 1997 and \$12.6 billion in 1998. The 1998 amount represents approximately 7.1 percent of the total Medicare fee-for-service benefit payments made that year.

The subcommittee found that, while progress has been made, much more is needed to ensure that the Medicare and Medicaid programs—critical to the security of 73 million elderly and impoverished Americans—are fiscally sound.

The following specific issues were disclosed in the agency's audit report for fiscal year 1998: Medicare contractors were not maintaining the support necessary to determine the accuracy of reported collections of accounts receivable; auditors were unable to determine if records maintained by the contractors included all of the amounts owed to HCFA; and the GAO found that Medicare con-

tractors did not have adequate control of their cash, including the collection of outstanding accounts receivable.

During 1998, Medicare contractors reported more than \$7.5 billion in collections. Auditors reported serious breakdowns in controls in this area, including the fact that, in many cases, Medicare contractors failed to prepare bank reconciliations in a timely manner. When reconciliations were prepared, they were not adequately documented. In addition, at one location visited by auditors the same individual was responsible for receiving and endorsing incoming checks, preparing and recording deposits, and performing bank reconciliations. This situation greatly increases the risk that the money collected by this contractor could be misappropriated. The segregation of these duties is a common internal control adhered to by even the smallest private entities.

3. "Making the Federal Government Accountable: Enforcing the Mandate for Effective Financial Management," House Report 106-802, July 27, 2000, Fifth Report by the Committee on Government Reform, together with Minority Views.

*a. Summary.*—In its continuing examination of financial management practices of Federal agencies in the executive branch, the subcommittee found that there has been a steady increase in the number of agencies that are successfully obtaining unqualified audit opinions on their financial statements as well as an increase in the number of agencies that are providing timely reports. This year, auditors gave 15 of the 24 major agencies unqualified opinions on their fiscal year 1999 financial statements, compared to fiscal year 1998 audits in which 12 agencies received unqualified audit opinions.

*b. Benefits.*—Billions of taxpayer-provided dollars are lost each year to fraud, waste, and mismanagement in hundreds of programs within the Federal Government. Audits continue to show that most agencies have significant weaknesses in financial controls and systems. As a result, Federal decisionmakers do not have reliable and timely performance and financial information to ensure adequate accountability, manage for results, and make timely and well-informed judgments.

*c. Hearings.*—During the year 2000, the subcommittee held eight hearings examining the status of financial management in the executive branch of the Federal Government. These hearings focused on Federal agencies, including the Internal Revenue Service, the Health Care Financing Administration, the Department of Agriculture, the Department of Housing and Urban Development, the Department of Defense. In addition, the subcommittee examined the Government's Consolidated Financial Statements, and agency-wide compliance with the Federal Financial Management Improvement Act of 1997.

These hearings explored the audit results for fiscal year 1999, the third year of full implementation of GMRA. Again this year, the subcommittee examined the consolidated audit results for the entire executive branch of the Federal Government and individual audit reports of the agencies noted above.

- (1) *"Results of the Internal Revenue Service's 1999 Financial Audit," February 29, 2000.*
- (2) *"Oversight of the Internal Revenue Service: The Commissioner Reports," April 10, 2000.*

The Internal Revenue Service [IRS] is responsible for collecting taxes, processing tax returns, pursuing collection of amounts owed, and enforcing tax laws. In fiscal year 1999, the IRS collected \$1.9 trillion in Federal tax revenues, disbursed \$185 billion in tax refunds, and reported \$21 billion in net taxes owed to the Federal Government.

The subcommittee held two hearings on the IRS's financial management. The first hearing, on February 29, 2000, focused on the financial management challenges facing the IRS. This hearing highlighted the need for continued involvement and commitment by IRS senior management to ensure that the agency is successful in attempting to address its serious financial management problems.

The IRS prepares financial statements on its custodial operations—revenues collected, refunds paid, and related taxes receivable and payable—and on its administrative activities associated with more than \$8 billion of appropriated funds. During the General Accounting Office's [GAO] fiscal year 1999 audit, auditors found that "the agency continues to experience pervasive material weaknesses in the design and operation of its automated financial management and related operational systems, accounting procedures, documentation, record-keeping, and internal controls, including computer security controls."<sup>54</sup> Such problems prevented the IRS from reliably reporting on the results of its fiscal year 1999 administrative activities. However, for the third consecutive year, the IRS was able to reliably report on its financial activity covering the collection and refunds of taxes. As in previous years, this achievement was accomplished through extensive, costly, and time-consuming *ad hoc* procedures to overcome pervasive internal control and systems weaknesses. Major problems identified during the hearing included deficiencies in controls over unpaid tax assessments and tax refunds. Such a lack of controls could result in both increased taxpayer burden and potentially billions of dollars in lost revenue and improper refunds.

The second hearing, held on April 10, 2000, focused on the progress and challenges the IRS faces in re-engineering its business practices and technology to meet the requirements of the IRS Restructuring and Reform Act of 1998. As noted by the GAO, the "IRS has taken important steps over the last year; however, some of its most important and difficult work lies ahead."<sup>55</sup>

The IRS has been the subject of many studies and much criticism. The studies have identified a long list of problems, including inadequate technology and the failure of technology modernization programs, poor service to taxpayers, and violations of taxpayer rights. On July 22, 1998, the IRS Restructuring and Reform Act of

<sup>54</sup> "Internal Revenue Service: Results of Fiscal Year 1999 Financial Statement Audit," GAO/T-AIMD-00-104 p. 1.

<sup>55</sup> "IRS Modernization: Business Practice, Performance Management, and Information Technology Challenges," GAO/T-GGD/AIMD-00-144.

1998 was signed into law.<sup>56</sup> This law included many provisions to enhance taxpayer rights and to deal with specific organizational aspects of the IRS. The Commissioner of the IRS noted that because of the act, “the IRS continues to plan and implement the most significant changes to its organization, technology, and the way it serves taxpayers in almost a half-century.”<sup>57</sup> According to the Commissioner, progress is being made on the agency’s short- and long-term goals and mandates set forth by the Restructuring and Reform Act, and with Congress’s continued and assured support the IRS will be able to make the changes the American taxpayers expect and deserve. The GAO warned, however, that “the magnitude of this modernization effort makes it a high-risk venture that will take years to fully implement.”<sup>58</sup>

At both hearings, the subcommittee heard testimony that the IRS’s ability to collect taxes in an effective and efficient manner continues to be hindered by significant long-standing financial management and operational problems. These problems will take years to correct and will require continuous commitment from the agency’s senior management.

(3) *“Results of the Health Care Financing Administration’s 1999 Financial Audit,” March 15, 2000.*

The Health Care Financing Administration [HCFA] is responsible for nearly 18 percent of all Federal outlays and pays for one-third of the health care costs throughout the United States. It is the largest single purchaser of health care in the world.

In fiscal year 1999, \$200 billion in Medicare benefit claims were administered by more than 50 Medicare contractors and \$110 billion in Medicaid benefit payments were administered by 57 States and territories. HCFA finances more than 860 million Medicare benefits claims annually to nearly 40 million seniors and disabled Americans, and provides States with matching funds for Medicaid health care services for approximately 33 million low-income individuals.

For fiscal year 1999, the Department of Health and Human Services Inspector General issued the first unqualified audit opinion on HCFA’s financial statements. However, HCFA continues to have internal control weaknesses that hamper its ability to safeguard the fiscal integrity of the Medicare and Medicaid programs. As of September 30, 1999, HCFA estimated that its improper payments were approximately \$13.5 billion or 8 percent of the \$169.5 billion in processed Medicare fee-for-service benefits. Auditors reported that no methodology exists for estimating the range of improper Medicaid payments on a national level and that since Medicaid is a grant program, any estimating methodology would need to be done in conjunction with the State programs. HCFA is currently working with States to apply a uniform methodology of calculating an error rate in the administration of the Medicaid program.

<sup>56</sup> Public Law 105–206, July 22, 1998.

<sup>57</sup> Testimony of Commissioner of Internal Revenue Charles O. Rossotti before the House Committee on Government Reform’s Subcommittee on Government Management, Information, and Technology’s hearing on “IRS Filing Season, IRS Restructuring Act and Budget,” April 10, 2000.

<sup>58</sup> “IRS Modernization: Business Practice, Performance Management, and Information Technology Challenges,” GAO/T–GGD/AIMD–00–144.



The subcommittee's hearing focused on HCFA's efforts to resolve its financial management problems and address the challenges associated with administering the Medicare program. The Inspector General reported that it was encouraged by HCFA's sustained success in reducing Medicare payment errors and by the important progress being made toward resolving prior years' financial reporting problems. But auditors noted, "We remain concerned, however, that inadequate internal controls over accounts receivable leave the Medicare program vulnerable to potential loss or misstatement. As HCFA begins a lengthy process to integrate its accounting system with the Medicare contractor systems, internal controls must be strengthened to ensure that debt is accurately recorded, an adequate debt collection process is in place, and information is properly reflected on the financial statements."<sup>59</sup> The GAO further noted that "shortcomings in HCFA's financial operations mean that it could not adequately ensure the reliability of data that the agency and the Congress use to track the cost of the Medicare program and to help make informed decisions about future funding."<sup>60</sup>

HCFA reported that there are several initiatives underway to bring the claims payment error rate down and that it is aggressively addressing financial management issues. Top management's continued support of these initiatives and sustained actions will be key to HCFA's success in resolving its financial management problems.

(4) *"Results of the 1999 Financial Audit of the Department of Agriculture," March 21, 2000.*

The Department of Agriculture's mission has evolved beyond agriculture programs to include programs in such diverse areas as economic development, food assistance, food safety, international trade and marketing, and land management. Today the Department of Agriculture is responsible for major programs that boost farm production and exports; promote small community and rural development; ensure a safe food supply for the Nation; manage natural resources; and improve the nutrition of families and individuals with low incomes. Its vast resources include more than \$118 billion in assets.

Since fiscal year 1992, the Department of Agriculture's financial statements have been unauditable, and it continues to have serious financial management problems. One of the more significant problems preventing the department from reporting reliable information is its inability to reasonably estimate its cost of extending or guaranteeing \$93 billion of credit. As the largest direct lender in the Federal Government, the department's inability to properly account for the costs of its loan programs continues to negatively impact the reliability of the consolidated financial statements of the U.S. Government. In addition, such a lack of reliable cost estimates prevents Congress from making decisions about whether to scale back or increase the loan programs.

<sup>59</sup> "HCFA: Fiscal Year 1999 Financial Statement Audit," testimony of June Gibbs Brown, Inspector General, U.S. Department of Health and Human Services before the House Committee on Government Reform's Subcommittee on Government Management, Information, and Technology, March 15, 2000.

<sup>60</sup> "Medicare Financial Management: Further Improvements Needed to Establish Adequate Financial Control and Accountability," GAO/T-AIMD-00-118.

At the subcommittee hearing the Inspector General stated that “Financial information in USDA is, on the whole, not reliable,” and, as a result of serious internal control weaknesses, “managers of the programs and operations may be relying on highly questionable information.” The Department of Agriculture’s Chief Financial Officer acknowledged the problems, the various initiatives underway, and the department’s progress in resolving those problems. The GAO concluded that many of the problems are deeply rooted and will take time, substantial resources, and sustained commitment from top management to correct.

(5) *“Results of the 1999 Financial Audit of the Department of Housing and Urban Development,” March 22, 2000.*

The Department of Housing and Urban Development was established to promote adequate and affordable housing, economic opportunity, and a suitable living environment free from discrimination. Its major functions include insuring mortgages for single-family and multi-family dwellings; channeling funds from investors into the mortgage industry; making direct loans for construction or rehabilitation of housing projects for the elderly and the handicapped; providing Federal housing subsidies for low- and moderate-income families; providing grants to States and communities for community development activities; and promoting and enforcing fair housing and equal housing opportunities.

For fiscal year 1999, the Inspector General was unable to express an opinion on HUD’s financial statements in time to meet the statutory deadline of March 1, 2000, because of problems related to HUD’s conversion to a new accounting system. The Inspector General’s report noted that “material internal control weaknesses with HUD’s core financial management system and U.S. Government Standard General Ledger [SGL], adversely affected HUD’s ability to prepare auditable financial statements and related disclosures in a timely manner.”

The Inspector General noted that material weaknesses and reportable conditions reported in previous years have essentially remained unchanged. However, the Inspector General stated that the department “has recognized its areas of systemic weakness to a degree that it never did before, and that in each of these areas it has plans in place and activities underway to address the problems.”

In addressing its financial management problems, the Deputy Secretary stated that HUD has “dedicated resources to address each and every material weakness and reportable condition cited in the audit.” He further stated that HUD’s goal is to obtain unqualified opinions every year and that the final implementation of HUD 2020 Management Reform Plan will resolve each remaining material concern.

Although an unqualified opinion is important, the department must continue to strive to achieve the goal of the financial management legislation passed by Congress—which is to ensure that agencies maintain financial systems that allow them to produce accurate, reliable financial information on a day-to-day basis.

(6) *“Are the Government’s Financial Records Reliable?” March 31, 2000.*

The Chief Financial Officers Act of 1990 (Public Law 101–576), as expanded by the Government Management Reform Act of 1994 [GMRA] (Public Law 103–356), required that the Federal Government produce annual audited, consolidated financial statements, beginning in fiscal year 1997. GMRA also required that beginning in 1998, the General Accounting Office issue an annual audit report on the consolidated financial statements no later than March 31 of the subsequent year.

At the subcommittee’s hearing on March 31, 2000, the Comptroller General of the United States released the results of the fiscal year 1999 audit of the financial statements of the Federal Government. For the third consecutive year, he reported that “because of serious deficiencies in the Government’s systems, record-keeping, documentation, financial reporting, and controls, amounts reported in the Government’s financial statements and related notes may not provide a reliable source of information for decision-making by the Government or the public.”<sup>61</sup> The Comptroller General further noted that as of March 31, 2000, 19 of 22 major agencies’ financial systems did not comply with the requirements of the Federal Financial Management Improvement Act of 1996<sup>62</sup> and that agency financial systems overall are in poor condition and cannot provide reliable financial information necessary for managing day-to-day Government operations.

The Office of Management and Budget recognized that necessary financial management improvements are difficult and require a great effort, and that modernizing financial management and reporting throughout the Federal Government is a long-term process that will take years, not months, to correct. The OMB reported, however, that steady progress is being made—that the timeliness of financial reports has improved and the number of agencies receiving “clean” audit opinions has increased. Nonetheless, the Comptroller General cautioned that although clean audit opinions are essential to providing an annual public scorecard, they do not guarantee that agencies have the financial systems needed to produce reliable financial information. Modern financial management systems and good controls are essential to reaching the goal of providing reliable financial information necessary for managing Government operations on a day-to-day basis.

On March 31, 2000, the subcommittee released its third annual report card, measuring the effectiveness of financial management in the 24 Cabinet departments and independent agencies required to produce audited financial statements. The grades were based on the results of the audits prepared by agency Inspectors General, independent public accountants, and the General Accounting Office.

The report card is a gauge for Congress to see where attention is needed to prod agencies toward getting their financial affairs in order. Again, this year, the grades are dominated with “D’s” and

<sup>61</sup> “Auditing the Nation’s Finances: Fiscal Year 1999 Results Continue to Highlight Major Issues Needing Resolution,” GAO/T-AIMD-00–137.

<sup>62</sup> The remaining two major agencies had not yet issued their audited financial statements. However, they had not complied with the act’s requirements for fiscal years 1998 and 1997.

“F’s.” This year, the subcommittee also graded the Federal Government as a whole. Based on this year’s consolidated audit report, the subcommittee has determined that, overall, the Federal Government earned a “D-plus.”

The National Aeronautics and Space Administration and the National Science Foundation demonstrated they could effectively manage their finances. Both agencies received “A’s.” The Social Security Administration, General Services Administration, Department of Labor, and the Department of Energy earned “B’s.” Five agencies could not pass muster and earned failing grades of “F.” They were: the Agency for International Development, the Department of Agriculture, the Department of Defense, the Office of Personnel Management, and the Department of Housing and Urban Development.

Although 14 agencies received “clean” audit opinions, they still missed the most important goal, which is to maintain financial systems that allow them to produce accurate, reliable financial information on a day-to-day basis.

Five of the 24 agencies were late in issuing their financial statements, and two—the Department of Interior and the Department of State—had not filed reports by the subcommittee’s March 31st hearing—6 months after the close of the Government’s fiscal year.

(7) *“Results of the 1999 Financial Audit of the Department of Defense,” May 9, 2000.*

The subcommittee’s hearing focused on the status of financial management at the Department of Defense and the importance of reliable financial information to the logistics operations of the Army, Air Force, and Navy.

The Department of Defense [DOD] is the largest of the Federal Government’s 14 Cabinet-level departments. Fiscal year 1999 was the fourth year the Department of Defense had prepared audited, agencywide financial statements. For fiscal year 1999, the department reported total assets of \$599 billion and total net cost of operations of \$378 billion.

Once again, the agency’s Inspector General [IG] disclaimed an opinion on the department’s financial statements, stating that internal control weaknesses, compilation problems, and financial management system deficiencies continued to exist. The audit report noted that the internal controls did not ensure that accounting entries impacting financial data were fully supported and that assets, liabilities, costs, and budget resources were properly accounted for and reported. The report also identified noncompliance issues related to the Federal Financial Management Improvement Act of 1996, the Chief Financial Officers Act of 1990, and the Government Performance and Results Act of 1993.

According to the Assistant Inspector General for Auditing, “Despite commendable progress, the DOD remains far from CFO Act compliance, and aggressive measures will be needed over the next few years to achieve success. . . . sustained involvement by senior managers and the Congress are vital ingredients for progress.” The GAO also noted that the “DOD continues to make incremental improvements to its financial management systems and operations. At the same time, the department has a long way to go to address the remaining problems. Overhauling DOD’s financial systems,

processes, and controls and ensuring that personnel throughout the department share the common goal of improving DOD financial management, will require sustained commitment from the highest levels of DOD leadership—a commitment that must extend to the next Administration.”

At this hearing, a panel of two Generals and a Vice Admiral from the logistics side of the military also stressed the need of having reliable financial information to assist in making accurate, timely, and good decisions to ensure the Nation’s military readiness.

(8) *“Compliance with the Federal Financial Management Improvement Act of 1996: Agencies Continue to Struggle,” June 6, 2000.*

Historically, Federal agencies have struggled with reporting complete, reliable, and useful financial information. The lack of such information has hindered managers ability to efficiently manage operations on a daily basis, and has prevented Congress from making fully informed decisions in allocating limited resources. Recognizing the importance that financial management systems play in providing timely and reliable financial information, Congress passed the Federal Financial Management Improvement Act [FFMIA] (Public Law 104–208) of 1996.

On June 6, 2000, the subcommittee held its first oversight hearing on the status of the 24 CFO Act agencies’ implementation of the FFMIA. The hearing focused on the progress agencies have made in complying with the law as well as the significant challenges that are preventing many of the agencies from having management systems that provide reliable financial information on a day-to-day basis.

At this hearing, both the OMB and the GAO noted that many agencies continue to struggle FFMIA because of the overall long-standing, poor condition of agency financial systems. Their systems were designed to track cash outlays under budget appropriations law, not accrual-based financial accounting. Specifically, the GAO found five primary reasons that agencies are in noncompliance: (1) nonintegrated financial management systems; (2) inadequate reconciliation procedures; (3) noncompliance with the Federal Government Standard General Ledger; (4) lack of adherence to Federal accounting standards; and (5) weak security over information systems.

Even though more agencies are receiving unqualified or “clean” audit opinions, continued noncompliance with FFMIA’s requirements prevent them from meeting the intent of the financial management reform legislation—reporting complete, reliable, and useful financial information. As of July 2000, 20 of 23 CFO Act agencies did not have financial management systems that comply with FFMIA even though 14 of the 23 agencies received “clean” audit opinions. According to the GAO, these clean audit opinions were attained using costly, heroic efforts that go outside the financial systems.

Meeting the requirements of FFMIA presents long-standing, significant challenges that will ultimately be attained through investment, and sustained emphasis. As with the Government’s year 2000 conversion efforts, success is dependent on the commitment of top agency managers to the effort. As noted by the GAO, “consist-

ent and persistent top management attention is essential to solving any intractable problem.” Such a commitment is needed if the requirements of the FFMIA are to be met.

4. “Management Practices at the Office of Workers’ Compensation Programs, U.S. Department of Labor,” House Report 106–1024), December 4, 2000.

*a. Summary.*—After 3 years of on-going oversight of the Office of Workers’ Compensation Programs, on October 19, 2000, the subcommittee submitted a report entitled, “Management Practices at the Office of Workers’ Compensation Programs, U.S. Department of Labor,” which was adopted by the full Committee on Government Reform. This report summarized the subcommittee’s on-going oversight of management practices at the Office of Workers’ Compensation Programs.

Over the last 3 years, the subcommittee has received hundreds of letters and documentation from Federal employees who have sustained work-related injuries, stating that the workers’ compensation system is adversarial and biased against the injured worker.

The subcommittee subsequently held three hearings to examine management practices at the Office of Workers’ Compensation Programs. Hearing witnesses, who included claimants, their attorneys, union representatives, and health care providers, described similar problems to those cited by letter writers.

The Office of Workers’ Compensation Programs [OWCP] at the Department of Labor is responsible for processing injured employee compensation claims for most Federal workers. The subcommittee investigated the management of OWCP, including whether the Federal Employees’ Compensation Act [FECA], administered by the Federal Employees’ Compensation Program, is a fair, timely, and efficient process. The committee report summarized these problems and offers preliminary recommendations aimed toward resolving them.

The subcommittee found that:

- Those responsible for the administration of the Federal Employees’ Compensation Act at the Office of Workers’ Compensation Programs are not providing adequate information or services to claimants who file appeals;
- Employees at the Office of Workers’ Compensation Programs are not focused on customer service;
- In many cases, agencies are not providing adequate assistance to their employees who are injured while performing work-related duties; and
- Actions are needed to improve management practices and customer service at the Office of Workers’ Compensation Programs.

The subcommittee made the following recommendations:

- Provisions of the Federal Employees’ Compensation Act must be enforced, specifically those provisions dealing with employers who interfere with an employee’s legitimate claim for compensation due to a work-related injury or illness;
- Provisions in the Employees’ Compensation Act must be clarified to require a third opinion by a qualified physician when an employee’s attending physician and a second opinion physician dis-

agree on the diagnosis or prognosis of a work-related injury or disease;

- The Division of Federal Employees' Compensation should make every effort to provide telephone access to the Office of Workers' Compensation Programs for claimants, their representatives and medical providers. This effort should include a centralized communications system and studying the feasibility of providing a toll-free telephone number;

- While timeframes must be set for claim resolutions, they must not be at the expense of a quality, well-thought-out decision; and

- Congress should consider establishing an independent board, such as the board currently overseeing ongoing reforms at the Internal Revenue Service, to review, make recommendations, and oversee reforms at the Office of Workers' Compensation Programs. This board should also consider and recommend to Congress whether appeals by Federal workers under the Office of Workers' Compensation Program should be extended to include the Federal court system.

*b. Benefits.*—Subcommittee action responded to widespread concerns among injured Federal workers, the medical community, the legal community, employee unions congressional caseworkers and the concerns of the Inspector General regarding customer service at the Office of Workers' Compensation Programs.

*c. Hearings.*—

(1) *"Oversight of the Management Practices at the Office of Workers' Compensation Programs," July 6, 1998.*

The subcommittee began its examination of the OWCP with a July 6, 1998, field hearing in Long Beach, CA, that addressed the agency's management practices and administration of the Federal Employees' Compensation Act. The hearing focused on the timely adjudication of Federal injured workers' claim and the process of a fair and just appeal.

Joseph Perez and William Usher, hearing representatives from the Office of Workers' Compensation Program, presented testimony on the first panel. These two witnesses expressed their frustrations and criticism over the way in which the Department of Labor administers its Office of Workers' Compensation Programs, the slowness of the adjudication process, as well as existing waste, fraud, and abuse within the agency.

The second panel consisted of injured Federal workers from the U.S. Postal Service and the Navy. Witnesses described their personal experiences with the Department of Labor, in particular the Office of Workers' Compensation Programs.

The third panel consisted of officials from the Department of Labor who presented a status update on any questionable management practices at the Office of Workers' Compensation Programs. Michael Kerr, Deputy Assistant Secretary, Office of Workers' Compensation Programs testified on the third panel. The hearing was conducted to determine whether injured Federal employees received timely and equitable adjudication of their compensation claims and to determine methods to improve the compensation system.

(2) *"Oversight of Customer Service at the Office of Workers' Compensation Programs," May 18, 1999.*

On May 18, 1999, the subcommittee held a second hearing examining customer service issues at the Office of Workers' Compensation Programs. The Federal Employees' Compensation Act, administered by the Office of Workers' Compensation Programs, authorizes Federal agencies to compensate Federal employees for traumatic injuries sustained on the job. In its creation, FECA was intended to develop a non-adversarial arrangement whereby Federal employees would be compensated for their injuries in a fair and equitable manner while also saving the Federal Government from tort liability.

The subcommittee has received numerous complaints from injured Federal employees, alleging that FECA is no longer a non-adversarial system. The first panel at the hearing consisted of three Federal injured workers who presented their cases and described their experiences with customer service at the Office of Workers' Compensation Programs. Most of the subcommittee's investigations have focused on the appeals process. The first two witnesses, Dianne McGuinness and Thomas M. Chamberlain described, their unsatisfactory experiences, and each provided evidence to show the lack of care, fairness, and attention that had been given to their individual cases by the Office of Workers' Compensation Programs. The third witness, Matthew Fairbanks, who was granted compensation immediately upon submitting his claim, described his experience with the Office of Workers' Compensation Programs as beneficial and rehabilitative.

The second panel consisted of people who work closely with the OWCP. These witnesses discussed the shortcomings that exist in the OWCP's customer service and suggested approaches to overcome such shortcomings. Beth Balen, administrator for the Anchorage Fracture and Orthopedic Clinic, testified that the OWCP's lack of responsiveness often required her to place many calls before getting a response. She described the difficulty of obtaining reimbursement payments and resolving outstanding bills with the OWCP. Because of the clinic's negative experiences with the OWCP, it no longer treats injured Federal workers, unless it is an emergency. The clinic does, however, welcome injured workers who are employed by the State of Alaska or private organizations. John Riordan, a union representative from the American Federation of Government Employees testified regarding his negative experiences in assisting and representing injured Social Security Administration employees, one of whom was hearing witness Dianne McGuinness.

Mr. Riordan described the difficult and unresponsive environment that exists at the New York Regional Office of the OWCP. He presented signed affidavits and testimony describing actions by the Regional Director of the New York and Boston Offices, Kenneth Hamlet, who accosted Mr. Riordan for being in the building while attempting to drop off a package. Mr. Riordan also worked in the same building he was thrown out of.

James Linehan, a lawyer from Oklahoma, described the difficulty of representing injured workers during the administrative appeals process. He described the difficulty of getting calls returned, responses to correspondence, and gaining access to his client's files.



Tina Maggio, a congressional caseworker, in the office of Representative Michael F. Doyle of Pennsylvania, testified that she also found the OWCP to be nonresponsive to her calls, including a clearly stated emergency call, until after leaving many messages with the District Directors at OWCP regional office. She also testified that among the Federal she deals with, the OWCP is the worst.

The third panel consisted of Patricia Dalton, Deputy Inspector General of the Department of Labor, and Shelby Hallmark, Deputy Director of the Office of Workers' Compensation Programs. Patricia Dalton testified regarding the Office of Inspector General's report on the OWCP's customer service survey. She testified that the questions were biased and the questionnaire was poorly constructed. She stated that of the 36 questions on the survey, OWCP only used the first, which she said was biased in favor of the agency, to measure customer service. Additionally, she testified that the information gathered was not retained for further analysis and use.

Shelby Hallmark testified regarding the allegations and evidence presented at the hearing. He stressed that the OWCP was very customer-friendly and that customer service rises each year. He described the situations and testimonies submitted at the hearing were unusual or unique situations and did not represent the whole of the OWCP's customer service in the appeals process.

(3) *"The Federal Workers' Compensation Programs: Are Injured Workers' Being Treated Fairly?," September 21, 2000.*

Similar to previous hearings, witnesses testified about the problems they have encountered with the OWCP's appeals process. Witnesses at this hearing included an injured claimant, an attorney, a union representative, and the chairman of the Employees Compensation Appeals Board [ECAB]. Attorney Clete Weiser said that the average appeal takes about 2 years to be heard by the Employees Compensation Appeals Board. Claimant Greg Fox discussed the personal and financial hardships for claimants caused by these delays. ECAB Chairman Michael Walsh said that the Board has significantly reduced its backlog of appeals, but it often gets cases that must be returned to the OWCP because they need further review or files are incomplete.

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL  
RESOURCES, AND REGULATORY AFFAIRS

Hon. David M. McIntosh, *Chairman*

1. "Non-Binding Legal Effect of Agency Guidance Documents," House Report No. 106-109, October 26, 2000, Seventh Report by the Committee on Government Reform, together with Minority and Additional Views.

*a. Summary.*—Various laws enacted by Congress ensure legal protections for the public so that agencies may not issue documents that bind the public without the public's opportunity to participate in the policymaking process. These good government provisions are a key to our democratic process. They protect citizens from arbitrary decisions and enable citizens to effectively participate in the

process. If agencies avoid these legal protections or issue documents that do not clearly state if they have binding legal effect or not, the public may be confused or unfairly burdened—sometimes at great cost.

Agencies sometimes claim they are just trying to be “customer friendly” and serve the regulated public when they issue advisory opinions and guidance documents. This may, in fact, be true in many cases. However, when the legal effect of such documents is unclear, regulated parties may well perceive this “help” as coercive—an offer they dare not refuse. Regrettably, the subcommittee’s investigation found that some guidance documents were intended to bypass the rulemaking process and expanded an agency’s power beyond the point at which Congress said it should stop. Such “backdoor” regulation is an abuse of agency power.

In 1996, Congress enacted the Congressional Review Act [CRA] to oversee agency legislative rules and agency guidance documents with any general applicability and future effect. Despite repeated requests by the subcommittee and specific direction by Congress in two appropriation cycles, the Office of Management and Budget [OMB] failed to provide sufficient guidance to Federal agencies for implementation of the CRA. The result has been some agency confusion over the legal effect of agency guidance documents and incomplete agency compliance with the CRA.

As a result of the subcommittee’s 1999–2000 investigation, the major regulatory agencies each submitted letters from their chief legal officials to the subcommittee stating that their agency guidance documents have no binding legal effect on the public and that they are taking steps to clearly communicate this fact to the public. These officials state that these guidance documents are “not legally binding” on the public and conclude by saying, “We recognize the importance of using guidance properly, and we have taken—and will continue to take—appropriate steps to address the concerns that guidance not be used as a substitute for rulemaking and to make the legal effect of our documents clear to the public.”

Nonetheless, as Law Professor Robert Anthony stated in a 1998 article entitled, “Unlegislated Compulsion: How Federal Agency Guidelines Threaten your Liberty,” “Even though those documents do not have legally binding effect, they have practical binding effect whenever the agencies use them to establish criteria that affect the rights and obligations of private persons” (Cato Policy Analysis No. 312, August 11, 1998, p. 1).

*b. Benefits.*—The subcommittee found that, since the March 1996 enactment of the CRA, OMB failed to provide sufficient guidance to the agencies on implementation of the CRA. The result was some agency confusion about the CRA, especially about agency guidance documents subject to congressional review under the CRA, and incomplete agency compliance with the CRA. Under the CRA, agency guidance with any general applicability and future effect is subject to congressional review. Without the required congressional review, covered agency guidance has no legal force or effect.

The subcommittee also found that agencies have sometimes improperly used guidance documents as a backdoor way to bypass the

statutory notice-and-comment requirements for agency rulemaking and establish new policy requirements.

The subcommittee further found that agencies often do not clearly state within their guidance documents that they are not legally binding on the public. As a consequence, the public often is confused and unfairly burdened, sometimes at great cost.

In response, the subcommittee requested information from the major regulatory agencies about their use of nonregulatory guidance documents, their submissions for congressional review under the CRA, and their specific explanations within each guidance document regarding its legal effect. The agencies responded by submitting letters to the subcommittee confirming that their guidance documents have no legally binding effect on the public.

The report includes these agency letters for the public's use; however, the subcommittee remains concerned about future backdoor rulemaking attempts by the agencies and future agency guidance documents without explanations regarding their non-binding legal effect on the public. Consequently, the subcommittee intends to continue its oversight in this area and asks the public to inform the subcommittee about any instances of agency guidance which either establishes policy through the backdoor or is unclear about its non-binding legal effect on the public.

*c. Hearings.*—On February 15, 2000, the subcommittee held a hearing entitled, “Is the Department of Labor Regulating the Public Through the Backdoor?” The purpose of the hearing was to examine the Department of Labor’s [DOL’s] use of nonregulatory guidance documents and to determine whether DOL was regulating the public through the backdoor—by imposing binding legal requirements in nonregulatory guidance documents. The hearing allowed the Department’s chief legal officer, Solicitor Henry Solano, to discuss DOL’s use of nonregulatory guidance documents instead of public rulemaking and the ways in which DOL disclosed or failed to disclose whether or not each such guidance document is legally binding on the public.

Besides Mr. Solano, witnesses included: Michael E. Baroody, senior vice president, Policy, Communications and Public Affairs, National Association of Manufacturers [NAM] and Former Assistant Secretary of Policy, DOL; Robert A. Anthony, George Mason University Foundation professor of law and former chairman, Administrative Conference of the United States; Jud Motsenbocker, owner, Jud Construction Co., Muncie, IN; Dixie Dugan, human resource coordinator, Cardinal Service Management, Inc., New Castle, IN; Dave Marren, vice president and division manager, the F.A. Barlett Tree Expert Co., Roanoke, VA; and Adele Abrams, attorney with Patton, Boggs in Washington, DC.

The hearing revealed that: (a) DOL and the Department of Transportation [DOT] had admitted that *none* of their listed guidance documents for their Occupational Safety and Health Administration [OSHA] and the National Highway Traffic Safety Administration [NHTSA], respectively, were legally binding on the public; (b) DOL and DOT had admitted that *none* of their listed guidance documents for OSHA and NHTSA were submitted to Congress for review under the CRA; (c) the vast majority of DOL’s and DOT’s submitted guidance documents did not make it clear to the public

that the documents are not legally binding on the public; and (d) only 8 percent of DOL's 1999 OSHA guidance documents included any explanation of legal effect and only 5 percent put this explanation at the beginning of the document. In contrast, DOT included an explanation of legal effect in about 40 percent of its NHTSA guidance documents.

The hearing also examined several areas of DOL guidance. Mr. Baroody provided many examples of agency guidance documents which make "the point that the problem of non-regulatory guidance, 'non-rule rules,' back-door rulemaking as it is variously described, is not just a problem at the Occupational Safety and Health Administration, nor is it just a problem at the Department of Labor. It is a problem widespread in this Administration."

The hearing, including testimony by Ms. Dugan, examined one aspect of DOL's Family and Medical Leave Act [FMLA] guidance. The hearing revealed that DOL issued a nonregulatory but policysetting guidance opinion letter which redefined a "serious health condition" under the 1993 FMLA. DOL's 1995 opinion letter said that minor illnesses, such as the common cold, were not a serious health condition. However, in December 1996, DOL retracted its previous definition and stated that the common cold, the flu, ear-aches, upset stomachs, et cetera, all are covered by the FMLA if an employee is incapacitated more than 3 consecutive days and receives continuing treatment from a health care provider. Ms. Dugan's testimony explained that the consequences of this non-regulatory and costly redefinition reverberated throughout the employer world and actually created a problem for needy people.

Ms. Dugan, a human resource coordinator for a private, for-profit corporation whose services include group homes and supported living apartments, explained, "When employees are legitimately on leave we find a way to cover for them; however, under DOL opinion letters unscheduled and unplanned absences and illegitimate leave hurts us. They threaten our ability to serve our clients who are counting on us to be there 24 hours a day. We share this dilemma with many industries where unscheduled and unplanned absences can affect customers and coworkers."

The hearing noted DOL's backdoor work-at-home guidance. On January 5, 2000, the subcommittee wrote DOL about its November 15, 1999, work-at-home policysetting guidance letter, which was not included in DOL's 3,374 OSHA documents submitted to the subcommittee, since it was issued after the subcommittee's October 8th request letter. The subcommittee sought to determine if DOL's 1999 guidance had been submitted to Congress for review under the CRA and if it was legally binding on the public. Of especial concern was DOL's expansion, without any express statutory delegation from Congress, of its jurisdiction into private homes. Subsequently, DOL withdrew this guidance document.

The hearing, including testimony by Mr. Marren, explored DOL's 1998 and 1999 guidance documents for arborists. DOL withdrew both of these guidance documents after threats of lawsuits against DOL for not following the Administrative Procedure Act's [APA's] statutory procedures for new rulemaking.

The next day (on February 16, 2000), the subcommittee submitted many post-hearing questions to DOL. For example, the sub-

committee asked DOL to identify all other withdrawn guidance documents and to submit a chart identifying the number of guidance documents by category of guidance (e.g., compliance directives, compliance guides, interpretation letters, manuals, et cetera). Even though DOL, in its March 16th partial reply to some of the post-hearing questions, promised to provide this information to the subcommittee, it never did so despite the subcommittee's repeated requests for this information.

SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS AND  
INTERNATIONAL RELATIONS

Hon. Christopher Shays, *Chairman*

1. "The Department of Defense Anthrax Vaccine Immunization Program: Unproven Force Protection," House Report No. 106-556, April 3, 2000, Fourth Report by the Committee on Government Reform, together with Dissenting and Supplemental Views.

*a. Summary.*—In the 106th Congress, the Subcommittee on National Security, Veterans Affairs, and International Relations held six hearings on issues raised by the Department of Defense [DOD] Anthrax Vaccine Immunization Program [AVIP]. The hearings examined the role of vaccines in force protection, specifically the design, implementation and procurement strategy of the AVIP. Witnesses also questioned the safety and effectiveness of the mandatory AVIP which proposes to administer an old, little-used vaccine to the entire 2.4 million member U.S. military force.

Based on the hearing record, and more than 100,000 pages of documents obtained from DOD and the Food and Drug Administration [FDA], the subcommittee staff prepared an oversight report containing five findings and five recommendations.

The report finds the AVIP unsustainable in its present form due to an unreliable vaccine supply, unmanageable program logistics, uncertain safety monitoring and the unproven efficacy of the current vaccine against the biological warfare threat. The report recommends development of a safer, more effective vaccine for broad-based military use. In the meantime, the report recommends DOD undertake the research necessary to make the current vaccine safer, including limiting its use to clinical trials requiring informed consent of all those receiving the immunization. If necessary, DOD could request the President to authorize a waiver of informed consent procedures for certain deployed forces pursuant to the statute, regulation and Executive order put in place since the gulf war.

*Findings:*

1. The AVIP is a well-intentioned but over-broad response to the anthrax threat. It represents a doctrinal departure overemphasizing the role of medical intervention in force protection.

2. The AVIP is vulnerable to supply shortages and price increases. The sole-source procurement of a vaccine that requires a dedicated production facility leaves DOD captive to old technology and a single, untested company. Research and development on a second-generation, recombinant vaccine would allow others to compete.

3. The AVIP is logistically too complex to succeed. Adherence to the rigid schedule of six inoculations over 18 months for 2.4 million members of a mobile force is unlikely, particularly in reserve components. Using an artificial standard that counts only shots more than 30 days overdue, DOD tolerates serious deviations from the Food and Drug Administration [FDA] approved schedule.

4. Safety of the vaccine is not being monitored adequately. The program is predisposed to ignore or understate potential safety problems due to reliance on a passive adverse event surveillance system and DOD institutional resistance to associating health effects with the vaccine.

5. Efficacy of the vaccine against biological warfare is uncertain. The vaccine was approved for protection against cutaneous (under the skin) infection in an occupational setting, not for use as mass protection against weaponized, aerosolized anthrax.

*Recommendations:*

1. The force-wide, mandatory AVIP should be suspended until DOD obtains approval for use of an improved vaccine. To accomplish this:

2. DOD should accelerate research and testing on a second-generation, recombinant anthrax vaccine; and,

3. DOD should pursue testing of the safety and efficacy of a shorter anthrax inoculation regimen; and,

4. DOD should enroll all anthrax vaccine recipients in a comprehensive clinical evaluation and treatment program for long term study.

5. While an improved vaccine is being developed, use of the current anthrax vaccine for force protection against biological warfare should be considered experimental and undertaken only pursuant to FDA regulations governing investigational testing for a new indication.

*b. Benefits.*—Acknowledging vaccine shortages and the failure of the sole-source vaccine producer to meet Food and Drug Administration requirements for new production, DOD scaled back the AVIP in July 2000, requiring inoculation of only those forces active in high threat areas for more than 30 days. Oversight of the AVIP also prompted a clarification of medical exemption policies, closer tracking of the immunization regimen, and a more focused effort to determine the impact of the program on reserve component readiness, retention and morale. As the result of sustained congressional interest in the AVIP, adverse medical events subsequent to inoculation are being more closely monitored by DOD, FDA and private organizations. U.S. service personnel have been provided a significant volume of objective information and testimony on the program's origins, design, implementation, policy implications and impacts.

The report also helped define issues raised by a policy of reliance on medical force protection to the possible exclusion or detriment of other elements—protective suits, masks, detectors—effective against chemical and biological warfare agents.

*c. Hearings.*—A hearing entitled, "The Impact of the Anthrax Vaccine Program on Reserve and National Guard Units," occurred on September 29, 1999 with testimony from witnesses from the

DOD and armed service members. A hearing entitled, "Force Protection: Improving Safeguards for Administration of Investigational New Drugs to Members of the Armed Forces," was held on November 9, 1999. Testimony was received from DOD and HHS witnesses on current procedures for obtaining informed consent from service personnel. Biomedical ethicists also testified on the implication of using investigational products, or licensed products for off-label purposes, in mandatory force medical force protection programs. Hearing entitled, "Anthrax Vaccine Adverse Reactions," occurred on July 21, 1999 with testimony from GAO, FDA, DOD and service members; hearing entitled, "Department of Defense's Sole-Source Anthrax Vaccine Procurement," occurred on June 30, 1999 with testimony received from officials from DOD, GAO and BioPort Corp.; a hearing entitled, "DOD's Mandatory Anthrax Vaccine Immunization Program for Military Personnel," took place on April 29, 1999 with testimony from officials with GAO, DOD and members of the armed services. Hearing entitled, "The Anthrax Immunization Program," occurred on March 24, 1999 with testimony received from officials with the DOD, members of the armed forces, and concerned citizens.

## B. OTHER INVESTIGATIONS

### FULL COMMITTEE

Hon. Dan Burton, *Chairman*

#### *1. Investigate the current regulation of Federal wetlands, in particular the area owned by Mr. John Pozsgai of Morrisville, PA.*

*a. Summary.*—Wetlands are valued by many Americans for the very practical reason that they can act as a buffer against flooding or can purify streams and rivers, in addition to providing a home for a diverse species of wildlife. However, regulation and protection of wetlands has been one of the most controversial environmental issues that Congress has had to face. The debate over wetlands has evolved around the balance between protecting wetlands and private property rights.

The Clean Water Act is the principal issue instrument of America's wetlands policy, with the focus exclusively, in stopping pollution. Yet over the years, the Army Corps of Engineers and the Environmental Protection Agency [EPA] steadily have expanded their jurisdiction, using the Clean Water Act as a means to protect wetlands, moving the focus away from actual polluters. In effect, the Clean Water Act has been transformed into a means to protect wetlands, yet Congress has never passed such a law.

*b. Benefits.*—The investigation hopefully will compel the next administration and Congress to review and clarify our current wetlands policy.

*c. Hearings.*—On October 6, 2000, the Committee on Government Reform held a hearing entitled, "Federal Wetlands Policy: Protecting the Environment or Breaching Constitutional Rights?"

On the first panel, the committee heard testimony from Mr. Paul Kamenar from the Washington Legal Foundation, Ms. Susan Dudley, from the Mercatus Center. The committee also heard testimony from Mr. John Pozsgai's daughters, Ms. Victoria Pozsgai-Khoury

and Ms. Gloria Pozsgai-Heater. The final witness on the first panel was Ms. Kathleen Andria, Director of American Bottom Conservancy and chairman of the Environment Committee for East St. Louis Community Action Network.

Mr. Kamenar and Ms. Dudley discussed the confusion surrounding the current definition of a “wetland,” and argued that the Federal Government has expanded the use of “wetlands” designation beyond what the law originally intended.

The committee specifically looked at the case of former Hungarian freedom fighter, now self-employed truck mechanic, John Pozsgai of Morrisville, PA. His daughters, Ms. Victoria Pozsgai-Khoury and Ms. Gloria Pozsgai-Heater testified that their father decided to purchase a 14-acre parcel of property across the street from where they lived. The property had historically been used as old dump in a highly urban area, but Mr. Pozsgai saw it as an opportunity to expand the family business and make a better life for himself and his family.

Mr. Pozsgai cleaned it up, which entailed removing over 7,000 old tires and rusting car parts. In order to build on the property, Mr. Pozsgai proceeded to fill approximately 5 acres of property with clean fill. Clean fill consists of topsoil, rubble, and bricks. Unfortunately for Mr. Pozsgai, the Army Corps of Engineers and EPA claimed that his property was a federally protected wetland and that this clean fill was considered a “pollutant.” Federal prosecutors argued the same, and succeeded.

In civil court proceedings, Mr. Pozsgai was fined \$200,000. In a criminal prosecution, a few weeks later, he was sentenced to 3 years in prison and fined an additional \$202,000. The fines were reduced in both the civil and criminal cases, due to Mr. Pozsgai’s inability to pay them. Mr. Pozsgai, however, did serve a year and half in Allenwood Federal Penitentiary and a year and a half in a half way house.

During the second panel, the committee heard testimony from Mr. Michael Davis, Deputy Assistant Secretary of the Army for Civil Works, and Mr. Robert Wayland, Director of the Office of Wetlands, Oceans, and Watersheds at the Environmental Protection Agency.

## *2. Review of United States Counter-Narcotics Policy*

### *Aid to Colombia*

The committee has worked jointly with the House International Relations Committee during the 106th Congress to conduct oversight of the administration’s counter-narcotics policy and strategy, particularly toward Colombia.

Colombia’s unstable democracy is a threat to the entire Andean Region. This instability is the result of both 40 years of civil strife and nearly three decades of a false economy fueled by the illicit narcotics trade. Colombia borders Venezuela, where 23 percent of United States petroleum products originate. Colombia virtually borders the Panama Canal, where nearly 80 percent of the world’s economy passes at one time or another.

According to the DEA, nearly 90 percent of the cocaine and 75 percent of the heroin on United States streets and schoolyards



originates in Colombia. For the first time in our Nation's history, according to the CDC and the FBI, drug-induced deaths surpassed homicides in 1998. Nearly 17,000 drug-induced deaths occurred in America in 1998, the latest available statistics. In Baltimore, the DEA estimates that 1 in 16 citizens is a heroin addict, and that the nearly 50,000 heroin addicts in that city spend over \$1 million per day on their habits.

Working jointly, Chairman Burton of the Government Reform Committee and Chairman Gilman of the International Relations Committee have promoted a strategy of identifying and fighting the surging cocaine and heroin problems at their source, where our resources are most effective. They have been joined in this effort by Chairman John Mica of the Criminal Justice Subcommittee and the House leadership. Over the vigorous objections of the administration, Congress approved funding for equipment—including six Black Hawk Helicopters—for the Colombian National Police [CNP]—the main counternarcotics force in Colombia. Through the oversight process, the two committees have protested repeated delays in delivery of the helicopters approved by Congress. When the committees learned that the State Department planned to send the CNP 50-year-old ammunition and inadequate armour for the helicopters to Colombia, Chairmen Burton and Gilman protested forcefully. In the 6 months since the CNP received the helicopters mandated by Congress, they have eradicated more opium poppy than in all of last year, and 4 times as much as in 1998.

In January 2000, the administration proposed “*Plan Colombia*,” a \$1.3 billion aid package designed to assist the Colombian Government battle drug-trafficking. In the views of the two committees, the administration's package focuses its resources too heavily on the Colombian Army, which has been beset by human rights problems and a well-earned reputation for ineffectiveness. The Plan Colombia aid package focuses 90 percent of its resources on the Colombian Army, and less than 10 percent on the Colombian National Police, who have a proven track record in combating narco-terrorism. The Government Reform Committee will continue to closely monitor the administration of the “Plan Colombia” aid package.

*Field Hearing on Drug Trafficking through Cuba and Puerto Rico*

The committee held a field hearing in Miami, FL, on January 3 and 4, 2000, focusing on Cuba and Puerto Rico as transshipment points for illegal drugs destined for the United States. On January 3, the committee heard vivid testimony about drug trafficking in Cuba by the Castro regime. A former Cuban Government official testified, along with the daughter of an executed Cuban Army officer. Also testifying were representatives from the DEA and the Customs Service. Witnesses were questioned about a seizure of 7.2 tons of cocaine in Cartegana, Colombia. The ship's manifest indicated that the drugs were to be shipped to Cuba. After investigating the seizure thoroughly in three countries, the committee firmly believes the drugs were ultimately destined for the United States, possibly through Mexico.

On January 4, the committee heard testimony from several witnesses about the growing use of Puerto Rico as a transshipment

point for drugs destined for the United States, as well as the lack of resources for combating this emerging problem.

#### SUBCOMMITTEE ON THE CENSUS

Hon. Dan Miller, *Chairman*

1. *"Oversight of the 2000 Census: Community Based Approaches for a Better Enumeration," Phoenix, AZ, January 29, 1999.*

*a. Summary.*—The total undercount of the American Indian population was approximately 12.22 percent in 1990. Following the 1998 dress rehearsals, the Inspector General [IG] raised serious concerns that the Census Bureau had not become prepared to address the unique nature of the Tribal societies and American Indian Reservations to reduce this undercount in 2000. The IG's report on the dress rehearsal in Menominee, WI, indicated that complete count committees [CCCs] and paid advertising, both key components of a successful census, had problems. Advertising was found to be inappropriate for American Indians and the CCCs did not have strong coordination with the Tribal chairman.

The dress rehearsal provided an opportunity for the Census Bureau to assess major risks which may be detrimental to the successful execution of the proposed plan. It is important that the Census Bureau be prepared to correct any problems which arose during the dress rehearsals and to work with local community members to find ways to reduce the undercount through partnership activities.

*b. Benefits.*—This oversight provided the subcommittee with useful information about the unique nature of the Tribal societies and American Indian Reservations toward its effort to reduce this undercount for 2000. In addition, the subcommittee documented the problems associated with obtaining an accurate count in a rapidly growing community such as the greater Phoenix, AZ, area. The subcommittee elicited ideas and suggestions from stakeholders in the 2000 census, such as tribal leaders, local officials and community groups, about how local efforts can improve participation and accuracy of the census count.

*c. Hearings.*—A hearing entitled, "Oversight of the 2000 Census: Community Based Approaches for a Better Enumeration," was held on January 29, 1999, in Phoenix, AZ. Witnesses included: The Honorable J.D. Hayworth (R-AZ); Dr. Taylor McKenzie, vice-president, Navajo Nation; the Honorable Ivan Makil, president, Salt River Pima Maricopa Indian Community; the Honorable Wayne Taylor, Jr., chairman, the Hopi Tribe; Mr. Rodney B. Lewis, general counsel, Gila River Indian Community; Mr. Scott Celley, executive assistant to Governor Jane Hull; Representative Doug Lingner, city council member, District 7; Mr. John R. Lewis, executive director, Inter-tribal Council of Arizona; Mr. Jack C. Jackson, Jr., director of Federal Relations, National Congress of American Indians; Mr. James Bourey, executive director, Maricopa Association of Governments; Ms. Levonne Gaddy, president, Multiethnics of Southern Arizona in Celebration [MOSAIC]; and Ms. Esther Lumm, chairwoman, Arizona Hispanic Community Forum.

The hearing's primary focus revolved around the undercount of Native Americans in the 1990 census and several approaches that could be used in the 2000 census to reduce that undercount.

2. *"Oversight of the 2000 Census: Examining the Benefits of Post-Census Local Review," February 11, 1999.*

a. *Summary.*—During the 1990 census, the Census Bureau utilized a program called "post census local review" [PCLR]. Prior to the 1990 census, the Census Bureau conducted a "pre-census local review" where local and tribal governments could add their input to the Census Bureau's mailing lists. Described as a local quality check, the post census local review [PCLR] program allowed participating local and tribal governments to check the Census Bureau's work before the books closed on the census. This quality check found and corrected over 400,000 errors in the census. Some of these errors were errors in the geographic placement of households, while others were whole census blocks that were missed by Census Bureau enumerators. Although this program was voluntary for eligible jurisdictions during the 1990 census, the process is crucial because errors can be found and corrected while the census is still underway.

b. *Benefits.*—A post census local review [PCLR] would provide local and tribal governments an opportunity to ensure that no households in their jurisdiction are missed by the Census Bureau during the enumeration. It is important for local and tribal governments to have an accurate count in their jurisdiction for many different reasons, and PCLR is a tool they can utilize to flag missing households and geographic errors in the placement of those households. For census 2000, the Census Bureau is utilizing a program at the front end of the census process called the local update of census addresses [LUCA]. This pre-census activity is a voluntary program that empowers local and tribal governments to review the address list in their jurisdiction to ensure the accuracy prior to census day. This process was made possible by the Census Address Improvement Act of 1994, (Public Law 103-430) which allowed local and tribal governments the opportunity to check the actual address lists and maps that the Census Bureau will use during the decennial census. At this time, the Census Bureau does not plan to complement this "front end" program with PCLR. On January 25, 1999, the U.S. Supreme Court ruled in *Glavin v. Clinton* and through *U.S. House of Representatives v. Department of Commerce* that the Census Bureau must follow up on 100 percent of all non-responding households as part of their plans for census 2000. Given this fact, many census stakeholders have encouraged the Census Bureau to utilize every proven traditional and legal methods at their disposal to ensure that every American is counted.

c. *Hearings.*—A hearing entitled, "Oversight of the 2000 Census: Examining the Benefits of Post-Census Local Review," was held on February 11, 1999, and a bill was marked-up at this time. The hearing provided a forum for various stakeholders from local government and Members of Congress to comment on the potential addition of PCLR to census 2000 plans. Witnesses at the hearing included: The Honorable Thomas Petri (R-WI); the Honorable Thomas Sawyer (D-OH); the Honorable Kenneth Blackwell, Secretary of

State, Ohio and co-chair of the Census Monitoring Board; Ms. Carol A. Roberts, county commissioner, Palm Beach County, FL; the Honorable Timothy M. Kaine, mayor, city of Richmond, VA; Mr. James Bourey, executive director, Maricopa Association of Governments, Maricopa County, AZ; Mr. Lanier Boatwright, president, National Association of Developmental Associations; Ms. Barbara Welty, member, National Association of Towns and Townships; Dr. Everett Ehrlich, member, U.S. Census Monitoring Board; Dr. Barbara Bryant, former Director, U.S. Census Bureau, National Quality Research Center, School of Business Administration, University of Michigan; the Honorable Alex G. Fekete, mayor, city of Pembroke Pines, FL; Mr. Steven D. Whitener, member, Board of Supervisors, Loudoun County, VA; and Ms. Jessica F. Heinz, assistant city attorney, city of Los Angeles, CA. Ms. Heinz and Mr. Whitener submitted testimony for the record but did not appear in front of the subcommittee.

The hearing revolved around whether a post census local review of addresses, which allows census stakeholders to review their census figures for accuracy after the census is completed, would be beneficial. Some argued that this step is imperative to getting a proper count, while others said that the local update of census addresses program, which already allows stakeholders to review the census address list prior to the count, is enough stakeholder input.

3. *“Oversight of the 2000 Census: Examining the America Counts Today [ACT] Initiatives to Enhance Traditional Enumeration Methods,” March 2, 1999.*

*a. Summary.*—The debate over the 2000 census has been over how to eliminate the differential undercount found to exist in the 1990 census. Democrats have insisted that the only way to eliminate the undercount was to use statistical estimation. Republicans maintained that a full enumeration without statistical estimation could be successful, if new and/or improved outreach efforts were used in 2000. The America Counts Today [ACT] initiative was the culmination of proposed outreach activities and other programs the subcommittee felt would be helpful in eliminating the differential undercount in 2000. It was first introduced publicly at the winter meeting of the U.S. Conference of Mayors on January 27, 1999. The ACT initiative focused heavily on ideas that related directly to hard to count communities and would have provided funding to community outreach groups.

*b. Benefits.*—ACT and its subsequent oversight provided the subcommittee with important tools to help eliminate the differential undercount. Several of the ACT initiatives, had been previously considered by the Census Bureau, used in the dress rehearsals or in the 1990 census. The hearing gave the subcommittee the opportunity to hear from the Census Bureau and used its recommendations for the ACT plan. The issue of post census local review [PCLR] a significant part of ACT was considered in a separate hearing.

*c. Hearings.*—The hearing was held on March 2, 1999. Testifying before the subcommittee was the Honorable Sue Myrick (R-NC), the Honorable Carrie Meek (D-FL), and Dr. Kenneth Prewitt, Director, U.S. Census Bureau.

The hearing focused on America Counts Today, a group of 10 initiatives that could help improve the census count. These tactics to improve the accuracy of the census came about after sampling was declared unconstitutional by the Supreme Court for the apportionment of congressional seats. Such examples included a greater advertising and promotion budget and an extension to the census in the schools program. The Bureau's Director Prewitt favored all but three of the initiatives, which were the mailing of a second census questionnaire, a post census local review process and an increase in languages on the census forms.

4. *"Oversight of the 2000 Census: Examining the Bureau's Policy to Count Prisoners, Military Personnel, and Americans Residing Overseas," June 9, 1999.*

a. *Summary.*—The subcommittee examined three measures introduced by Members of Congress concerning census 2000. It investigated whether the Bureau of the Census should include in the 2000 decennial census all citizens of the United States residing abroad. The Census Bureau intends to exclude more than 3,000,000 citizens of the United States living and working overseas from the 2000 census because such citizens are not affiliated with the Federal Government. Several groups representing citizens abroad have been working for years to ensure they are counted in the decennial census. They are a taxpaying, voting segment of America requesting to be included in the census. It is necessary to understand the implications and viability of such an undertaking.

The subcommittee also investigated whether the Secretary of Commerce should require the Census Bureau to make changes in tabulating the total population of prisoners in the United States in a decennial census. Currently, the Census Bureau plans to add the number of prisoners to the count of the State in which they are incarcerated. It has been suggested that procedure be changed so that any prisoner who is convicted in one State but incarcerated in another would be counted as a resident of the State from which more than half the costs associated with such a prisoner's incarceration are recoverable. It is the responsibility of the subcommittee to determine whether prisoners will be accurately counted by the Census Bureau's current plans or whether a change is warranted.

Finally, the subcommittee investigated whether the Secretary of Commerce should be required to ensure that the Census Bureau makes changes to the way they allocate active duty members of the armed services back to the States. Currently, the Census Bureau plans to use the "usual residence" rule that places domestically stationed military personnel into the counts of the States where they are living and sleeping most on census day. It has been suggested that instead, the Census Bureau first allocate members of the armed forces on active duty to their home of record. This matter was carefully scrutinized, as it is essential that the subcommittee ensure that residents are counted in the appropriate place of residence in order to ensure fair and equitable apportionment of Congress, redistricting, and distribution of Federal funds among the States.

b. *Benefits.*—This oversight provided the subcommittee with information about the feasibility of counting Americans abroad, pris-

oners in their originating State, and military personnel in their home of record. These three portions of the U.S. population constitute millions of Americans that deserve to be as accurately counted and included in the decennial census as possible. The subcommittee's review of the issues at hand provided documented accounts by both the Census Bureau and the stakeholders of the viability and implications of the proposed legislation.

*c. Hearings.*—A hearing entitled, "Oversight of the 2000 Census: Examining the Census Bureau's Policy to Count Prisoners, Military Personnel, and Americans Residing Overseas," was held on June 9, 1999. Testimony was received from: The Honorable Mark Green (R-WI); the Honorable Benjamin Gilman (R-NY); the Honorable Kenneth Prewitt, Director, Bureau of the Census; Mr. David Hamod, executive director of the Census 2000 Coalition; Mr. Don Johnson, vice president of the Association of Americans Resident Overseas; Mr. L. Leigh Gribble, secretary of the American Business Council of Gulf Countries and executive committee member of Republicans Abroad; Ms. Dorothy Van Schooneveld, executive director of American Citizens Abroad; and Mr. Joseph Smallhoover, chair of Democrats Abroad.

This hearing discussed how to include certain groups—Americans overseas, prisoners and the military—in the census count. The most prominent debate was over the American overseas. Bureau Director Prewitt said the Census Bureau could not credibly enumerate that population in the 2000 census because they did not know certain characteristics of the group, i.e., size. Legislation for an interim census of overseas Americans to prepare for their inclusion in the 2010 census was discussed.

5. *"Oversight of the 2000 Census: Community-Based Approaches for a Better Enumeration," Racine, WI, June 28, 1999.*

*a. Summary.*—Although the Census Bureau is headquartered in Suitland, MD, just outside of Washington, DC, the census itself is a very localized project. In fact, it will be the Nation's largest peacetime mobilization ever, carried out in communities across the country. The Census Bureau depends on local governments to provide them with correct address lists and updated maps. They also rely heavily on local organizations, ranging from civic to religious, to help recruit workers and find unique ways to reach traditionally undercounted members of each respective community. The Census Bureau has developed many programs to tap into the vast knowledge of local officials. It is the job of the subcommittee to determine the effectiveness of those programs through hearings and oversight activities.

*b. Benefits.*—As part of the subcommittee's pledge to reach out to traditionally undercounted populations across the country, a series of field hearings was held throughout 1998 and 1999. The most accurate census possible has always been the primary goal of the subcommittee, and reaching outside Washington, DC, for ideas toward achieving that goal seemed only logical. The unique perspective of local government leaders and other stakeholders provided members of the subcommittee with insights otherwise unavailable to them. In an effort to make every experience different from the last, each hearing was held in a different setting than the previous

one. This allowed members of the subcommittee to draw on several different perspectives in their oversight responsibilities.

*c. Hearings.*—The third of three field hearings was held on June 28, 1999, in Racine, WI, at the request of subcommittee member Paul Ryan (R-WI). In keeping with the same theme as previous field hearings, entitled, “Oversight of the 2000 Census: Community-Based Approaches for a Better Enumeration.” Members of Congress in attendance were subcommittee Chairman Dan Miller (R-FL), subcommittee Ranking Member Carolyn Maloney (D-NY), subcommittee member Paul Ryan (R-WI), and the Honorable Tom Petri (R-WI). Witnesses included: The Honorable Bonnie Ladwig, Wisconsin State representative (R-63), The Honorable Gwendolynne S. Moore, Wisconsin State senator (D-4), the Honorable James M. Smith, mayor, city of Racine, WI, the Honorable John M. Antaramian, mayor, city of Kenosha, WI, Mr. Nathaniel E. Robinson, Office of Governor Tommy G. Thompson, Ms. Jean S. Jacobson, Racine County executive, Mr. Allan K. Kehl, Kenosha County executive, and Dr. Paul Voss, Department of Rural Sociology, University of Wisconsin, Madison.

Wisconsin had the Nation’s best response rate in the 1990 census. This hearing discussed certain tactics that Wisconsin is using to keep its response rates high. Wisconsin depends upon a good census count in 2000, because it is at risk of losing a seat.

6. *“Oversight of the 2000 Census: Examining the Census Bureau’s Advertising Campaign,” July 27, 1999.*

*a. Summary.*—As part of census 2000, the Census Bureau has introduced the first ever paid advertising campaign to promote the decennial census. Young and Rubicam [Y&R] was awarded the contract for the advertising campaign. Y&R worked with several subsidiaries/subcontractors, who have experience creating advertising for racial and ethnic minorities, to design the program. The campaign was implemented during the 1998 dress rehearsals and underwent independent evaluations by Westat, Inc., to determine its effectiveness. Since then, Y&R and its subsidiaries have revised the campaign.

The advertising campaign received \$47 million for fiscal year 1999 and \$13 million as part of a fiscal year 1999 supplemental, and the Bureau has requested \$114 million for fiscal year 2000 for a total of \$174 million for the campaign. The English speaking base plan accounts for 51 percent of the spending, while in-language/in-culture overlays receive 49 percent of the funding. While it is critical to reduce the undercount rate, it has not been proven that those unlikely to participate will be motivated by the advertising. Additionally, it is the concern of some members of the subcommittee that rural communities will receive a disproportionately low percentage of the advertising budget, despite high undercount rates in many rural areas.

*b. Benefits.*—The subcommittee has investigated the campaign to obtain a better understanding of how the Census Bureau and Y&R have addressed the problems found in the dress rehearsals, how the advertising contract was awarded, and how the money will be spent in detail. The investigation has afforded the subcommittee the opportunity to oversee the spending of a large appropriation for

a process which is new for the Census Bureau and the advertising agency responsible for carrying out the task.

*c. Hearings.*—A hearing entitled, “Oversight of the 2000 Census: Examining the Census Bureau’s Advertising Campaign,” was held on July 27, 1999. Witnesses included: The Honorable Kenneth Prewitt, Director, U.S. Bureau of the Census; Ms. Terry Dukes, account managing director, Young and Rubicam, New York; Mr. Samuel J. Chisholm, chairman and CEO, the Chisholm-Mingo Group, Inc., and Mr. Curtis Zunigha, Census Advisory Committee member on the American Indian and Alaska Native Populations.

The hearing’s aim was to review the advertising campaign and ensure that money was being spent wisely. Bureau Director Prewitt explained the selection process for the advertising company, Young and Rubicam, and each of its divisions explained what they were doing to reach out to appeal to specific populations that would be counted by the census.

7. *“Oversight of the 2000 Census: Discussion of the Effects of Including Puerto Rico in the 2000 U.S. Population Totals,” September 22, 1999.*

*a. Summary.*—Since 1910, the Census Bureau has been enumerating Puerto Rico’s population as required by title 13. The methods and questionnaires used to enumerate Puerto Rico have always been different than the methods and questionnaires used in the United States. For the first time in Puerto Rico’s history, the Census Bureau will enumerate the island’s population using methods and questionnaires similar to what will be used in the United States. The change in how Puerto Rico is to be enumerated created a demand from Puerto Rican leaders to include Puerto Rico’s 2000 population count in the national population totals that will be produced by the Census Bureau in 2001. The change prompted Congressman José Serrano (D-NY) to propose language to be inserted into the fiscal year 2000 Commerce State Justice report that recognized the change of enumeration methods that will be used in Puerto Rico. The proposed language suggested that the Census Bureau include Puerto Rico’s count in all of the Census Bureau’s national data products. The suggestion of the inclusion of Puerto Rico’s population in the national totals caused concern for the subcommittee and the Census Bureau. The main concern of the subcommittee was the potential effect this change would have on national statistics. Furthermore, what was the Census Bureau’s position and would the change even be possible?

*b. Benefits.*—The oversight of the change in Puerto Rico’s enumeration methodology and its effects on national statistics allowed Congress to make an informed judgement about including Puerto Rico’s population in the national summary totals. Prior to this oversight, Congress and the subcommittee were unsure what the effects of the change would be on national statistics. The Census Bureau clearly stated their opposition to such a move, citing the difficulty of adjusting all prior national statistics to accommodate the addition of roughly 4 million people to the national population.

*c. Hearings.*—A hearing entitled, “Oversight of the 2000 Census: Discussion of the Effects of Including Puerto Rico in the 2000 U.S. Population Totals,” was held on September 22, 1999. Witnesses in-



cluded: The Honorable José E. Serrano, (D-NY); the Honorable Carlos A. Romero-Barceló, (D-PR); the Honorable Eni F.H. Faleomavaega, (D-AS); and the Honorable Kenneth Prewitt, Director, Bureau of the Census.

The hearing was designed to examine the effects of including Puerto Rico's population into national census totals. This prompted questions such as: How will the inclusion of Puerto Rico affect the numerous data products produced by the Census Bureau and other agencies?; what effects will the inclusion of data on Puerto Rico have on Federal policy decisions that primarily impact the 50 States and the District of Columbia? If we decide to include Puerto Rico, should we then include the population totals of other American Commonwealths, related territories, and possessions as well? Bureau Director Prewitt was opposed to adding the Puerto Rico population to national totals without more exploration: "For reasons of statistical consistency, the Census Bureau would hesitate unilaterally to establish a new denominator . . . Any fundamental change in this definition should be fully explored with stakeholders within and outside the Federal Government."

8. *"Oversight of the 2000 Census: A Midterm Evaluation of the Local Update of Census Addresses Program," September 29, 1999.*

*a. Summary.*—The most critical element of a successful census is a complete and accurate address list. The Census Bureau's address list, or "master address file," determines which households will receive a census questionnaire in the mail. The address list is also used to conduct non-response follow up for households that do not mail back the questionnaire. Without a complete address list for the country, the chances of all households being enumerated decrease sharply, resulting in a greater undercount. Congress realized this important connection and passed the Census Address List Improvement Act of 1994 (Public Law 103-430). The law directed the Census Bureau to form partnerships with local and tribal governments in the compilation of the census 2000 address list. The law also permitted the Census Bureau and the U.S. Postal Service to share address information for the first time. The local update of census addresses program [LUCA], was created to work with local and tribal governments in sharing address information.

The basic steps of the LUCA program consisted of the following:

1. Governmental units signed a confidentiality agreement with Census Bureau.
2. The Census Bureau sent materials such as address lists and maps to the participating local and tribal governments.
3. Governmental units were given 90 days to review the lists and maps, adding and deleting addresses according to the governmental units own records.
4. The governmental units then submitted all changes to the Census Bureau.
5. The Census Bureau then conducted a full canvass of all addresses to verify all submitted address additions and deletions.
6. The Census Bureau then informed governmental units which additions and deletions were accepted based on their review.

7. Finally, the governmental units were able to file an appeal with the Office of Management and Budget to rectify any final discrepancies. The LUCA program was conducted from January 1998 through December 1999.

*b. Benefits.*—The benefit of the subcommittee's oversight of the LUCA program was the planning of future Census Bureau address list compilation programs that involve local and tribal governments. The Census Bureau had never interacted with local governments on such a national level before. The oversight and evaluation of specific LUCA procedures will be of valuable use in the planning and development of future 2010 census address list programs. Local participation is essential in designing the address list because it is the local governments that are the most knowledgeable when it comes to where people live. Future census address list programs are more than likely to have local participation as a key ingredient. Overseeing how local governments and the Census Bureau best work together will ensure a future address list that is accurate and complete.

*c. Hearings.*—A hearing entitled, "Oversight of the 2000 Census: A Midterm Evaluation of the Local Update of Census Addresses Program," was held on September 29, 1999. Witnesses included: The Honorable Kenneth Prewitt, Director, Bureau of the Census; Mr. John Thompson, Associate Director for Decennial Census, Bureau of the Census; Mr. Preston Jay Waite, Associate Director for Decennial Census, Bureau of the Census; Mr. J. Christopher Mihm, Acting Associate Director of Federal Management and Workforce Issues, U.S. General Accounting Office [GAO]; Mr. Jack Maguire, planning/GIS manger for the city of Lexington, SC; Mr. George Pettit, assistant town manager of Gilbert, AZ; Mr. Don Rychnowski, executive director of the Southern Tier West RP&D Board; Ms. Jessica Heinz, Los Angeles City Attorney's Office; Mr. Michel Lettre, assistant director, Maryland Office of Planning.

The hearing provided an interim look at the progress of the LUCA program. At the time of the hearing, the Census Bureau was in the process of verifying additions and deletions in a nationwide address canvass. Some witnesses who testified said the LUCA program had been of a little help and that a post census local review would help them achieve a more accurate count, while others said the LUCA program worked well and was sufficient.

#### *9. The Rushed Census: Quantity Over Quality?*

*a. Summary.*—Numerous reports received by the subcommittee throughout decennial census operations from independent news media and persons involved with census operations indicate that in some parts of the country quality assurance measures were neglected in a push to finish operations more quickly. Instances in which the Census Bureau felt that the quality of data had been compromised resulted in the re-enumeration of nearly 100,000 households nationwide, the most significant of which was the re-enumeration of the entire Hialeah, FL Local Census Office. Subcommittee analysis of production and staffing data provided by the Census Bureau indicates that there are 15 other areas of the country where fraudulent or improper procedures may have been implemented.

*b. Benefits.*—Congress appropriated over \$6.5 billion for this decennial census—more than twice that invested in the 1990 census—to ensure that it be conducted as accurately as possible. Because of the stakes involved with the outcome of the census—apportionment of the House of Representatives, the drawing of political districts, the distribution of Federal funds—an accurate census is of utmost importance to the Nation. It is imperative that the Census Bureau use all of the resources available and do all that is necessary to get an accurate census count. If fraud occurred or quality control measures were ignored during the collection of census data, the quality of that data might have been compromised.

*c. Hearings.*—The status of census operations was the topic of oversight hearings held throughout the session. Concern with a “rushed census” was specifically raised during the hearing entitled, “Non-Response Follow-Up and Close Out,” held June 22, 2000.

*10. The American Community Survey [ACS]—A Replacement for the Census Long Form?*

*a. Summary.*—During the mailout/mail back phase of the 2000 census, concerns were raised that the 53 questions of the census long form are an unnecessary and inappropriate invasion of privacy by the Federal Government. As a result of privacy concerns, various Members of Congress introduced legislation aimed at limiting the scope of census questions or the penalties for not answering them, and the Census Bureau noted their plans for the American Community Survey [ACS]. The ACS, which is currently in testing, is planned as an ongoing survey, to be delivered nationwide to 30 million households over a 10-year period, that asks largely the same questions as the census long form.

*b. Benefits.*—As an ongoing survey, proponents of the ACS note that it will be able to provide more up-to-date economic, social, demographic, and housing information to the Nation’s data users each year. Additionally, because the ACS is delivered to 30 million households on a continuous basis—that is, at times other than during decennial census operations—it is hoped that public discomfort with answering the questions will be minimized. The financial benefits and/or shortcomings of the ACS are still being investigated.

*c. Hearings.*—A hearing entitled, “The American Community Survey [ACS]—A Replacement for the Census Long Form” was held July 20, 2000. The hearing provided a forum for Members of Congress, government officials, privacy advocates and data users, to comment on the American Community Survey as a replacement to the census long form.

*11. The Accuracy and Coverage Evaluation [ACE]—Still More Questions than Answers.*

*a. Summary.*—The Accuracy and Coverage Evaluation [ACE] is the Census Bureau’s statistical adjustment plan for the 2000 census. Plans to use a similar statistical adjustment in the 1990 census were discarded due to concerns regarding fundamental problems with its accuracy, legality, and its potential for political manipulation. Those same concerns still surround the Census Bureau’s ACE plans. On January 25, 1999, the Supreme Court ruled in the case of *Glavin, et al. v. Clinton, et al.*, that the use of sam-

pling to determine the population for purposes of apportionment of the U.S. House of Representatives is illegal.

*b. Benefits.*—Questions still remain regarding the Accuracy and Coverage Evaluation. The subcommittee remains concerned about the potential for political manipulation associated with the sampling plan, as well as its methodology, accuracy, and legality. Expert statisticians from across the Nation have likewise expressed their concerns with ACE plans.

*c. Hearings.*—A hearing entitled, “The Accuracy and Coverage Evaluation [ACE]—Still More Questions than Answers,” was held May 19, 2000 to determine Census Bureau plans for conducting the ACE.

## 12. A Transparent Census?

*a. Summary.*—With over \$6.5 billion invested in this decennial census, the subcommittee has made a significant effort to ensure that the proper oversight authorities have access to the Census Bureau’s operational information needed in order to determine that appropriated funds were properly used.

*b. Benefits.*—Given the funds appropriated for this decennial census and the stakes related to its outcome, it is imperative that the Congress and all other oversight bodies have full access to the information they need to carry out their obligations. Transparency is necessary to build public confidence in the census and is one of the qualities that, according to Census Bureau Director Kenneth Prewitt, make for a good census.

*c. Hearings.*—The subject of transparency and the access of oversight bodies to information from decennial census operations was raised in multiple subcommittee hearings. Oversight access to census operational plans, information, and data was the topic of a discussion with Director Kenneth Prewitt during “Oversight of the 2000 Census: Status of Bureau of the Census Operations and Activities” held March 8, 2000. The General Accounting Office updated the subcommittee on its findings and its access to census information in testimony during hearings entitled, “Oversight of the 2000 Census: Examining the GAO’s Census 2000 Oversight Activities,” held February 15, 2000; “Oversight of the 2000 Census: Status of Key Operations,” held March 14, 2000; and “Oversight of the 2000 Census: Mail-Back Response Rates and Status of Key Operations,” held April 5, 2000.

Shortly before a hearing entitled, “Non-Response Follow-Up and Other Key Considerations,” held May 11, 2000, the subcommittee was made aware of an e-mail from a Census Bureau Area Manager instructing Local Census Office Managers that they “can and must not share” a particular report “with any GAO representative.” The e-mail was largely the topic of the hearing, and both Subcommittee Chairman Miller and Subcommittee Ranking Member Maloney consequently requested on May 22 and May 18, respectively, that the General Accounting Office [GAO] investigate the matter to determine whether there had been any attempt by the Census Bureau to prevent Congress, the GAO, or any other oversight body from having access to information.

### 13. *Census Bureau Data Processing Systems.*

*a. Summary.*—The Census Bureau’s headquarters processing systems perform the key functions of controlling, managing, and processing census data.

In order to determine the nature and state of Census’ processing systems, Subcommittee Chairman Miller and Subcommittee Ranking Member Maloney formally requested that the General Accounting Office examine the systems.

*b. Benefits.*—Because of the central role the Census Bureau’s headquarters processing systems have in the success of census 2000, it is important that they be operating properly and without error. The General Accounting Office’s evaluation of the Bureau’s headquarters processing system found weaknesses in the process that indicate the potential for the occurrence of serious problems.

*c. Hearings.*—None.

### 14. *The Long Form.*

*a. Summary.*—Although this year’s census long form was shorter than its predecessors, it nonetheless was the subject of concern from those who felt that its questions are an unnecessary government invasion of privacy.

*b. Benefits.*—Voiced opposition to the long form was the greatest during the week prior to March 26, during which census forms were delivered by mail to the Nation’s households. There was approximately a 12 percent difference between the mail response rate for the long and the short form, continuing a general increase in the percentage of non-response for the long form, and representative of increased privacy concerns.

*c. Hearings.*—A hearing entitled, “Oversight of the 2000 Census: Mail-Back Response Rates and the Status of Key Operations” was held April 5, 2000. Another hearing entitled, “Oversight of the 2000 Census: Status of Non-Response Follow-Up” was held May 5, 2000, during which the subject of public concern over the long form was discussed.

## SUBCOMMITTEE ON THE CIVIL SERVICE

Hon. Joe Scarborough, *Chairman*

### 1. *Federal Reserve Board Retirement Portability.*

*a. Summary.*—Although most Federal employees are covered by either the Civil Service Retirement System [CSRS] or the Federal Employees Retirement System [FERS], the General Accounting Office [GAO] reported to the subcommittee in 1996 that Federal employees participate in 34 defined benefit retirement plans and 17 defined contribution retirement plans. In reviewing these plans, GAO noted that most of the defined benefit plans operate on “pay as you go” principles comparable to CSRS. That system, which covers Federal employees hired before December 31, 1983, had an actuarial accrued unfunded liability of \$512.4 billion as of September 30, 1996. By paying benefits from current revenues, the system provides inadequately for future benefit obligations, resulting in a growing gap between the annual retirement fund payments from employees and their agencies and the system’s long-term obliga-

tions. During fiscal year 1999, the Civil Service Retirement and Disability Fund is projected to pay \$43 billion in benefits, while collecting less than \$10 billion in revenues. This shortfall is accommodated annually by redeeming the Fund's assets (nonmarketable Treasury Special securities) using general fund receipts. Within the next 20 years, the annual CSRDF shortfall is projected to exceed \$100 billion annually, leaving future retirement benefits vulnerable. The Federal Employees Retirement System Act of 1986 reformed this system, creating a benefit package [FERS] that relies in part on a defined contribution component, the Thrift Savings Plan, that enables employees to provide for part of their future retirement benefit through investment accounts. These defined contribution accounts are portable, in the sense that the benefit vests with the employee as it accrues, and employees who leave Federal service are able to roll over these retirement funds into other employers' 401(k) plans. Alternatively, employees may leave the investment in the TSP to accrue until they become eligible to withdraw the funds.

The Federal Reserve Board operates both defined benefit and defined contribution plans that are counterparts of CSRS and FERS. Unlike the CSRDF, however, the Federal Reserve retirement investments are largely invested in market instruments (equities such as common and preferred stocks, government and corporate bonds, et cetera) that provide a pool of assets from which the Federal Reserve Board pays the benefits earned by its retirees. Where the CSRDF has an actuarial accrued liability, the Federal Reserve's retirement fund currently holds reserves that amount to approximately 150 percent of future liabilities. Although the Board's retirement program provides opportunities for Federal employees to gain credit for their service under FERS, Board employees who might otherwise desire to work for other Federal agencies are unable to gain FERS credit for service after January 1, 1988. This quirk in current law originated with the Federal Employees Retirement System Act of 1986, and the Federal Reserve Board reported seeking a statutory correction for 5 years.

Although the difficulties of the cash-flow accounting of Federal retirement programs have drawn increasing criticism in recent years, alternative funding mechanisms have not gained the support necessary for adoption. Indeed, in October 1998, when the administration sought congressional approval to liquidate assets that the Department of the Treasury acquired from the District of Columbia Retirement Board, the leading rationale for liquidation was to make the management of the District's retirement funds consistent with the administration of other Federal retirement programs. During a hearing on April 29, 1997, then-CBO Deputy Director Blum estimated that the long-term cost of the D.C. retirement liabilities could approach \$36 billion. When the Department of the Treasury liquidated the D.C. retirement assets, consistent with requirements of the Omnibus Appropriations Act of 1998, it effectively converted an income producing source of revenues that could have paid benefits for 8 to 15 years into receipts that were expended during the then current fiscal year.

*b. Benefits.*—This investigation of retirement portability and retirement funding enabled the subcommittee to address two con-

cerns. The research supported a hearing which led to House adoption of H.R. 807, a bill that resolves the retirement portability problem of Federal Reserve employees who transfer to other Federal agencies. The investigation provided further evidence that current funding of future retirement benefits is superior to the prevailing Federal practice of paying annuities out of current revenues.

*c. Hearings.*—The subcommittee conducted a hearing entitled, “H.R. 807, Federal Reserve Board Retirement Portability Act,” on February 25, 1999. Witnesses at the hearing were the Honorable Edward W. Kelley, Jr., Governor of the Federal Reserve System, and Mr. William E. “Ed” Flynn, Associate Director, Retirement and Insurance Services, Office of Personnel Management. Mr. Scarborough described the funding differences between the two systems, and noted the recurrent vulnerability of Federal retirement benefits in light of annual budget problems. He reviewed the advantages derived from independent funding sources, and asked the Federal Reserve Board about the potential vulnerability of the Federal Reserve’s surplus retirement funds if there were a future desire on the part of the Treasury, comparable to the vulnerability of the District of Columbia retirement funds. Although both Governor Kelley and Mrs. Norton distinguished the District’s liability that resulted in the Federal assumption of its assets and liabilities, a May 24, 1999, letter outlining the fiduciary responsibilities under section 401 of the Internal Revenue Code indicated that the Federal Reserve Board’s retirement funds could indeed be vulnerable to subsequent changes in law.

## *2. Long-Term Care Insurance for Federal Employees.*

*a. Summary.*—Long-term care [LTC] refers to a broad range of supportive, medical, personal, and social services designed for individuals who are limited in their ability to function independently on a daily basis. Long-term care needs may arise at any time due to an injury, chronic illness, or the effects of the natural aging process. Long-term care services can be provided in a nursing home, an assisted living facility, the community or in the home.

Longer life spans coupled with a steady increase in the elderly population as baby boomers (people born between 1946 and 1964) age will lead to a dramatic rise in the numbers of Americans who will need long-term care. Continuing increases in the number of two worker families, more single workers, and the increased geographic spread of family members means that there will be fewer family members available to provide care on an informal basis. As a result of these trends, long-term care will increasingly be provided in institutional settings or by hired personnel.

Most people believe that they are covered for long-term care by their health care plans, disability insurance, or by Medicare. Unfortunately, many learn the hard way—when they or a family member needs care—that they are not sufficiently covered and must pay for long-term care on their own. As nursing home costs rise faster than overall inflation and incomes, many more middle income baby boomers could become impoverished by nursing home costs and thus become eligible for Medicaid. To the extent that individuals purchase long-term care insurance, the burden of paying for long-term care will be shifted from Medicaid and other public programs

to private resources, and individuals will be able to protect their life's savings and other assets.

The subcommittee conducted a series of three hearings to evaluate legislative proposals to establish a program under which Federal employees and annuitants may purchase long-term care insurance. The first hearing explored the need for a program to provide long-term care insurance to Federal employees and annuitants, the second hearing focused on the eligibility of active and retired members of the uniformed services for the Federal program, while the third hearing examined unresolved issues such as the how the competition should be structured. The hearings addressed additional program issues, such as OPM's administrative role, options available for benefit package design, and whether policies should be written on a "guaranteed issue" basis. Prior to the first hearing, Chairman Scarborough introduced H.R. 602, the Civil Service Long-Term Care Insurance Benefit Act. H.R. 602 establishes a long-term care insurance program for Federal employees that relies on principles of market competition among multiple carriers. OPM would establish and administer the program through which Federal employees, annuitants, and eligible relatives could purchase long-term care insurance.

*b. Benefits.*—Long-term care is expensive. According to the American Council of Life Insurance Policy Research Department, by 2030 the average annual cost of a nursing home stay will increase from \$40,000 today to more than \$97,000 (in 1997 dollars). Long-term care insurance is an affordable way to protect against the risk of losing your savings to pay for long-term care services. As a large employer, the Federal Government can reach over 2.8 million workers and an additional 2.1 million retirees and survivors. Competition among carriers, group discounts, and volumes of sales will keep premiums affordable for Federal employees and annuitants. By offering long-term care insurance to individuals in their working years, the Federal Government can help encourage the purchase of this product at younger ages, when premiums are lower.

*c. Hearings.*—Three hearings were held to examine various aspects of the long-term care insurance issue.

(1) On March 18, 1999, Chairman Scarborough conducted the first in a three part series of hearings entitled, "Long-Term Care Insurance for Federal Employees," to address H.R. 602 and H.R. 110, both of which establish a program under which Federal employees and annuitants may purchase long-term care insurance.

Chairman Scarborough stated that achieving maximum participation would require affordable premiums and an ability to satisfy the varying needs of a diverse population. The success of the program would be measured by the number of participants in the Federal program. The chairman also noted that as one of the Nation's largest employers, the Federal program would serve as a model for employers throughout the country.

Three panels presented testimony to the subcommittee. The first panel consisted of Judy Kramer, a private individual with personal experience with the Medicaid spend-down process. The second panel provided the administration's views on H.R. 602 and H.R. 110 through the testimony of OPM Director Janice Lachance and William E. Flynn III, Associate Director for Retirement and Insur-



ance Services. The third panel consisted of representatives from the insurance industry, including the American Council of Life Insurance, the Health Insurance Association of America, and New York Life Insurance Co.

Judy Kramer gave a compelling account of her struggles with the current system of government assistance as a custodian for her aging parents. After a difficult spend-down process, her parents had to rely on Medicaid to cover the costs of their nursing home care. She testified to her desire to purchase long-term care for herself and her husband, a retired Federal employee, yet noted without a group discount it would be difficult to afford such protection.

Director Lachance provided the administration's views on H.R. 602 and H.R. 110. Director Lachance agreed that long-term care insurance for Federal employees is an idea whose time has come. The administration estimates that, initially, 300,000 eligible participants would enroll in such a program. OPM hopes to seek competitive bids for long-term care insurance that meets specified quality and price criteria in order to select the best contractor or contractors possible. As program administrator, OPM envisions its role to negotiate an optimum price for a benefit package it predetermines and that subsequently information on available options is broadly disseminated.

David Martin, on behalf of the American Council of Life Insurance, testified to the importance of a long-term care insurance program as an integral part of an employees' retirement security. Without this protection, retirement savings could be wiped out with just one long-term care episode.

Mr. Martin's testimony spoke to the varying long-term care needs of individuals. Based on ACLI's experience in dealing with large employers, it would be appropriate for the Federal Government to offer a variety of options. More than one carrier would have to participate in order to underwrite the risk inherent in such a large population. The Federal participant group, as defined by both H.R. 602 and H.R. 110, would be greater than any group underwritten by a single carrier today.

David Brenerman, on behalf of the Health Insurance Association of America, focused on the development of the long-term care insurance market. He noted the ability of companies to offer quality products at affordable premiums results from the abilities of companies to freely compete with each other in the marketplace, not because of the imposition of Federal or State requirements that would regulate premiums, hinder product development, and stifle market competition. He drew a distinction between a quality, affordable product and the danger of promising a low-cost plan with "rich" benefits and minimum underwriting requirements that would be financially unsustainable in the long run.

Ken Grubb provided the views of carriers who sell individual as opposed to group products. He raised concerns about the limitations in H.R. 602 and H.R. 110 restricting participation to group carriers only. He pointed out that several companies currently offer discounts on individual contracts or have specific individual LTC policies priced for offering on a group sponsored basis. Since the individual contracts are competitive with group coverage, Mr. Grubb

stressed they ought not to be excluded from consideration in the Federal program.

Mr. Grubb also highlighted the benefits of broad eligibility under H.R. 602, resulting in a broader, younger risk pool that would result in lower overall costs. Letting the marketplace dictate costs and benefits was key to both wide acceptance of the product and long term commitments from strong, reliable carriers.

(2) On April 8, 1999, Chairman Scarborough held the second hearing entitled, "Long-Term Care Insurance for Federal Employees," at the Naval Air Station in Jacksonville, FL. The purposes of the hearing were twofold. The subcommittee examined the benefit of including active and retired members of the uniformed services in any long-term care insurance program offered to civilian employees and retirees. The subcommittee also continued its examination of the scope of OPM's role in administering an LTC program and whether participating carriers would be required to offer policies on a "guaranteed issue" basis. Guaranteed issue refers to the practice of allowing individuals to purchase long-term care insurance without regard to their current health status and without answering any questions regarding their medical history. While of obvious benefit to at risk individuals, the costs of issuing policies on a guaranteed basis increase premiums substantially for all enrollees.

Chairman Scarborough reiterated his intent to include both active and retired members of the uniformed services in the long-term care insurance program at the appropriate time in the legislative process. He recognized the valuable service active duty service men and women have provided as employees of the Federal Government. The chairman also emphasized the need to build on past successes in crafting legislation and the importance of offering competitive benefits at affordable prices.

Two panels presented testimony to the subcommittee. The first panel consisted of representatives from the organizations representing active and retired members of the uniformed services including the Retired Officers Association [ROA], the National Military Families Association [NMFA], and the Retired Enlisted Association [REA]. The second panel consisted of witnesses on behalf of the Florida Health Care Association, the Health Insurance Association of America, and the Department of Defense.

Speaking for NMFA, Marilyn Cobb Croach provided testimony on the importance of affordable premiums. Few military families have the disposable income after the basics of housing, health care and food to afford a policy with high premiums, no matter how wise an investment they felt it might be. She also stressed that service members and their families should not be left out of a program that includes civilian employees and annuitants.

Of particular importance to the National Military Families Association was the inclusion of parents and parents-in-law as eligible to receive coverage. Since thousands of miles often separate military families from their parents, significant stress occurs when parents can no longer care for themselves. The high operations tempo facing the armed services often puts the burden of care for both sets of parents on the spouse, who is left with few alternatives. The safety net of an affordable long-term care insurance policy would

relieve families of the stress involved in caring for an elderly parent.

Larry Hyland testified on behalf of the Retired Enlisted Association. Mr. Hyland emphasized the equity of including the military in a program that will provide access to long-term care insurance at group rates for civilian employees. He highlighted the increasing anxiety among aging retirees who were “promised free health care for life,” by the Department of Defense. The ability to purchase long-term care insurance in the same program would ensure some financial security for retired members of the uniformed services and ensure quality health care is available.

Colonel Klyne Nowlin presented testimony on behalf of the Retired Officers Association. Colonel Nowlin spoke to the need for the subcommittee to remember those who served in the Armed Forces and who need comprehensive long-term care coverage for their remaining years. His testimony also provided an estimate of participation. Based on the national participation rate of 6 percent, TROA expects that participation for military members would be approximately 203,000 individuals. By broadening the participation base to include the military community, all participants could be the beneficiaries of reduced premiums or enhanced benefits packages. Without access to the government plan, it is feared that most service members would not be in a position to afford long-term care insurance.

Pat Freeman, Director of the John Knox Medical Center, provided testimony on the effect both affordable premiums and choice among a variety would have in encouraging the purchase of private long-term care insurance. The John Knox Medical Center has both nursing and assisted living facilities.

Ms. Freeman provided the subcommittee information on a recently released American Health Care Association survey on long term care. While female baby boomers expressed concerns about their retirement security, survey results indicated they were not saving adequately for long-term care costs that nearly three out of five of them will encounter. The overall conclusion drawn from the survey findings was the reality that an alarming gap exists in how baby boomers viewed their retirement needs. While 91 percent of baby boomers are covered by health insurance, many incorrectly believe either these policies or Medicare would pay for their long-term care needs. The study also highlighted that 41 percent of the women surveyed have either been forced to quit their jobs or take an extended leave of absence to provide long-term care to a family member or friend.

Ken Grubb provided information regarding the desirability and relative importance of both competition in price and variety of insurance products. Mr. Grubb discussed the importance of market competition in determining the availability, quality and affordability of long-term care plans. He also noted the need for the government to encourage personal responsibility for financing long-term care through the expansion of the private long-term care insurance market, including enhancement of the tax status of long-term care insurance. As a retired Air Force Reserve Colonel, Mr. Grubb felt the military should have the opportunity to obtain af-

fordable coverage to protect themselves against the financial ravages of a long-term illness.

Bill Carr, Deputy Director of Force Management Policy for the Department of Defense, provided testimony on the desire of the Department of Defense to have the military included in the list of eligible participants. Mr. Carr noted the willingness of the Department of Defense to study how the inclusion of uniformed service personnel in long-term care proposals might contribute to recruitment, retention and morale of military personnel. He also stated the Department of Defense was willing to work with the appropriate committees on the issue of long-term care insurance.

(3) On June 14, 1999, Chairman Scarborough held the third hearing, this time in Baltimore, to further discuss the various legislative proposals to establish a long-term care insurance benefit for Federal employees. Three bills referred to the subcommittee were addressed: H.R. 602, H.R. 110, and H.R. 1111.

Chairman Scarborough emphasized the importance of letting beneficiaries, not government officials, make their own long-term care decisions. The chairman also stressed the need for the legislation to allow for continued innovation of policies as the insurance industry continues to evolve and mature.

Two panels presented testimony to the subcommittee. The first panel consisted of two witnesses from AT&T and the Maryland Department of Health and Mental Hygiene, as well as a witness with the responsibility for caring for his elderly relatives. The second panel consisted of representatives of the National Association of Retired Federal Employees [NARFE], the Health Insurance Association of America, and Wright & Co.

Charles Yocum provided an account of his experiences with long-term care as custodian for his aging relatives. His depiction of his struggles with the current system of government assistance further emphasized the necessity of finding a workable solution to the financing of long-term care. He described himself as a member of the "sandwich generation." Although his children are not yet fully on their own, he now has the added responsibility of seeing to it that his parents and other elderly relatives are cared for. An attorney by profession, he noted the need to consult with an attorney specializing in "elder law" in order to understand the Medicaid spend-down process.

Dr. Georges Benjamin provided informative testimony regarding the State of Maryland's initiatives to control the growth of public long-term care spending through partnership with public and private stakeholders. Maryland is implementing the Outreach Empowerment Campaign for Individual Long-Term Care Planning. Under this initiative, various Medicaid waivers and programs have been proposed or are under development to manage public long-term care spending and provide home and community based services as alternatives to institutionalization.

Dr. Benjamin provided statistics regarding expenses for Maryland's Medicaid program. During fiscal year 1997, the program spent close to \$557 million on long-term care for recipients aged 21 or over, representing 22 percent of the total Medicaid budget. His testimony highlighted the need for private long term care insur-

ance to shift the burden of paying for long term care will be shifted from Medicaid and other public programs.

David Carver testified about the long-term care insurance program offered by AT&T to its employees. In 1990, AT&T began work on the planning phase of its long-term care program. The market at that time was considerably less developed than it is today. AT&T looked for its plan to achieve two goals: (1) assure financial protection by making the breadth of benefits extensive, and (2) permit employees to meet specific needs by offering significant choice of plan designs. AT&T anticipated a 5 to 7 percent enrollment rate for management, and a 2 to 3 percent enrollment rate for retired employees and occupational employees. AT&T has exceeded these targets, with 14 percent of management enrolled, 3 percent of retired employees enrolled, and 4 percent of occupational employees enrolled. Since inception of the program, AT&T feels awareness for this type of coverage has increased, and touted its continued good experience with lower than expected lapse rates.

The program was not without challenges, and AT&T continues to be frustrated by the ineligibility of children, the mandating of certain provisions in specific States, the difficulty in protecting the integrity of the plan as employee expectations exceed what can be offered due to underwriting requirements, and exclusion from Section 125 of the Internal Revenue Code.

Dave Cavanaugh provided information on products that offer the benefits of life insurance and long-term care insurance in a single policy. This "linked benefits" approach provides various options during the completion of the aging process, including long-term care coverage, a cash accumulation fund, death benefits, and, if necessary, a recapture of the dollars paid in premium. A key advantage to this type of policy is that the "gamble" aspect of paying premiums for long-term care insurance coverage is eliminated. The entire life insurance benefit can be paid as a tax-free benefit to a beneficiary or can be used to provide long-term care services.

Frank Atwater, president of the National Association of Retired Federal Employees, testified on the importance of long-term care insurance to meet its goal of assuring financial stability in retirement for government employees. Protecting retirement assets through careful financial planning means considering long-term care insurance as an option. Mr. Atwater commended the efforts of all members of the subcommittee to provide a long-term care insurance program.

While NARFE's goal is to ensure that annuitant underwriting standards are less burdensome than those offered in the private market today, Mr. Atwater did recognize that insurance carriers would be unlikely to participate in the proposed Federal program if they were forced to sell policies to senior citizens that are probable candidates for long-term care.

Ken Grubb, on behalf of the Health Insurance Association of America, emphasized the necessity of public education about the risks and costs of long-term care. Without understanding the problem, the public cannot be expected to understand the appropriate solutions. It is critically important for the public and private sectors to provide long-term care insurance education. By making the investment now and designing a financing arrangement our elderly

can live with today, our future retirees can protect their assets. Successful employer plans that have experienced high participation rates are those that have invested in multi-faceted education and marketing campaigns. The Federal Government's involvement, in partnership with carriers, is critical to the success of this program. Without substantial employer participation and commitment to educating employees about the importance of a long-term care insurance policy, the Health Insurance Association of America believes the Federal program will not be successful.

Mr. Grubb's testimony provided information regarding the costs of long-term care to employers. Long-term care related expenses cost employers \$29 billion a year in lost time, lost employees, and lost productivity. A Federal employee long-term care insurance program would be the clearest signal of government support for encouraging personal responsibility and planning for long-term care through avenues such as long-term care insurance. The sheer size of the Federal Government as an employer would assure an immediate and heightened awareness of long-term care financing among working adults.

### 3. OPM's FEHBP Policy Guidance for Fiscal Year 2000.

*a. Summary.*—In the spring of each year, OPM issues a call letter to instruct FEHBP carriers on the policies OPM intends to pursue for the next calendar year, including the benefits or coverages that will be mandated. These policies affect the FEHBP premiums that taxpayers and employees will have to bear.

In light of recent premium increases in the FEHBP, the subcommittee has become increasingly concerned that OPM's policies have both added costs to the program, e.g., by mandating benefits, and deprived carriers of the flexibility they need to develop innovative benefit packages to restrain premium increases, or even lower premiums. On average, FEHBP premiums rose by 8.5 percent in 1998 and 10.2 percent in 1999. Witnesses at previous hearings have warned the subcommittee to be wary of mandated benefits and over regulation of the program. Mandates carry with them both a visible cost, the cost of providing the mandated benefit, and a hidden cost. This hidden cost arises because carriers and consumers both are required to accept an increasingly standardized package of benefits, and carriers lose the freedom to use innovative and less costly alternative offerings. Blue Cross Blue Shield has testified at past hearings that mandated coverages have increased its program costs by about \$100 million per year.

In this year's call letter, OPM has identified seven "significant initiatives" for contract year 2000:

1. Imposing the so-called patient's bill of rights [PBOR];
2. Quality healthcare;
3. Family-centered care;
4. Customer service;
5. Provider contracts (fee-for-service plans);
6. The DOD/FEHBP demonstration project mandated by last year's defense authorization act; and
7. Y2K compliance.

The subcommittee examined the impact of these mandates and proposals on FEHBP premiums.

*b. Benefits.*—Information developed at this hearing will assist the subcommittee in evaluating the causes of FEHBP premium increases for the year 2000 and OPM's overall administration of the FEHBP.

*c. Hearings.*—The subcommittee conducted an oversight hearing entitled, "FEHBP: OPM's Policy Guidance for Fiscal Year 2000" on May 13, 1999. Witnesses were William E. Flynn III, Associate Director, Retirement and Insurance Services, OPM; Stephen W. Gammarino, senior vice president, Federal Employee Programs, Blue Cross Blue Shield Association; Dr. Joseph Braun, chief medical officer, George Washington University Health Plan; Bobby L. Harnage, Sr., president, American Federation of Government Employees.

Subcommittee Chairman Scarborough noted that the FEHBP is the largest employer-sponsored health benefits plan in the Nation, covering approximately 9 million individuals, Federal employees, retirees, and their families. Both employees and annuitants view it as one of the most important benefits the Federal Government provides for active and retired civil servants. He also pointed out that many experts consider the FEHBP a model employer-sponsored health benefits plan and a model for reforming Medicare. However, Mr. Scarborough also identified several disturbing developments in the direction of the FEHBP in recent years, the most visible of which has been the dramatic premium increases during the past 2 years. There has also been a trend toward more mandated benefits and increased standardization in the FEHBP. This development is contrary to the market orientation that has been the key to the FEHBP's success over the years.

Mr. Scarborough cited OPM directives to implement such portions of the President's so-called patients' bill of rights [PBOR] as information disclosure and the right to amend one's medical records as examples of mandates that can drive up carrier costs without providing a commensurate benefit to enrollees. On the other hand, allowing carriers the flexibility to design benefit packages can help restrain—or even reduce—premiums. He suggested that the subcommittee carefully examine OPM's policies by asking three questions: Does the policy address a real problem in the FEHBP? Will the directive increase premiums or lower the quality of health care for Federal employees or retirees? Will the directive be implemented in a reasonable manner?

Mr. Flynn testified that OPM is confident its policies will strengthen its ability to provide high quality, affordable care through the FEHBP. He contended that OPM has been able to implement the PBOR for less than \$10 dollars a year for each policyholder, although under questioning he admitted that this added over \$30 million a year to FEHBP costs. Mr. Flynn also identified further implementation of the PBOR as one of OPM's objectives for 2000, along with implementation of the DOD demonstration project (see section II. B.(5) below). Mr. Flynn asserted that OPM is concerned about costs and argued that FEHBP premium increases were driven by forces in the overall health care market. He also noted that in recent years there have been significant advances in the measurement of health care quality to identify techniques that produce healthy outcomes. OPM will do more to identify treat-

ments that are effective and cost efficient. Mr. Flynn also suggested that OPM will consider establishing a national prescription drug benefit for the entire FEHBP and “partnering” with other government agencies on the purchase of drugs for Federal employees and other beneficiaries of Federal programs.

Mr. Gammarino focused on several trends that he believes are adversely affecting the FEHBP: increasing administrative burdens on participating carriers; reduced carrier flexibility, movement away from a level playing field, and the standardization of health plans and health plan administration.

With respect to the impact of this year’s call letter on FEHBP costs and premiums, Mr. Gammarino cited the implementation of the PBOR as one likely to impact both. For example, he noted, the PBOR would require that patients have a right to obtain and amend their medical records. This could force Blue Cross Blue Shield to renegotiate its agreements with over 400,000 providers, agreements developed for the most part for its non-FEHBP commercial business, at tremendous cost without adding much value for patients and policyholders. He also pointed out that Blue Cross Blue Shield has no reason to become involved in the relationship between the physician and the patient with regard to medical records. In addition, he is concerned that some providers would leave the Blue Cross Blue Shield networks rather than renegotiate. Mr. Gammarino also emphasized that, though some have cited the FEHBP experience with the PBOR as proof that various “patient’s rights” legislation pending in Congress would not be costly, the PBOR is far less onerous than some of those bills.

OPM’s has failed to provide plans with sufficient flexibility to adapt their benefit packages to today’s trends, according to Mr. Gammarino. For example, while the growth in prescription drug costs outpace other cost trends, OPM has for 2 years refused to allow Blue Cross Blue Shield to introduce a cost sharing program. Consequently, its FEHBP plans has experienced “wastage and high utilization” encouraged by the availability of “free drugs” to some of its enrollees.

Mr. Gammarino also informed the subcommittee that Blue Cross Blue Shield understood that OPM was planning to use the FEHBP administrative reserve fund to offset carrier losses in the FEHBP/military retiree demonstration project, which he believes would be unlawful. In addition, he also noted that he was concerned about the administration’s continuing attempts to impose the Cost Accounting Standards on FEHBP carriers. Congress blocked the administration’s previous attempt to impose these standards on the FEHBP because, as OPM has acknowledged, they are incompatible with insurance industry accounting practices and would add no value to the FEHBP.

Mr. Harnage attacked OPM’s administration of the FEHBP, citing the rising premiums in recent years and its failure to allow unions to participate in negotiating contracts with carriers. OPM has offered to consult more closely with his union. But he contended that he was not looking for mere consultation; he wanted “full participation at the table.” He complained that instead of pledging to bring premium inflation under control, OPM merely repeats the insurance industry’s own “propaganda.” He also argued



that carriers should have to comply with the Cost Accounting Standards.

Dr. Braun testified that the American Association of Health Plans, on whose behalf he testified, had a close working relationship with OPM. He also warned that many of the provisions in bills pending before Congress and other recent mandates would micro-manage health plans and freeze medical practice in today's patterns. They would drive up both health care costs and the number of the uninsured. Several provisions in the PBOR, he noted, would be especially difficult to implement. For example, he argued that OPM's information disclosure requirements are overly broad and burdensome and that its transitional care mandates could impose unnecessary burdens on health plans. In general, Dr. Braun cautioned that administrative and benefit mandates may make the FEHBP unwieldy, more expensive, and less responsive to the beneficiaries' needs. He also raised concerns about OPM's data collection plans, specifically that OPM has underestimated its cost and that many plans may not have a sufficient survey pool to obtain statistically valid results. Dr. Braun also expressed concern about the qualifications of some of the non-physician providers that OPM is encouraging health plans to use. In order to promote affordability and improved access in the FEHBP, Dr. Braun said that OPM and the Congress must allow health plans the flexibility to meet the needs of Federal employees.

#### *4. FEHBP as a Model for Medicare Reform.*

*a. Summary.*—In March 1999, the National Bipartisan Commission on the Future of Medicare (Bipartisan Commission), co-chaired by Senator John Breaux (D-LA) and Representative Bill Thomas (R-CA), developed a set of proposals that would modify the financing of Medicare along lines shaped by the Federal Employees Health Benefits Program [FEHBP]. The Civil Service Subcommittee initiated an investigation of the similarities of the financing and benefit structure of the two systems to assess whether the FEHBP might serve as an appropriate model for providing more secure funding for Medicare.

Congress and the President have long recognized the challenges facing the financing and administration of Medicare. The Balanced Budget Agreement of 1997 introduced a Medicare+Choice component of the Medicare benefit package as an endeavor to rely more upon market forces than existing Medicare options. In earlier efforts to control escalating Medicare costs, the program moved beneficiaries away from fee-for-service medicine and toward managed care services. Since those reforms, HMOs have been charged with rationing care by limiting access to specialists and expensive services, and restricting options for consumers. While an increasing portion of treatment is provided through prescription pharmaceuticals, Medicare does not provide a direct drug benefit. As a result, some Medicare consumers consider themselves effectively denied treatments that are increasingly available for much of the population.

Escalating medical care costs are widespread in American society. As the Civil Service Subcommittee learned in previous oversight of the FEHBP, escalating costs stem largely from increased

use of prescription drug treatments by an aging population and increasing amounts of preventive care account for a significant portion of rising costs. Although drug treatments are cheaper individually than some alternative treatments that they replace (notably invasive surgeries), they enable longer life spans and the treatment requirements are often continuous. Longer term use of the drugs effectively increases the lifetime cost of treatment. In many cases, newer, more effective drugs are more expensive than the drugs that they replace, and research costs are integrated into pricing structures. As people live longer, lives that are extended by more effective pharmaceutical care eventually end as a result of chronic medical conditions—which can also be very expensive to treat.

Extended life spans are the largest single factor contributing to long-term population growth. Birth rates have declined since the 1960's, and they have declined most precipitously in developed nations. Immigration contributes to some population growth, but at significantly lower rates than the extended life spans of senior citizens. With an increasing portion of the population over age 65 (and usually retired from the workforce), the smaller working portion of the population must produce the revenue to support the retired population. Medicare, therefore, must develop more effective methods of identifying and delivering treatment while controlling costs.

In looking to the FEHBP as a model for ameliorating Medicare's financial challenges, the Bipartisan Commission developed a three-track approach, beginning with design of a premium support system, incorporating current improvements in the Medicare program, and moving to a more comprehensive solution to the solvency challenges facing Medicare. The Bipartisan Commission acknowledged that the separation between Part A and Part B Medicare benefits had become outmoded, and opted for an integrated benefit structure known as a "premium support" option. That structure would be administered by an appointed board, which would oversee one national, government-sponsored, fee-for-service plan, and a variety of other plans. The board would provide oversight of premiums and benefit structures in other plans, but providers would have the flexibility to design and administer systems of premiums, co-payments, benefits, and other factors. The board would also oversee periodic open seasons, and people would be able to shift between their current coverage and either higher or lower benefit plans depending on their current medical care requirements. The government would pay approximately 88 percent of standard option premium costs. Enrollees would bear the incremental costs of any "high option" benefits, and would pay the balance of premiums and any co-payment requirements and/or costs of non-covered services. For senior citizens with income less than 135 percent of poverty levels (currently \$10,568 for an individual and \$13,334 for a couple), premiums would be paid by the government, up to 85 percent of the national average of high option plans. States would continue current levels of effort, but additional costs would be paid from the Federal Treasury.

Participants would be required to pay 12 percent of the total cost of standard option plans. Beneficiaries would not be required to pay premiums for plans whose premiums remained below 85 percent of the national weighted average of standard option plans.

Beneficiaries would pay all premium costs above the national weighted average. However, in areas where the government's fee-for-service plan has no competition, beneficiaries would be responsible for no more than 12 percent of costs. The government would continue to fund medical education costs and other indirect expenses now attributed to the Medicare program.

The Bipartisan Commission also recognized the changing shape of Medicare and included several ideas to reform current health care coverage for senior citizens. It would extend a federally-paid prescription drug benefit to low-income seniors while adding prescription drug coverage to health insurance plans covering senior citizens. Additionally, the combination of Medicare Parts A and B would blend the current Part A deductible (\$768) and the Part B deductible (\$100) into a single medical cost deductible of \$440. To guard against unnecessary premium increases, Medicare would include a 10 percent coinsurance requirement for all services other than inpatient hospital stays and preventive care. Where higher co-payment requirements already exist, they would be retained. The proposals would revise eligibility for Medicare by conforming the minimum eligibility age for Medicare to the increasing age requirement for full Social Security benefits. Individuals between the age of 65 and the then-current Social Security eligibility age would be eligible to "buy-in" to Medicare without subsidy. People over 65 could also qualify for benefits if they met specific needs-based criteria, such as the inability to perform a range of activities of daily living. The Bipartisan Commission expected these reforms to slow the growth rate by 1 to 1.5 percent per year from the current long-term growth assumptions of 7.6 percent (intermediate) or 8.6 percent (the no slowdown baseline). Reducing this growth in Medicare costs will improve the system's financing, but not resolve the long-term fiscal challenges. Improvements in the technology of health care will affect the system substantially, but in mixed ways. As Federal Reserve Chairman Alan Greenspan told the Bipartisan Commission, effective improvements in medical care could both reduce the per-unit costs of treatment and result in an expanding demand for services.

Over the past 15 years, the Congressional Research Service has shown, the annual increase in FEHBP premiums has been lower than annual growth in medical expenditures. In part, this control of costs is achieved by FEHBP participants' flexibility in moving between plans and adapting their health insurance coverage to meet changing needs. Using a variety of co-payments, managed care, preferred provider discounts, and other market-oriented devices, carriers develop flexibility in designing benefits. That flexibility appears to be diminishing as the Office of Personnel Management mandates additional benefits and increasingly appears to standardize benefit packages. Linking responsibility for payment to the consumption of services provides the greatest array of incentives to both producers and consumers to act responsibly. For providers, the market provides incentives to keep costs as low as possible, to avoid pricing themselves out of the market. Cost reductions can be achieved through refinement of procedures, introduction of new technologies, or other innovations in the types of products, services, and procedures available. Health care delivery sys-

tems that guarantee providers the full cost of services, or establish a flat rate per activity, significantly reduce incentives to cut costs below those levels.

At the same time, the absence of payment requirements on beneficiaries reduces incentives to control inefficient, or wasteful uses. Some observers have noted that the availability of prescription drugs through mail order at no cost (as provided by some FEHBP carriers) effectively enables beneficiaries to accumulate additional medication beyond current needs. A system of copayments, even minimal fees, provides some incentive to beneficiaries to direct their use of health care to essential services. In the absence of effective incentives to reduce costs—on the part of both producers and consumers—other methods of allocating care, such as rationing, inevitably are substituted for market forces.

*b. Benefits.*—This oversight of the FEHBP and assessment of the Medicare program provided a broader understanding of factors affecting the costs and services available to address medical care concerns. It provided insight into the dimensions of the FEHBP that are widely admired and respected in the health care community, and provided insight about changes in the FEHBP that could jeopardize the market dynamics that have been effective in controlling costs.

*c. Hearings.*—On May 22, 1999, the subcommittee conducted a field hearing entitled, “The Federal Employees Health Benefits Program as a Model for Medicare Reform,” assessing the Bipartisan Commission’s report and to consider factors in the FEHBP that might contribute to easing future cost pressures affecting medical care. Chairman Scarborough conducted the hearing, with Mr. Mica attending. Witnesses included Mr. Jeffrey Lemieux of the Progressive Policy Institute, who served as staff economist for the National Bipartisan Commission on the Future of Medicare, Ms. Grace Marie Arnett, president of the Galen Institute, and Ms. Becky Cherney, president of the Central Florida Health Care Coalition. The hearing was held in Sanford, FL.

Mr. Scarborough explained the cost factors and limitations on services increasingly affecting the Nation, with intense effects on the Medicare program. Mr. Lemieux described the multiple factors that were involved in reaching the majority perspective in the Bipartisan Commission report, and indicated that related issues would be facing the Congress in the coming session. He noted that, more than a cost factor, developing a competitive environment will require major cultural change within the organization responsible for administering the Medicare program. As Ms. Arnett reported, doctors, medical institutions, nurses, and other providers are experiencing increasingly frequent administrative challenges to their medical decisions. These decisions to reduce or withhold payments for services transfer care options from doctors and patients to administrative personnel. Ms. Cherney emphasized the importance of recent professional training in effecting better treatment, and described effectively the difficulties that patients encounter when confronting the administrative procedures associated with justifying medical services under current Medicare processes. The Central Florida Health Care Coalition compiles information about the performance of different medical facilities, and reports on changes in

treatment practices and results. The panelists concurred that the aging of the population and the research and technology necessary to improve services would ensure that medical care costs would continue to increase. They agreed, however, that competitive factors and improvements in treatments will strengthen the ability to control the escalation of these costs in the coming years. Ms. Cherney noted that, as a result of the long-term commitment to medical education, we now have a relative glut of doctors, and these skilled professionals are an important factor in efforts to control cost escalation.

*5. Implementing the FEHBP Demonstration Project for Military Retirees: A Good Faith Effort or Another Broken Promise?*

*a. Summary.*—Congress established a limited demonstration project in the defense authorization act for 1999 (Public Law 105–261, § 721) to test the Federal Employees Health Benefits Program [FEHBP] as an option for dealing with the numerous problems plaguing the military health care system, including TRICARE. Under that project, up to 66,000 beneficiaries, primarily Medicare-eligible retirees and their families, in 6–10 test sites around the country are permitted to enroll in the FEHBP in lieu of military health care for a period of 3 years, beginning in 2000. The legislation also provided for the sale of assets to pay for the demonstration project.

The subcommittee, which has jurisdiction over the FEHBP, has been actively involved in this issue since the 104th Congress. During that period, the subcommittee has considered a number of legislative proposals, including the provisions establishing this project, to offer various military beneficiaries the opportunity to participate in the FEHBP. In stark contrast to TRICARE, the FEHBP, which covers civilian employees, retirees, and Members of Congress, is widely acknowledged to be the model employer-sponsored health care benefit. It is a market-oriented program that has historically allowed participants to obtain high-quality health care at affordable prices.

The subcommittee conducted this oversight hearing to determine whether the Department of Defense [DOD] and the Office of Personnel Management [OPM] were implementing the demonstration in the manner that Congress intended. The subcommittee found that actions of these two agencies have threatened the viability of the demonstration project. These actions include DOD's failure to adequately fund the project, the administration's refusal to use the funds Congress made available to pay for the project for that purpose, designing the site selection process to ensure a project much smaller in size than Congress intended, unsatisfactory efforts to educate potential participants about the project, and OPM's plans to use fees Congress intended to offset the agency's own expenses for the legally questionable purpose of subsidizing potential carrier losses.

*b. Benefits.*—The information developed by the subcommittee through this examination will assist in evaluating the initial experience under the demonstration project and to develop corrective legislation, if necessary.

*c. Hearings.*—"Implementing the FEHBP Demonstration Project for Military Retirees: Good Faith Effort or Another Broken Promise?," held June 30, 1999. Witnesses at this hearing were: Representatives Randy "Duke" Cunningham (CA) and James P. Moran (VA); Delegate Carlos Romero-Barceló (P.R.); Sydney Talley Hickey, associate director, Governmental Relations, National Military Families Association; Charles C. Partridge, Col. (U.S. Army, Ret.), legislative counsel, National Association of Uniformed Services; Kristen L. Pugh, deputy legislative director, the Retired Enlisted Association; Stephen W. Gammario, senior vice president, Federal Employee Program, Blue Cross Blue Shield Association; William E. Flynn III, Associate Director for Retirement and Insurance, OPM; and Rear Admiral Thomas P. Carrato (USPHS), Director, Military Health Systems Operations, TRICARE Management Activity, Department of Defense.

Subcommittee Chairman Scarborough emphasized that providing high-quality health care to military retirees is a high priority issue for him because he represents more military retirees than any other Member of Congress, and he has seen first hand the problems that plague TRICARE. He recalled that he worked hard to persuade doctors in his district to join the TRICARE system only to see them leave again. Mr. Scarborough also said that it is unconscionable that military retirees, and only military retirees, are effectively expelled from their employer's health benefits program after a lifetime of dedicated service.

Because of the way in which DOD and OPM have implemented the congressionally mandated demonstration program, however, Subcommittee Chairman Scarborough expressed his concern that many retirees will believe the Federal Government has broken yet another promise to them. Among other problems, he cited DOD's decision to limit the number of eligible beneficiaries living in the test sites to about 69,000. Unless almost all of these eligibles enroll in the FEHPB, which, as Mr. Scarborough noted, most believe unlikely since this is a temporary program, the demonstration project will be considerably smaller than Congress intended. He also pointed out that the small size of the project may drive up premiums for military retirees and deprive them of the wide range of choices available to other Federal retirees and employees.

As chairman of the subcommittee, Mr. Scarborough pledged that he would continue to work with other Members, military organizations, and all other interested parties to improve the quality of health care available to military families and military retirees.

Representative Cunningham described the sacrifices military personnel and their families are called upon to make, including frequent moves around the country and deployments to foreign lands. He also noted that the armed forces are having a difficult time retaining personnel, citing retention rates of only 23 percent for enlisted personnel and only 33 percent for pilots. He explained that the major reason for these low rates is the frequency of deployments, which separate servicemen and women from their families. But the second most important reason, he testified, is the erosion of promises that were made to those who joined the military, including the promise of health care for life. He cited the example of General Krulak, who retired as Commandant of the Marine Corps

on the day of the hearing, to illustrate how the Federal Government treats military retirees and civilian retirees differently. While General Krulak is not guaranteed access to his employer's health care program after 30-years of dedicated service, including service in wars, at age 65, Mr. Cunningham noted, a 65-year old civilian secretary who worked in the General's office would be able to participate in the FEHBP, as would a Member of Congress. This is wrong, he said; military retirees should have the same access to benefits as retired civilians and Members of Congress.

Even though he sponsored legislation that established the Medicare subvention demonstration program for military retirees, Representative Cunningham characterized that program as a "band-aid." To provide a level playing field for military veterans, Representative Cunningham said he, Representatives Moran and Watts, and others have sponsored legislation to expand the FEHBP demonstration project nationwide and remove the caps on participation. In response to questioning from the subcommittee chairman, Mr. Scarborough, Mr. Cunningham said the most important thing Congress could do to improve the demonstration project was to pass either his bill or one sponsored by Mr. Moran.

Representative Moran testified that he has been involved in this issue for 4 years because of the difficulties his constituents encountered finding access to quality, affordable health care after they retired from the military. Mr. Moran noted that other solutions, such as Medicare subvention, are unsatisfactory because so few military retirees now live in the catchment area of a military treatment facility; the FEHBP, in contrast, is available everywhere in the Nation. In his view, Congress and the Department of Defense really should be expanding the FEHBP now to the larger military retiree population, and he characterized the demonstration project as an attempt to bide time, avoid tough decisions, and save money. Consequently, he has introduced legislation to open the FEHBP to all Medicare-eligible retirees.

Nevertheless, Mr. Moran said he is pleased to see DOD moving forward with the project, but worries that its limited scope and funding will prevent Congress from obtaining a true measure of the FEHBP's effectiveness for military retirees. In order to achieve a worthwhile demonstration of the FEHBP, Mr. Moran said, DOD and OPM would have to ensure that the actual enrollment is as close to the 66,000 that Congress intended. He also urged expanding the demonstration project beyond its current sites. Representative Moran also emphasized that Congress must insist on adequate funding for the project, pointing out that it is incumbent on DOD to find the necessary offsets since it decided not to use the proceeds of selling assets to fund the demonstration as Congress intended. Finally, Mr. Moran urged the subcommittee to continue to conduct oversight on the project.

Delegate Romero-Barcelo testified that he was very pleased that Puerto Rico was chosen as a test site for the FEHBP. He emphasized that military retirees have devoted a substantial part of their lives to defending the Nation and that the Nation must keep its promises to them. Puerto Rican veterans have particular difficulty in obtaining health care, according to Mr. Romero-Barcelo: Veterans Administration facilities on the island are inadequate and the

only full service military treatment facility is in a remote location, an hour and a half from retirees in San Juan and 3 to 4 hours from retirees on Puerto Rico's western coast. These distances are unacceptable in medical emergencies, he noted, and impose unacceptable medical risks.

Mr. Romero-Barcelo believes that many of the 9,900 eligible retirees in Puerto Rico will enroll in the FEHBP if the program is publicized adequately. (He plans to publicize it as much as he can.) He also believes Puerto Rico will provide a good test of the FEHBP's benefit for military retirees since so many are in remote locations and have limited proficiency in English.

The representatives of the military organizations (Mrs. Hickey, Col. Partridge, and Ms. Pugh) were very critical of the way in which DOD and OPM have implemented the program. They all agreed that DOD's decision to limit the number of eligible beneficiaries living in the sites to slightly more than the maximum number of enrollees permitted in the project jeopardizes the test. They were all also concerned that certain decisions by OPM might drive premiums higher than they are in the FEHBP. And they all believed that additional test sites should be added, which would not require additional legislation. They also were concerned that DOD's marketing efforts will not sufficiently educate eligible beneficiaries about the FEHBP.

In addition, Mrs. Hickey noted that one result of DOD's decision to choose sites by drawing them from a "bingo drum" was to include two sites, Dover, DE and Puerto Rico, that are not representative of the rest of the country. (Dover, the only site that also includes a subvention project, because of the small number of eligibles in it; Puerto Rico because its FEHBP enrollment pattern is very different than in other parts of the country.) She estimated that only around 20,000 eligibles would actually enroll. She also pointed out that while the military groups and many in Congress wanted a broader test, DOD wanted a limited test. Therefore, she suggested that DOD should "bend over backwards" to ensure that the test is as fair and representative as possible.

Col. Partridge testified that not only are military retirees the only Federal employees who lose their health benefits at 65, but DOD has no plan for covering all beneficiaries by a date certain. He explained that TRICARE does not meet the needs of all beneficiaries, saying that, "In addition to disenfranchising Medicare-eligibles, the reimbursement rates, the red tape, and the bureaucracy have not been solved." He also recommended that Congress enact legislation to modify the demonstration project to allow those who enroll in FEHBP to continue to use military treatment facilities, with those facilities billing FEHBP carriers, and to allow those who enroll after the first year have a full 3 years in the program.

Ms. Pugh emphasized that OPM must finalize operational regulations, particularly regulations to give carriers access to their own reserves, quickly so carriers can set rates and military groups can educate their members. Otherwise, she warned, carriers will have to set artificially high rates and OPM effectively will have created a system different than the FEHBP for the demonstration project. She also noted that by artificially restricting the number of eligi-



bles in the test sites, DOD has increased the risk of adverse selection.

Mr. Gammarino testified that the Blue Cross Blue Shield Association strongly supports the demonstration project and is committed to helping it succeed. Nevertheless, he criticized both DOD's decision to establish such a low ceiling on the number of eligibles in the demonstration site and OPM's proposal to use the FEHBP administrative fund to offset potential carrier losses under the project. Blue Cross Blue Shield actuaries have estimated that only around 20,000 eligibles will actually enroll in the FEHBP under the current project design. He noted that this estimate was based on an analysis of the health care alternatives available to beneficiaries in the test sites, the cost of such alternatives, and the fact that the demonstration project is a temporary, 3-year program. In his view, to reduce the risk of adverse selection the project should be expanded to provide a realistic opportunity to attract 66,000 actual enrollees and that it be done in a way that ensures the enrollees will truly be a cross-section of the overall population of eligible beneficiaries.

Mr. Gammarino said that OPM's proposal to use the FEHBP's administrative reserve fund to subsidize any losses carriers may incur in the demonstration project was illegal and could distort the project's FEHBP market. He explained that in Blue Cross Blue Shield's view, there is no statutory support for this scheme. The administrative reserve is intended to offset OPM's expenses, not carriers." In addition, Blue Cross Blue Shield believes this scheme could introduce a "moral hazard" that threatens the basic structure of the FEHBP as a market-based program and, though limited now to the demonstration project, would establish a "harmful precedent" for the FEHBP as a whole. This "moral hazard" arises because OPM's proposal frees carriers from the discipline of sound actuarial rating practices by shifting the risk of loss from the carrier to OPM. According to Mr. Gammarino, Blue Cross Blue Shield provided OPM with its views and legal opinions on this issue. He also testified that, if necessary, Blue Cross Blue Shield would take legal action to challenge OPM's scheme in order to protect the integrity of the FEHBP market.

Both Chairman Scarborough and Ranking Member Cummings asked whether the demonstration project had been designed to fail. The witnesses' responses raised troubling questions about the administration's good faith. Col. Partridge noted that there was substantial "institutional opposition" to the project within DOD. As he described it, military surgeons general "like to have their sheep pen with all the military retirees in that sheep pen" so they can "reach in there and pull out the ones they want for their training programs" while the rest are left to get care where they can. Permitting military enrollees to join the FEHBP would reduce their ability to do this. Ms. Pugh stated that the demonstration project was "on a one-way train to failure right now," citing the lack of guidance from OPM and DOD that prevents military groups from educating their members. She also noted that some members of the Retired Enlisted Association were willing to move to make themselves eligible for the FEHBP. (Chairman Scarborough said he is

familiar with this phenomenon because many retirees live in one Pensacola zip code in his district to be close to the Navy hospital.)

Admiral Carrato described the steps DOD has taken to select test sites and implement the demonstration project. He also defended DOD's decision to limit the overall population of eligible beneficiaries to slightly more than the maximum number permitted to enroll in the project, identifying two factors that influenced this decision. First, he asserted, DOD did not want to establish an "artificial cap" on enrollment. Second, he argued that Congress did not fund the demonstration project. According to his testimony, DOD estimated that a project in which 66,000 eligible beneficiaries actually enrolled in the FEHBP would cost over \$130 million a year. However, he noted that the President's budget for fiscal year 2000 allocated only \$79 million for this demonstration project and two others. Under questioning from Subcommittee Chairman Scarborough, Admiral Carrato disputed the enrollment estimates of the military groups and Blue Cross Blue Shield, saying that DOD expected about 83 percent of the eligible beneficiaries in the demonstration sites to enroll, not just 20,000. However, under additional questioning by Mr. Scarborough and Ranking Member Cummings, he admitted that the President's budget only allocated \$62 million for this project. Admiral Carrato attempted to dismiss the discrepancy between this figure and the \$112 million that would be needed to fund DOD's anticipated 83 percent participation rate by pointing out that the President's budget covered only three quarters of calendar year 2000. However, when converted to a calendar year expenditure of about \$77 million, it is apparent that the allocation in the President's budget will not fund a project of the size DOD says it anticipates.

In addition, Admiral Carrato described the marketing campaign DOD will employ to familiarize eligible beneficiaries with their options under the FEHBP. The campaign will include mailings, establishing an 800 number, and health fairs in November.

Although Admiral Carrato denied that DOD had designed the demonstration project to fail, his written statement reflected DOD's deep-rooted hostility to offering the FEHBP to military beneficiaries. In that statement, he painted the FEHBP as prohibitively expensive and a threat to military medical readiness. He contended that DOD has a "sincere and enduring responsibility for the health of" military retirees, and said TRICARE will remain incomplete until it has the capacity to enroll retirees over 65.

Mr. Flynn testified that OPM and DOD have worked together very well on the demonstration project and that OPM has worked extensively with carriers and representatives of military organizations. He believes this work will lead to an effective roll out of the demonstration project. Mr. Flynn also said that the health care delivery system in the demonstration project has been tailored to mirror the FEHBP, with departures from FEHBP practices only where required by the nature of the demonstration project. Based upon OPM's preliminary negotiations with carriers, Mr. Flynn forecast that military retirees in the project will have an adequate number of health care plans to choose from; the number of choices in each site will range from 8 to 15, with an average of 11. He also defended OPM's proposal to use the administrative reserve to protect

carriers against losses in the project. Without such mitigation of risk, he argued, because of the demonstration projects structure and temporary nature, premiums for all carriers could not be kept competitive. He also contended that OPM's scheme complied with the law.

*6. FEGLI: New Options for Federal Employees.*

*a. Summary.*—The 105th Congress passed the Federal Employees Life Insurance Improvement Act (Public Law 105–311), which made numerous improvements to the Federal Employees Group Life Insurance program [FEGLI] and directed OPM to conduct a study to determine whether Federal employees are interested in group universal life, or group variable universal life, or additional voluntary accidental death and dismemberment insurance. Among the improvements enacted, were the following:

- a. eliminating maximum limitations on Basic life insurance and on additional Option B coverage (which permits employees to purchase at their own expense additional insurance up to 5 times their salary);
- b. increasing the maximum amount of insurance that employees may purchase on spouses (from \$5,000 to \$25,000) and children (from \$2,500 to \$12,500); and
- c. permitting employees to carry unreduced Option B insurance on themselves and Option C coverage for their families into retirement at their own expense. [Previously, Option B and Option C coverage was automatically reduced by 2 percent per month beginning at age 65 (or at retirement, if later) until coverage was eliminated.]

Coincident with implementing the improved benefits required by the Federal Employees Life Insurance Improvement Act, OPM also adjusted FEGLI premiums and created three new age brackets for Option B and Option C coverage. OPM has periodically adjusted FEGLI premiums as circumstances change. In light of lower mortality rates in most age groups, OPM has reduced premiums for basic insurance. Premiums for Options B and C have also been reduced for most age groups. Premiums have risen, however, for some older employees and annuitants. (For example, Option B monthly premiums for those age 55–59 have increased from \$0.650 per thousand to \$0.672.)

Because increased levels of coverage under these options can be carried into retirement and former employees may now also continue Option B for 3 years after separating, OPM has created new age brackets for them. Previously, there was a uniform rate for everyone 60 years of age or older. Under the new rate structure premiums are scheduled to increase as individuals move through the three new age brackets of 60–64, 65–69, and 70 and over. The creation of these rates has generated considerable controversy among older employees and annuitants, including Federal judges. Because of this controversy, OPM has postponed the application of the new brackets.

The purposes of this hearing were to examine OPM's implementation of the improvements mandated by law, to review OPM's studies of employee interest in new insurance products and proposals for such products, to examine new insurance products that

might be offered to Federal employees, and to examine the new FEGLI rates established by OPM.

*b. Benefits.*—The information developed through this oversight of the FEGLI program will assist the subcommittee in evaluating legislative proposals to offer new insurance products to Federal employees. It will also assist the subcommittee in evaluating the impact of OPM's new rates on various employees and retirees and to assess any legislative proposals to deal with the problems created by the new age brackets.

*c. Hearings.*—The subcommittee conducted a hearing entitled, "Life Insurance: New Options for Federal Employees," on July 22, 1999. Witnesses at the hearing were: William E. Flynn III, Associate Director, Retirement and Insurance Services, OPM; Michael J. Bartholomew, senior counsel, American Council of Life Insurance; Dennis J. New, vice president, Special Risk Products & Markets, Unum/Provident Life Insurance Co.; and G. Jerry Shaw, general counsel, Senior Executives Association.

Subcommittee Chairman Scarborough noted that currently the Federal Government only offers its employees term life insurance and accidental death and dismemberment through the FEGLI program. Insurance companies, however, are now offering a variety of flexible products worthy of consideration, and, he pointed out, with the likelihood of a more mobile workforce in the future, it would be logical for the Federal Government to follow the lead of private employers in offering these new products to its workforce. He also observed that the current FEGLI program is essentially a self-insured program that has been administered since its inception in 1954 by one company, MetLife. This was a pertinent fact to consider in evaluating additions or alternatives to the existing FEGLI system.

Mr. Flynn described OPM's actions in implementing the changes to FEGLI mandated by Public Law 105-311, including conducting a statutorily required open season for FEGLI from April 24 through June 30, 1999. OPM provided extensive information to employees about the improved benefits and their new options under the FEGLI program, and interest in the open season among them was high. However, Mr. Flynn also reported that OPM will not know the results of the open season until September 2000. He noted that while FEGLI premiums for most age groups went down, OPM re-evaluated its existing premium structure in light of the new opportunities for retirees under the new law. As a result of this review, OPM created new age bands covering those 65-69 years old and those 70 or older. Many seniors objected to the new, higher rates they would be required to pay. The premium for individuals at age 70 doubled, which Mr. Flynn characterized as creating an unforeseen but significant burden on older employees. Accordingly, OPM has postponed these increases until at least April 24, 2001 while it examines alternative approaches, including new legislation, and it has also advised retirees over 65 how they may ameliorate the rate increases that have already gone into effect.

Mr. Flynn also reported that OPM's survey revealed significant interest in group universal insurance and other new insurance products. The administration is currently considering offering these

new products, and Mr. Flynn hoped their internal discussions would be completed by the end of the fiscal year.

Mr. Bartholomew testified on behalf of the American Council of Life Insurance, whose members account for about 80 Representative of the group insurance market. He described group universal life as a combination of traditional group term insurance and a cash accumulation feature. Group variable insurance is similar, but it provides employees with the opportunity to choose to invest the cash value of the insurance among a variety of investment options. These policies help employees secure financial protection in the event of premature death and enhance their retirement planning.

ACLI's data show that in 1997 its member companies issued group universal insurance with a face amount of \$77 billion, and sold nearly \$26 billion of group variable universal. Studies by other organizations also show that more and more private employers are offering these products to their employees. One such study shows that 76 percent of employers with 1,000 to 5,000 employees offered such products. Since 1994, there has been a steady increase in the amount of group universal life insurance sold. Mr. Bartholomew said group universal and group variable universal are becoming more popular options for employees looking for alternatives to other forms of insurance. ACLI supports Congress's efforts to expand the insurance options for Federal employees by offering additional life and accidental death policies.

Mr. New testified that many of the Fortune 1,000 offer a stand-alone voluntary accidental death and dismemberment [AD&D] policy and that employees today want more choices in the insurance benefits offered to them. Voluntary AD&D also fills a real need, covering accidents 24 hours a day, on and off the job, and around the world. Statistics cited by Mr. New show that accidents are the leading cause of death for those under 38 and the fifth leading cause of death overall; nearly 9 out of 10 deaths occur away from the job. AD&D can also be combined with a number of other benefits, such as paralysis benefits, home alteration and vehicle modification benefits, and travel assistance. It also requires no medical underwriting. Consequently it has been very popular with employees. Mr. New testified that in his company's experience between 35 percent to 50 percent of employees enroll in employer-sponsored AD&D plans.

Mr. Shaw testified that although FEGLI has served many Federal employees well over the years, during the recent open season many private companies took the opportunity to educate employees on alternatives to FEGLI. Consequently, employees often found they had better options available from private companies in the open market. Some learned that they could purchase the same or better coverage at lower rates from private insurers, while others discovered additional products like group universal life insurance linked to long-term care insurance. He pointed out that his firm issues a free weekly on-line newsletter that is read by over 50,000 Federal executives and managers. Many of them contacted his firm to complain that they had been lulled by the Federal Government's sponsorship of FEGLI into erroneously believing the government had negotiated the lowest possible rates for them. He emphasized that the members of the Senior Executives Association want

choices. He noted the controversy in congressional consideration of long-term care insurance over whether only one company or several would be permitted in the Federal program. The SEA would support an approach to both long-term care insurance and additional life insurance offerings that offers employees maximum choices and competition among carriers, citing the FEHBP as a successful model.

#### *7. Reauthorization of the Office of Government Ethics.*

*a. Summary.*—The authorization for the Office of Government Ethics expired on September 30, 1999. Although the Office is a small agency, the functions it performs are important in preserving impartiality and integrity in government operations. Based upon its examination of this issue, the subcommittee found that on the whole, the Office has performed its mission very well.

Testimony received at this hearing also reinforced the importance of clarifying the definition of “special government employee” in 18 U.S.C. § 202. The statutory definition of a special government employee has not been materially revised since its enactment in 1962. Under it, a special government employee is someone who is retained or appointed to perform duties on a full-time or part-time basis with or without compensation for no more than 130 days within 365 consecutive days. This definition does not give adequate notice of who is covered by the definition and therefore covered by conflict-of-interest and financial-disclosure laws. Guidance issued by the Office of Government Ethics and the Department of Justice focuses on whether the advisor is in fact performing a Federal function, but there is no functional test in the statute. Neither the current law nor this Federal agency guidance adequately covers the various situations in which informal advisers in the White House have performed Federal functions and otherwise participated in the government’s decision or policymaking process in recent years.

*b. Benefits.*—Subcommittee Chairman Scarborough relied upon the testimony received in this hearing to introduce H.R. 2904 to reauthorize appropriations for the Office of Government Ethics through fiscal year 2003. (H.R. 2904 is described in section III.A.8. [Subcommittee on the Civil Service]).

*c. Hearings.*—The Subcommittee on the Civil Service held an oversight hearing entitled, “Reauthorization of the Office of Government Ethics” on August 4, 1999. Witnesses at the hearing were Stephen D. Potts, Director of the Office of Government Ethics, and Gregory S. Walden, an attorney in private practice and a former Assistant Counsel in the White House.

Subcommittee Chairman Scarborough observed that the Office of Government Ethics is a small but well-respected agency that promulgates policies and ethical standards that are implemented in the executive branch through a network of more than 120 designated agency Ethics Officers. He also pointed out that the Ethics in Government Act relies on financial disclosure requirements and post-employment restrictions to guard against conflicts of interest. However, he questioned whether these were sufficient to protect the public interest in the integrity of public officials in light of experience with the Clinton administration.

Mr. Potts described the functions and operations of the agency, which, he testified, had “overall responsibility for executive branch policies related to preventing conflicts of interest on the part of officers and employees.” The Office administers a program that is primarily preventive, with enforcement entrusted to other executive branch agencies, including the Department of Justice. The Office issues rules and regulations regarding such matters as conflict of interest, post-employment restrictions, standards of conduct, financial disclosure, and ethics training. It also reviews the financial disclosure forms filed by certain individuals nominated for or appointed to Federal office by the President and counsels those individuals on the avoidance of conflicts of interest and, when necessary, recommends appropriate corrective actions. Educating Federal employees about the ethical standards governing their conduct is also an important part of the Office’s responsibilities. Toward this end, the Office trains agency ethics officials and assists agencies in conducting their internal ethics training programs.

The Office also issues formal and informal guidance on a variety of ethics matters. In limited circumstances, the Office will investigate alleged ethics violations and order corrective action or recommend disciplinary action. In general, however, enforcement falls to individuals agencies or the Department of Justice. The Office also evaluates the effectiveness of conflict of interest laws and related statutes and rules and regulations. Mr. Potts testified that the Office has been enlisted by other executive agencies to provide technical assistance to the anti-corruption efforts of foreign countries.

From time to time, the Office will recommend modifying or repealing existing ethics laws or enacting new ones. In response to questioning, Mr. Potts testified that 18 U.S.C. § 202, which defines the term “special government employee,” should be clarified by codifying the elements on which the Office currently relies considers in determining whether an individual is a special government employee. He pointed out that the Office had supported, and indeed had been “one of the forces behind,” legislation introduced by Representative Mica and Representative Horn in the previous two Congresses to clarify this definition. (However, he also expressed reservations about tying such legislation to a reauthorization bill.)

Mr. Potts asked Congress to reauthorize the Office for 7 or 8 years. In support of that request, he cited the Office’s record over the years, its small size (a budget of \$9.1 million for fiscal year 2000 and a workforce of 84 full time equivalent employees), and the fundamental nature of the work it performs.

Mr. Walden testified that he supported both the agency’s reauthorization and the clarification of the term “special government employee.” In his opinion, the Office “has performed exceptionally well and deserves to be reauthorized.” He pointed out that he worked closely with the Office as an Assistant Counsel in the Bush White House and noted that it was the policy and practice of the Bush White House to solicit the Office’s advice before making decisions or taking a course of action, and urged future administrations to follow that practice as well. As an independent agency, he pointed out, the Office helps both to maintain the public’s trust in the

integrity of the government and protects Federal officials from unwarranted or politically motivated criticism.

In his testimony, Mr. Walden identified several matters that he believes the Office should address: issuing rules to implement the post-employment restrictions in 18 U.S.C. § 207, rules to implement section 209 of the same title, and rules covering such matters as legal defense funds, the outside activities of Federal employees in professional associations, and the expenses that Federal employees may accept for unofficial teaching, speaking, or writing. He also urged more involvement by the Office in ethics investigations and that the Office audit the White House and every Cabinet Department in the second year of a new administration. Other recommendations included joint ethics training of political appointees by the White House Counsel and the Office and increased attention to training for employees in the field.

Mr. Walden criticized the Office for too narrowly construing section 208, the conflict of interest statute, when it reviewed allegations that Hillary Clinton's stock portfolio created a conflict of interest with her responsibilities as the chairman of the President's Task Force on National Health Care Reform. He argued that the Office's conclusion that health care legislative proposals were too broad to constitute "particular matters" within the meaning of the statute "exempts some conduct that fits the classic notion of a conflict of interest."

In addition, Mr. Walden raised several legislative proposals, including clarification of the definition of "special government employee." The Clinton administration's "obvious struggle" with the concept in connection with its perhaps unprecedented reliance on such informal advisers and consultants as Harry Thomason, Paul Begala, Dick Morris, and the numerous outsiders who worked on the Clinton health care proposal, as well as Mrs. Clinton's own unprecedented involvement in governmental affairs, according to Mr. Walden, highlight the need for such clarification. He pointed out that he had testified in support of legislation to do that in both 1996 and 1997 and urged Congress to enact similar legislation before the next President is inaugurated.

Mr. Walden testified that the length of the reauthorization period was a matter for congressional judgment on the best way to ensure regular oversight of the agency.

#### *8. Federal Law Enforcement Retirement: Who Qualifies and Why?*

*a. Summary.*—In recent sessions, legislation has been referred to the subcommittee proposing to revise the terms and conditions extending enhanced retirement benefits (often referred to as "law enforcement retirement coverage" to additional occupations. During the first session of the 106th Congress, five bills addressing these issues were referred to the subcommittee. Two of these bills would extend enhanced retirement coverage, one to assistant U.S. attorneys, another to a broad range of occupational series, chiefly Immigration and Customs inspectors, Internal Revenue Service revenue officers, and police employed by several different Federal agencies. Additionally, other individuals who are currently covered by these enhanced retirement provisions have pursued legislation that would waive the mandatory retirement provisions associated with



this benefit. Bills referred to the subcommittee include a measure to waive the age 57 retirement provision governing U.S. Capitol Police officers, a bill that would raise the mandatory retirement age for Federal firefighters from 55 to 57, and a bill that would increase the mandatory retirement age for all covered employees from 57 to 60. In light of the interest in these proposals, and the differing effects associated with them, the subcommittee reviewed Federal employment practices associated with these occupations and conducted a hearing to assess the merits of such proposals and to evaluate their potential consequences for Federal workforce management and their costs to the government.

*b. Benefits.*—This review of the proposed legislation and the employment practices of the agencies that would be affected by the legislation demonstrated that the bills extending the enhanced retirement benefit would be very costly. The Congressional Budget Office estimated the cost of extending the benefit to assistant U.S. attorneys at \$660 million over 5 years. The Department of the Treasury estimated its initial costs at more than \$100 million per year in salaries and expense costs, plus causing additional unfunded liabilities of more than \$1 billion on the Civil Service Retirement and Disability Fund. During the hearing addressing these issues, the Department of the Treasury, the Department of Justice, and the Office of Personnel Management concurred that, for most of the occupations targeted by these proposals, the Government does not have difficulty recruiting well-qualified employees under current pay and benefit structures. Additionally, the Department of Justice noted that granting this benefit to immigration inspectors would alter one of the career ladder opportunities that provides these employees entry into immigration examiner occupational classifications. The Department of Justice further testified that the extension of this benefit to attorneys would be inappropriate. The attorneys have no need of the physical fitness requirement normally associated with law enforcement responsibilities. Indeed, if such a physical requirement were imposed on attorneys, applicants who might be fine attorneys, but have physical limitations, might be barred from government service.

In addressing the possibility of raising the mandatory retirement age associated with the enhanced retirement benefit, the Fraternal Order of Police recognized that this retirement age is linked to the enhanced accrual rate. If the mandatory retirement age were raised to age 60, then the covered individuals would be no different from other Federal employees who are eligible to retire with full benefits at age 60 with 20 years' service. The Fraternal Order of Police concluded that the requirement for a young and vigorous workforce remains a valid policy consideration.

As a result of this oversight, the subcommittee concluded that factors associated with costs, effects on career opportunities, and lack of support from employee organizations combined to support no change in the law at this time.

*c. Hearings.*—The Civil Service Subcommittee conducted a hearing entitled, "Law Enforcement Retirement Coverage," on the enhanced retirement benefits for law enforcement officers on September 9, 1999. Chairman Scarborough chaired the hearing, and Mr. Cummings and Mrs. Norton participated. Witnesses included: Mr.

Bryant of Tennessee, Mr. Davis of Virginia, Mr. Filner of California, Mrs. Mink of Hawaii, and Mr. Traficant, of Ohio. Testifying on behalf of agencies were Mr. William E. Flynn, Associate Director, Retirement and Insurance Services, Office of Personnel Management; Ms. Kay Frances Dolan, Deputy Assistant Secretary for Human Resources, Department of the Treasury, and Mr. John Vail, Deputy Assistant Attorney General for Management, Department of Justice. Employee and taxpayer organizations' witnesses included: Mr. Peter J. Ferrara, chief economist of Americans for Tax Reform; Mr. Gilbert G. Gallegos, national president of the Fraternal Order of Police; and Ms. Colleen M. Kelley, national president of the National Treasury Employees Union.

Mr. Scarborough noted the cost of the proposed extension of enhanced retirement coverage. Mr. Davis and Mr. Bryant supported the concept, but conceded that the CBO estimate of the costs associated with the current bill make the legislation "prohibitive." Agency witnesses agreed that the data on recruitment and retention provided by the Office of Personnel Management confirmed that the agencies do not face difficulties in most of the categories proposed for the enhanced benefit. Mr. Vail affirmed, in particular, "The Department of Justice does not have problems recruiting attorneys." The Departments of Justice and the Treasury indicated that they would work with OPM to address concerns about projected increases in the inspections workforce of the Customs Service and the Immigration and Naturalization Service.

Mr. Scarborough noted that, earlier in the session, when the subcommittee had required offsets before moving legislation to enhance participation in the Thrift Savings Plan, Federal employee organizations had opposed the offsets as likely to cause reductions in force [RIFs]. Although these retirement bills involved substantially greater costs, both the affected agencies and the employee organizations testified that these enhanced benefits could be administered in ways that would not require RIFs.

#### *9. Civilian Personnel Readiness.*

*a. Summary.*—Over the past 10 years, the Department of Defense's civilian workforce has shrunk even more than our military forces. Active duty personnel have been reduced by 35 percent from 1989 levels, while DOD has cut its civilian personnel by 38 percent. One third of that workforce reduction is attributable to base closures, but aggressive use of the contracting process, congressionally mandated reductions, and better ways of doing business have also contributed.

This drawdown has raised questions about its impact on military readiness. Simply put, there is concern that military readiness will be degraded if the civilian resources available to DOD, both Federal employees and contractors, are insufficient in number or lack the requisite skills to support peak performance by our armed forces. Key issues include: (1) whether the dramatic reductions in personnel have so increased uncertainty about the stability of civilian careers at DOD that they are no longer attractive to highly qualified individuals; (2) whether the workforce has the skills to support DOD's current mission; (3) whether DOD has developed a strategic human capital program to ensure that its workforce will

meet the requirements of the Department's missions in the future; and (4) whether its contracting activities have, in fact, saved money.

*b. Benefits.*—This examination provided a useful background for the subcommittee in evaluating a number of issues that have come before it, including the challenges presented by an aging workforce, the adequacy of agency training programs, pension portability, and personnel processes for hiring, retaining, and compensating Federal employees. It also assisted the subcommittee in analyzing a number of legislative proposals that were offered during the second session in conjunction with defense authorization bills and other measures.

*c. Hearings.*—On March 9, 2000, the subcommittee conducted a joint hearing with the Subcommittee on Military Readiness of the House Committee on Armed Services, entitled, "National Defense Authorization Act for Fiscal Year 2001—H.R. 4205, and Oversight of Previously Authorized Programs."

Witnesses at the hearing were Mr. Frank Cipolla, Center for Human Resources Management, National Academy of Public Administration [NAPA]; Mr. Michael Brostek, Associate Director, Federal Management and Workforce Issues, General Accounting Office; Mr. Barry Holman, Associate Director, Defense Management Issues, General Accounting Office; Dr. Diane Disney, Deputy Assistant Secretary of Defense (Civilian Personnel Policy); Mr. David Snyder, Deputy Assistant Secretary of the Army (Civilian Personnel Policy); Ms. Mary Lou Keener, Deputy Assistant Secretary of the Navy (Civilian Personnel/EEO); Ms. Mary Lou Keener, Deputy Assistant Secretary of the Air Force (Force Management and Personnel); Mr. David O. Cooke, Director of Administration and Management (Office of the Secretary of Defense).

Representative Herbert Bateman, chairman of the Subcommittee on Military Readiness, noted that this was the first joint hearing conducted by these two subcommittees in his memory. He acknowledged that the civilian personnel provisions included in the defense authorizations bills that come before Congress each year fall within the civil service subcommittee's jurisdiction and thanked the subcommittee for its cooperation.

Mr. Bateman noted that because of the way the agency's downsizing was conducted, employees with essential skills have permanently left the workforce. For that reason, he asked the witnesses to provide an assessment of their current skills inventory and what additional tools they would need to ensure that the agency's workforce will be able to support its current and future missions. He also addressed the issue of the aging workforce and asked whether the agency has planned for developing qualified successors to replace workers with critical skills when they retire. Mr. Bateman also emphasized that the agency has not yet demonstrated by careful analysis that the aging of its workforce presents a problem that can be solved only by abandoning long-established personnel practices. He also asked to learn what the agency has learned from the numerous demonstration projects it has been conducting. Pointing out that Federal jobs are still highly coveted in many areas, Mr. Bateman said it seems counterintuitive that the agency would have difficulty hiring new workers. Therefore, he would expect re-

quests for new authorities to be supported by careful analysis and would insist that such new authorities be targeted at skills the agency has demonstrated it cannot hire.

As the former chairman of the Civil Service Subcommittee, Mr. Mica thanked Mr. Bateman for his cooperation in the past and expressed his confidence that the two subcommittees would continue to work closely together on personnel issues. Defense downsizing, Mr. Mica noted, will account for 73 percent of the net government wide reductions in civilian personnel by the end of fiscal year 2001. He asked how this drawdown has affected the current ability of the workforce to support America's military, and he instructed the witnesses to identify critical short-term problems that must be addressed now and provide concrete proposals for the subcommittees to consider.

Because an inadequate civilian support system will degrade the performance of even the best military force, Mr. Mica told the subcommittees it is incumbent on Congress to work with the executive branch to determine the optimum mix of contractors and employees and the optimum mix of skills in that support system. He expected the witnesses to demonstrate that their civilian personnel strategies are solidly tied to anticipated military needs. With respect to the aging workforce, Mr. Mica said he expected a clear explanation of why this is considered such a problem and what agencies are doing to train or retrain their employees. He also asked witnesses to address whether the civilian benefit structure should be modified to attract highly qualified and motivated individuals. In particular, he asked whether the Federal Government needs more flexible benefits and more portable retirement systems to compete for highly skilled workers, particularly younger ones who do not envision remaining with just one employer throughout their careers.

Mr. Ortiz, ranking member on the readiness subcommittee, indicated that he was very concerned with the problems and challenges associated with a dwindling and aging workforce. He noted that by 2025, almost 18 percent of all Americans will be over the age of 65, which will impact, among other things, the quantity and quality of civilian personnel DOD will be able to recruit and retain to meet the department's technical and management challenges.

Despite increased outsourcing, more reliable equipment, and innovative management and maintenance concepts, Mr. Ortiz believes a core DOD workforce will always be necessary. But he is not sure the agency is in the best position now to prepare for the future. In particular, Mr. Ortiz said the agency does not have in place the same kinds of programs for attracting, retaining, and training blue collar workers as it has for white collar workers. He proposed that the Department of the Army conduct a pilot apprentice program at Army depots to address future needs for blue collar technicians that are already hard to find. Noting that Congress needs to better understand the linkage between perceived problems, enacted legislation, and the agency's policies and practices, legislative proposals, and costs, Mr. Ortiz wants to ensure the development of an integrated investment strategy to guide implementation of rational and achievable civilian personnel goals.

Mr. Cummings, ranking member of the Civil Service Subcommittee, said this hearing sent a message to agencies on the importance

of planning for the future and developing strategic plans to manage, train, retain, develop, hire, pay, and evaluate their most valuable assets, their employees. He noted that downsizing, contracting out, reductions in force, and an aging workforce can depress employee morale and promote insecurity among employees. According to a 1996 GAO report cited by Mr. Cummings, DOD's civilian workforce has declined by about 25 percent since 1987, and will be 35 percent below 1987 levels when the agency completes its downsizing plans in 2001. He asked the witnesses to address the current status of DOD's downsizing, its impact on civilian employees, and the agency's strategic plan to manage its workforce in the future.

Mr. Cipolla testified that DOD's challenge of ensuring that the right people are in the right place at the right time is more daunting today than ever. DOD and other managers must determine what skills will be needed in the future, decide how to update and upgrade skills and knowledge of the current workforce, and identify the best approaches for recruiting individuals with scarce skills while retaining senior level employees with expertise in key occupations. Federal managers, he noted, are now competing with private employers for talented employees in a tough market.

Managers in both the Federal Government and the private sector, according to Mr. Cipolla, are discovering that they cannot address these issues without instituting a systematic process of workforce planning. Most Federal agencies surveyed by NAPA are beginning to institute such processes.

Mr. Cipolla identified seven key conclusions with respect to human capital planning:

1. workforce requirements must be linked to the agency's overall strategic plans;
2. workforce planning must include collection and analysis of data about the external environment as well as information concerning the current workforce;
3. projections of future workforce requirements must be expressed in terms of needed skills and competencies, and not just members of full time equivalent employees;
4. agencies should consider the use of flexible employment arrangements;
5. managers must be given maximum flexibility in managing work and assigning staff to meet changing mission and program requirements;
6. human capital development and continuous learning should be viewed as organizational investments and given a high strategic priority;
7. retirement incentives should be used selectively to support restructuring and to retain needed talent in scarce occupations.

Mr. Brostek testified that DOD has undergone a significant downsizing of its civilian workforce, a process that is expected to continue and eventually result in a total reduction in the civilian workforce of about 43 percent from 1989 levels. In part, due to staffing reductions already made, imbalances appear to be developing in the age distribution of DOD civilian staff. The average age of this staff has been increasing, while the proportion of younger staff has been decreasing. To cope with downsizing, DOD also has

numerous reform initiatives under way to change the way it does business. Such changes, Mr. Brostek observed, can affect the kinds of competencies that staff must have to carry out their responsibilities.

In GAO's view, developments like these call for a strategic approach to human capital planning. And assessing human capital management policies and practices also is consistent with the management framework that Congress has adopted to focus agencies' attention on managing for results. To help agencies assess their human capital management policies and practices, GAO has developed a five-part self-assessment framework that can be useful in aligning human capital management with agencies' missions, goals, and other needs and circumstances. Federal agencies—DOD included—can and must define the kind of workforce they will need in the future, develop plans for creating that workforce, and follow up with needed actions and investments. This is important in order to ensure that when the future arrives, the right employees—with the right skills, training, tools, structures, and performance incentives—will be on hand to meet it. Mr. Brostek described that framework, whose parts, of necessity, are interrelated and overlapping, as including: (a) strategic planning; (b) organizational alignment; (c) leadership; (d) talent; and (e) performance culture.

Dr. Disney testified that DOD's workforce has declined from 1.15 million in fiscal year 1989 to 732,000 in fiscal year 1999 (excluding employees of nonappropriated fund instrumentalities). Those 10 years of downsizing have significantly changed DOD's workforce in terms of age, occupational profile, grade, and educational level. The average age of the workforce has increased and will soon exceed 46, while the number of employees under 40 has dropped substantially. Dr. Disney warns that these developments present potential problems in the transfer of institutional knowledge. Because of sharp declines in clerical and blue collar occupations, DOD's workforce has become increasingly professional. Likewise, educational levels have risen because jobs that have remained in DOD require more advanced education and training than in the past. Grade levels have also increased, primarily because lower-ranked positions are more likely to have been outsourced or replaced by technology.

According to Dr. Disney, DOD has accomplished the drawdown of its civilian workforce through base closure and realignment, privatization and outsourcing, re-engineering, attrition, and reductions in force. BRAC has accounted for about 44 percent of the reduction, a figure that would have been higher but about half of employees subject to it have been able to find jobs at other DOD locations. Based on a RAND Corp. study, Dr. Disney indicated that about 27 percent of contracting studies under OMB Circular A-76 resulted in outsourcing and 80 percent of outsourcings have resulted in some type of personnel displacement. However, DOD has been able to keep involuntary separations to less than 9 percent of total separations through use of a priority placement program, voluntary early retirements, and buyouts. Downsizing has also reduced promotional opportunities and brought to light skills imbalances. Despite the drawdown, according to a recent National Partnership for Reinventing Government study cited by Dr. Disney, 59–63 percent of DOD employees are satisfied or very satisfied with

their jobs, compared to 60 percent overall in the Federal Government's workforce, and 62 percent of private sector workers.

Dr. Disney also testified that while DOD's workforce has declined by about one third, constant-dollar costs for civilian personnel have only fallen by about 13 percent because of increases in age and grade levels, increased professionalization, and increases in compensation.

A competitive job market, and rigidity in civil service regulations, Dr. Disney told the subcommittee, hinder Federal recruitment.

To plan for the future, Dr. Disney said DOD is attempting to identify the skills it will need in the future. Her office is sponsoring, along with the joint staff, a "Future Warrior/Future Worker" study by the RAND Corp. Preliminary indications from this study suggest that the jobs expected to change the most are: aircraft, automotive, and electrical maintenance specialists; computer systems specialists; environmental health and safety specialists; and intelligence specialists. Her office is also working with the Office of the Undersecretary of Defense for Acquisition, Technology, and Logistics to identify competencies that will be critical to the acquisition workforce in the future. The results of this work will be used to evaluate acquisition training and education and preparing a new curriculum.

While the Goldwater-Nichols Act has yielded an officer corps that is more highly educated and with a stronger joint perspective, Dr. Disney said civilian personnel tend to remain "occupationally stove-piped" even though their jobs are becoming broader and their responsibilities more complex. To address this problem, DOD created the Defense Leadership and Management Program [DLAMP] in 1997. This is the first systematic DOD-wide program to prepare civilians for key leadership positions at GS-14, 15, and SES levels. DOD is also considering expanding DLAMP and creating a DLAMP preparation program for lower-graded employees.

Other activities that Dr. Disney cited were reorganizing the Defense Acquisition University, strengthening labor management relations, and making "extensive and creative" use of workforce shaping tools currently available to it.

Dr. Disney asked the subcommittees for extension of authority to allow employees to volunteer for reductions in force, modification of existing authority for voluntary early retirements and buyouts, and to restructure restrictions on degree training. DOD is also working on a proposal for an alternative hiring system.

Mr. Snyder testified that during the last 10 years, the Department of the Army has reduced total appropriated fund strength by more than 42 percent. By 2005, the Army's civilian personnel will be 48 percent below fiscal year 1989 levels. Demographic trends at Army, such as increased professionalization and higher educational levels, are similar to DOD-wide trends on the whole.

Thirty percent of Army's civilians will be eligible for retirement in 2003 and 62 percent in 2010, according to Mr. Snyder. To counter these losses, Mr. Snyder said Army must significantly increase civilian recruitment and entry level hiring in professional, administrative, and technical occupations. However, an intern program through which Army hires and trains its future civilian leaders has declined substantially since 1989, when there were 3,800

interns in it. Mr. Snyder told the subcommittee there will be 950 interns in fiscal year 2001. The Army also anticipates greater difficulty in filling journeymen level and leadership vacancies with highly qualified and well-trained employees. Mr. Snyder ascribes this difficulty to civil service rules and regulations that put the agency at a competitive disadvantage in the job market. Army is working with the Office of the Secretary of Defense to develop an alternative hiring system.

Ms. Welch described the impact of downsizing on the Navy's civilian workforce. She testified that Navy's workforce is 44 percent smaller than it was 10 years ago, and she pointed out that the workforce is aging. Only 16 percent of Navy's workforce was eligible for retirement 10 years ago; today it is about 34 percent. According to Ms. Welch, in 5 years the retirement eligibility rates for several key white-collar occupations will be even higher (47 percent for engineers, 55 percent for scientists, 64 percent for contract specialists), and 53 percent of blue collar workers will then be eligible for retirement.

Through the use of such tools as the priority placement program, outplacement, and buyouts, Ms. Welch testified, Navy has been able to minimize downsizing's impact on employees. In particular, she noted that before buyouts became available in 1993, 56 percent of Navy separations were involuntary, a figure that dropped to 17 percent after 1993. Nevertheless, she noted that Navy now has an older workforce that is closer to retirement without an adequate number of replacements in the pipeline.

Navy recognizes its need to attract, retain, and develop employees. It is establishing and coordinating a recruiting effort to attract highly-qualified individuals and reviving its apprenticeship programs for blue-collar workers, which Ms. Welch described as having "slowed to a trickle" due to base closures over the past 10 years.

For its current workforce, Ms. Welch said the Navy is focusing on workforce development, quality of work life, and workplace dispute resolution. Navy is committed to improving its current workforce through DOD's leadership and management program, Navy's civilian leadership development program, and continuous learning initiatives. It is also encouraging Navy commands and activities to use flexible work arrangements, such as job sharing, part-time employment, alternative work schedules, and satellite work locations. Navy has also established a pilot program to revamp the "costly, lengthy, divisive" EEO complaint process. Ms. Welch testified that Navy managers and employees had cited this process as the "number one problem." Under the pilot, more complaints are being resolved informally, and the processing time and costs of resolving EEO complaints have been significantly decreased.

Ms. Keener assured the subcommittees that the Air Force has a plan to meet the challenges of ensuring that its workforce will be able to support future Air Force missions. The major areas of that plan are force renewal, force skills development, and separation management. Force renewal is a priority for the Air Force, especially in the depots, which Ms. Keener described as suffering severe imbalances in skills and levels of experience because of a decade of hiring freezes. Because the Air Force expects to lose more em-



ployees, particularly in blue-collar occupations, it needs to undertake aggressive hiring efforts.

The Air Force will also invest in training and retraining current employees. However, Ms. Keener also contended that the Air Force must have the ability to offer targeted voluntary separation incentives that can be used with precision to shape the workforce so it will have the skills needed today and in the future.

Mr. Cooke testified about the personnel situation in what he called the "Fourth Estate," a wide variety of DOD components that are not part of one of the military departments. According to Mr. Cooke, the workforces in these components have higher proportions of civilians, white-collar workers, and women than the military departments. However, the problems of the "Fourth Estate" mirror those of the military departments. He also noted that while the "Fourth Estate" has grown over the years, primarily by consolidating functions previously fragmented among the military departments, it has also experienced workforce reductions similar to the military departments. The Office of the Secretary of Defense, for example, has been reduced by 33 percent. Mr. Cooke said the workforce shaping tools Dr. Disney described were also needed by the "Fourth Estate."

#### *10. EEO Data and Complaint Processing Problems.*

*a. Summary.*—The subcommittee reviewed the backlog of cases regarding workplace disputes filed with the Equal Employment Opportunity Commission [EEOC], the lack of adequate data on discrimination complaints, and the use of alternative dispute resolution [ADR] techniques to resolve equal employment opportunity [EEO] disputes. In a report entitled, "Equal Employment Opportunity: Data Shortcomings Hinder Assessment of Conflicts in the Federal Workplace" (May 1999), GAO found that EEOC does not collect and report data that would shed light on several issues fundamental to understanding the nature and extent of workplace conflicts. It also reported that data EEOC collects from agencies is of questionable reliability. In addition, GAO's August 1999 study, "Equal Employment Opportunity: Complaint Caseloads Rising, With Effects of New Regulations on Future Trends Unclear," revealed that the backlog of EEO cases at agencies and EEOC has continued to grow while the average age of these cases has also increased. The subcommittee has also examined alternative dispute resolution program of several agencies, including the Air Force, Navy, and the Postal Service.

*b. Benefits.*—The subcommittee learned that alternatives to the current complaint procedures, especially the expanded use of ADR mechanisms, could aid agencies in resolving workplace disputes, thereby eliminating the involvement of EEOC. As a result of information revealed in the GAO reports and the hearing described in paragraph (c), Chairman Scarborough introduced H.R. 4362 to require agencies and the EEOC to maintain information necessary to assure fundamental questions about their EEO processes and make it available on the internet.

*c. Hearings.*—The subcommittee held a hearing, "EEO Data and Complaint Processing Problems" on Wednesday, March 29, 2000, in Washington, DC. Witnesses at the hearing were the following: The

Honorable Albert R. Wynn (D-MD); Carlton Hadden, acting director of Federal operations, Equal Employment Opportunity Commission; Michael Brostek, Associate Director, Federal Management and Workforce Issues, General Accounting Office; Gerald R. Reed, president, Blacks in Government; Cynthia Hallberlin, Chief Counsel of Alternative Dispute Resolution Program, National Program Manager of REDRESS, U.S. Postal Service; and Roger Blanchard, Assistant Deputy Chief of Staff, Personnel, U.S. Air Force.

Subcommittee Chairman Scarborough stated that Federal employees should have available a procedure for resolving EEO complaints that is fair, timely, and efficient. Mr. Scarborough expressed concern that EEOC fails to collect and report data in an efficient manner and spends an average of 3 years to process a case. Mr. Scarborough told subcommittee members that the use of ADR should be encouraged as a means by which agencies can resolve disputes in a more efficient manner.

Congressman Wynn (D-MD) testified that unless the EEOC collects accurate data Congress would be unable to address discrimination in the Federal workplace. Mr. Wynn complained that he has heard from almost each Federal agency regarding discrimination complaints and thus, concludes that the "problem is systemic." Mr. Wynn told the subcommittee that a GAO report had found the number of unresolved complaints had increased by approximately 102 percent, from 16,964 at the end of fiscal year 1991 to 34,267 at the end of fiscal year 1997. Mr. Wynn concludes that the EEO process needs to be reformed. He called the current system "underfunded [and] ineffective" and called for new legislation that would address the current problems.

Mr. Carlton M. Hadden, Acting Director, Office of Federal Operations, U.S. Equal Employment Opportunity Commission, testified that Chairwoman Castro, who has been the head of EEOC since 1998, has brought significant changes to the Federal sector EEO process. Mr. Hadden admitted that Federal employees wait too long for their complaints to be processed at almost every stage of the Federal EEO complaint process. Mr. Hadden reported that the rule on Federal Sector Regulatory Reform became final on November 9, 1999. The rule implements Federal sector reforms designed to streamline the complaint process. Mr. Hadden also referred to the change that requires agencies to institute ADR programs to resolve disputes.

Mr. Roger Blanchard, Assistant Deputy Chief Of Staff, Personnel, U.S. Air Force, discussed the Air Force's use of ADR in resolving workplace disputes. Mr. Blanchard told the subcommittee that the Air Force has "made significant progress" with the ADR program. He testified that in fiscal year 1998, Federal agencies required an average of 384 days to resolve EEO complaints. However, the Air Force took 293 days, 24 percent less.

Ms. Cynthia J. Hallberlin, National Program Manager for the U.S. Postal Service testified about the Postal Service's ADR program, known as REDRESS, which is an acronym for "Resolve Employment Disputes, Reach Equitable Solutions Swiftly." Under REDRESS, an employee contacts an EEO counselor and is given the option of mediation in place of traditional EEO counseling. When mediation is used, a professional mediator not from the Postal

Service is used within 2 to 3 weeks. The idea behind REDRESS is a quick resolution of a dispute. This helps to ensure that mediation maximizes the chances of a resolution. REDRESS has been a success. In fiscal year 1999, over 8,500 cases were mediated nationwide at the Postal Service; 61 percent of these were successfully resolved with a mediator.

Mr. Michael Brostek, Associate Director with GAO's Federal Management and Workforce Issues General Government Division, shared some of GAO's findings with the subcommittee. Mr. Brostek said that GAO concluded that EEOC failed to collect the type of data that would provide answers to basic questions such as the number of employees who filed complaints and the type of discrimination they alleged. GAO found that the number of complaints filed by Federal employees increased in the 1990's.

Mr. Gerald R. Reed, president and CEO of "Blacks in Government" testified that Federal mismanagement should be a Federal offense. Specifically, Mr. Reed advocates new criminal laws to punish managers in the Federal workplace who commit discrimination.

#### *11. Fulfilling the Promise.*

*a. Summary.*—The subcommittee examined extending enrollment in the Federal Employees Health Benefits Plan [FEHBP] to certain military health care beneficiaries. Throughout their career, military personnel are told in recruitment and retention brochures and by military officers that while their salary is low, part of their compensation package is lifetime medical care, earned by military service. However, when they reach age 65, military retirees are dropped from the military health care system, unless space is available in a military treatment facility. During the 106th Congress, two legislative proposals, H.R. 2966 and H.R. 3573, generated much discussion. The proposals recognize that those who entered the service prior to June 7, 1956 were promised free health care for life and should not be penalized by a subsequent change in statute. The legislation provided for health care under the FEHBP as part of a separate risk pool for military retirees, with 100 percent of the associated premiums paid for by the Department of Defense.

*b. Benefits.*—The subcommittee gained a clear understanding of the legislative options available in an effort to develop a consensus approach to implement necessary reforms to the military health care system.

*c. Hearings.*—A hearing entitled, "Fulfilling the Promise," was held on April 3, 2000, in Pensacola, FL. Witnesses at the hearing were the Honorable Ronnie Shows, D-MS; Colonel George "Bud" Day, Class Action Group; Colonel George Rastall, the Retired Officers Association; Stephen Gammarino, senior vice president, BlueCross BlueShield Association; William "Ed" Flynn III, Associate Director of Retirement and Insurance Programs, Office of Personnel Management; and Rear Admiral Thomas Carrato, director of military health system operations, TRICARE Management Activity.

Subcommittee Chairman Scarborough stated that a strong military medical system was necessary to support not only the present active forces but also to uphold the promise made to so many of our military retirees. With recruiting shortages in all services except

the Marine Corps, keeping faith with military retirees is necessary to maintain credibility with potential recruits and current service personnel. He reminded subcommittee members of the problems that have troubled TRICARE. The chief complaints have included the nonpayment of providers, lack of accessibility for patients, and unavailability of prescription drugs. Because of these and other deficiencies, TRICARE has fallen far short in delivering on its promised free medical care for life. He emphasized the issue of free medical care for life is a high priority for the Congress.

Mr. Cummings emphasized that without a doubt, military families and retirees deserve a quality health care system. He stated that to differing degrees FEHBP plans cover inpatient and outpatient care, prescription drugs, and mental health services, and it would be unfortunate if Congress attempted to help one group of beneficiaries and hurt another.

Mr. Shows referenced the support of over 250 Members of Congress for legislation he introduced, H.R. 3573. He recognized the extensive grassroots effort, which was very active in generating support for the legislation. He questioned how Congress could defend giving Federal employees and elected officials, including themselves, health care as part of their retirement and not providing it for the men and women who served the country as members of the uniformed services.

Colonel Bud Day discussed the history of the promise of free medical care for life, including reference to the Federal Government's defense on March 7, 2000, in the Federal Circuit Court of Appeals which stated that "yes, the promise had been made but they did not have to keep it because there was no legislation that specifically tied retired medical care to an appropriations measure." He reminded the subcommittee of the moral and legal basis for providing quality health care to military retirees and their dependents.

Colonel George Rastall reminded the subcommittee of Florida Federal District Court Judge Vincent's decision, in which the judge said that the plaintiffs certainly had a strong argument that the government should abide by its promises. Relief for the plaintiffs must come from the Congress, however, and not from the judiciary due to the constitutional separation of powers. Colonel Rastall reaffirmed that uniformed service members want fair treatment along with civilian Federal employees, including the opportunity to participate in the FEHBP. For the 173,200 retirees in Florida, including the 36,000 in Pensacola, care is only available on a diminishing space-available basis.

Mr. Gammarino provided background on the FEHBP as a model of efficiency and effectiveness that the private sector is often called on to attempt to replicate. As the largest carrier in the program, he stated the special responsibility BlueCross and BlueShield feels toward the program and its desire to work with the subcommittee as it examines various legislative proposals to allow military retirees access to the FEHBP. He discussed four basic principles that should be considered when evaluating suggestions for extending the FEHBP beyond its current enrollment base: establishment of a logical connection between the Federal Government as an employer and the population proposed to receive the coverage, preservation

of the competitive nature and existing private sector role in the program, expansion of the infrastructure to handle the increased enrollment, and preservation of the insurance underwriting principles.

Mr. Flynn provided an overview of the FEHBP. In order to expand health care access to military retirees, Mr. Flynn outlined several important principles that must be met. First, a separate risk pool must be established for purposes of setting premiums. Second, the Department of Defense must be prepared to conduct enrollment administrative-related financial activities as Federal employing agencies do. Finally, OPM must have the authority to manage the inclusion of the new participants.

Admiral Carrato stated the Department of Defense's opposition to provisions extending FEHBP coverage to military retirees on a permanent basis, owing to their high cost and adverse effects on military readiness. The most serious consequences of these provisions would arise, according to Admiral Carrato, if the costs had to be absorbed by the Defense Health Program.

Admiral Carrato predicted space-available care in the military treatment facilities would ultimately be reduced. He reminded the subcommittee that current statutory authority provides for space-available care in military treatment facilities for military retirees who have reached age 65. However, the growing number of military retirees and infrastructure downsizing have resulted in less space-available care for retirees, resulting in Defense Secretary Cohen's recent iterations of his commitment to expand health care access for military retirees.

## *12. The FEHBP Demonstration Project for Medicare-Eligible Military Retirees.*

*a. Summary.*—The subcommittee examined the administration's implementation of the demonstration project established in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, which permits a limited number of Medicare eligible military retirees to enroll in the Federal Employees Health Benefits Program.

As required by statute, the Department of Defense [DOD] selected at random eight demonstration sites, of the 6–10 provided for under Public Law 105–261. In accordance with the legislative requirements, the sites included areas within and outside of the catchment areas of military treatment facilities, an area in which there is also a Medicare subvention demonstration project, and no more than one site per TRICARE region. The test sites selected were Dover, DE; Roosevelt Roads, PR; Fort Knox, KY; Greensboro, NC; Dallas, TX; Humboldt County, CA and surrounding counties; Camp Pendleton, CA; and New Orleans, LA. Each area contained enough fee-for-service plans and HMOs participating in those areas to provide DOD beneficiaries an adequate choice of providers.

The authorizing legislation limited participation in the demonstration to 66,000 military beneficiaries and dependents. DOD chose to offer an enrollment opportunity to only about 70,000 persons. Consequently, almost 100 percent of eligible beneficiaries would have to enroll in the FEHBP to produce a demonstration project as large as Congress intended. After the first open season,

which concluded December 31, 1999, there were 1,250 enrollees, slightly under 2 percent of the total eligible population.

*b. Benefits.*—The subcommittee gained a clear understanding of the effects unsatisfactory marketing, artificial enrollment limitations, an ill-equipped information center, and poorly planned health fairs had on the success of the demonstration project.

*c. Hearings.*—A hearing entitled, “The Failure of the FEHBP Demonstration Project: Another Broken Promise?,” was held on April 12, 2000. Witnesses at the hearing were the Honorable Randy “Duke” Cunningham, R-CA; the Honorable Charlie Norwood, R-GA; the Honorable Jim Moran, D-VA; Colonel Charles Partridge, co-chair, National Military and Veterans Alliance; Kristen Pugh, deputy legislative director of the Retired Enlisted Association, on behalf of the Military Coalition; William E. Flynn III, Associate Director of Retirement and Insurance Programs, Office of Personnel Management; and Rear Admiral Thomas Carrato, Director of Military Health Systems Operations, Tricare Management Activity.

Subcommittee Chairman Scarborough expressed his concern that DOD’s decision to artificially limit the total number of eligible beneficiaries in the test sites contributed to the dramatically depressed enrollment in the demonstration. He reminded the witnesses of his commitment to providing quality health care to America’s men and women in uniform.

Representative Mica expressed his disappointment at the manner in which the whole demonstration project had been handled, particularly with the limited number of beneficiaries eligible to participate. The demonstration project was not following the original intent of Congress to see that all personnel, retirees included, have access to health care on an affordable basis.

Mrs. Morella stated she was eager to hear DOD and OPM explain what factors contributed to the initial low enrollment.

Mr. Norwood reminded the subcommittee that many military retirees still have little or no access to health care, and are being kicked out of the TRICARE system at age 65. He referenced his legislation, H.R. 3573, which would expand the FEHBP option to all military retirees. Additionally, Mr. Norwood pointed out that military readiness was suffering since military retirees were less enthusiastic about encouraging young people to enlist with the armed services. He asked the subcommittee members if they would be willing to trade their healthcare, the FEHBP, for the TRICARE system. The answer was no.

Mr. Moran discussed the overwhelming support of Congress for the original legislation authorizing the demonstration project and the importance of making the necessary resources available to meet the healthcare needs of military retirees. To achieve a worthwhile demonstration project, Mr. Moran felt OPM and DOD needed to ensure that enrollment is at least 66,000 beneficiaries.

Mr. Cunningham discussed steps Congress should take to address the inequities in the military health care system, including—lifting the geographic and numeric limits on the demonstration project, removing the prohibition on the use of military treatment facilities for those enrolled in the FEHBP, and allowing those participating in the demonstration project to continue their enrollment in the FEHBP at the conclusion of the demonstration.

Colonel Charles Partridge stated that with base hospital closures, reductions in medical personnel, and perennial medical funding shortfalls, the increasing lack of available healthcare continues to be a major concern to active and retired personnel, alike. He predicted the situation would clearly get worse as additional hospitals are converted to clinics and medical personnel downsizing continues. Military retirees remain concerned that DOD has no plan to provide the promised health care benefit by a date certain. He reminded the subcommittee that military retirees are the only Federal employees that do not have a lifetime benefit.

Colonel Partridge stated the reasons for low participation in the demonstration project included a lack of aggressive marketing, failure to educate military retirees on the interaction of FEHBP plans with Medicare, the 3-year limitation for participation, and the lock-out of participants from receiving care at military treatment facilities.

Kristen Pugh stated the reasons for the extremely low participation rate included the lack of timely delivery of accurate and comprehensive information about the demonstration project, hastily planned health fairs conducted with little or no notification for eligible enrollees, and the lack of knowledgeable specialists at the call center to provide answers to simple questions and to send adequate educational materials. She cited several examples of poor marketing, including the 10 percent error rate in DOD's first mail-out, which the department made no effort to correct. Ms. Pugh compared the inadequacy of marketing materials for the demonstration project with the informative post card, glossy brochures, and handsome benefit book prepared for the TRICARE senior prime supplement.

On behalf of the Military Coalition, Ms. Pugh recommended the following in order to achieve a truly fair assessment of the demonstration project: a guaranteed enrollment beyond the conclusion of the demonstration project, an aggressive marketing and education program, mailings to all eligible beneficiaries in each site, and an expansion of the number of enrollees.

Admiral Carrato shared the subcommittee's concern for the low enrollment and outlined the additional marketing activities undertaken by the Department, which resulted in an increased enrollment of 1,000. Given that enrollment fell far short of the levels authorized for the demonstration, the Department of Defense would be adding two additional sites to the demonstration, bringing the total number of sites to the statutory maximum of 10. Admiral Carrato felt the Department was gaining valuable information about beneficiary preferences and desires, and looked forward to the General Accounting Office's detailed findings from a beneficiary survey.

Mr. Flynn stated the initial results from the demonstration project were, admittedly, disappointing. As a result, the demonstration would allow for belated open season enrollment, with coverage and premiums taking effect retroactive to January. A geographical evaluation of the enrollments suggested that when access to military treatment facilities was available, individuals were less likely to sign up for the FEHBP.

*13. FEHBP: OPM's Policy Guidance for 2001.*

*a. Summary.*—OPM administers the FEHBP, negotiating rates and benefit packages with participating carriers. Each year it issues a “call letter” outlining its objectives for the upcoming contract year, including benefits and coverages that will be required of participating carriers.

*b. Benefits.*—The subcommittee determined that the increases generally reflected rising health care costs, in particular pharmaceutical costs due to increased utilization. The subcommittee remains concerned that increased mandates have both hidden and direct costs, contributing to premium increases.

*c. Hearings.*—A hearing entitled, “FEHBP: OPM's Policy Guidance for 2001,” was held on June 13, 2000. Witnesses at the hearing were William E. Flynn III, Associate Director of Retirement and Insurance Services, OPM; Stephen W. Gammarino, senior vice president, BlueCross BlueShield Association; Mr. Bobby Harnage, president, American Federation of Government Employees; and Dr. Scott Nystrom, adjunct scholar, the Mercatus Center at George Mason University.

Subcommittee Chairman Scarborough emphasized that the FEHBP, which is often cited as a model employer-sponsored health benefits program, succeeds because of its market orientation. He expressed concern over the dramatic rises in premiums over the past 3 years, and the substantial increase that seemed imminent for 2001. He stated his disappointment in the 2001 call letter, in which there was no retreat from mandates being imposed on the FEHBP. In particular, he expressed concern about the rising cost of pharmaceuticals, and the importance of developing a complete understanding of the causes of the increases and the impact of possible responses to it.

Mr. Cummings stated that given the aging Federal workforce and the fact that older Americans are the largest consumers of prescription drugs, the Federal Government had a responsibility to explore any and all avenues that may help contain premium and prescription drug costs.

Mrs. Morella expressed her enthusiasm for mental health parity and patient safety initiatives to reduce medical errors within the FEHBP. In addition to her concern over the anticipated premium increases, she stated her desire to ensure that autologous bone marrow transplants for breast cancer were not hindering the use of more effective treatments.

Mr. Flynn restated OPM's commitment to providing access to high-quality, affordable health coverage for Federal employees and retirees and members of their families. He provided details on OPM's mandate that coverage for clinically proven treatments for mental illness and substance abuse would be provided in a manner identical to coverage for other medical conditions. Networks of providers will be used to deliver the parity benefit. Analysts familiar with the FEHBP have projected that parity will result in cost increases somewhere between 1 and 3 percent of the total premium. Mr. Flynn predicted the premiums would fall within the upper range of the estimate.

Mr. Flynn stated that the budget for 2001 assumes an average premium increase of 8.7 percent. OPM feels the premium increases



are unacceptable and will seek amendments to the current law to counteract them, including contracting directly for benefits. OPM has allowed the Special Agents Mutual Benefits Association to access the Federal Supply Schedule for prescription drugs for mail-order pharmaceuticals. Mr. Flynn said OPM looked forward to reviewing the results of this pilot to see whether or not the savings generated might be applicable to other areas of the FEHBP.

Mr. Gammarino stated BlueCross and BlueShield's general opposition to mandates, believing they have a long-term adverse effect on the ability to provide affordable health care coverage. He described the care management strategy that would be implemented to accomplish mental health parity while controlling the costs associated with it. Mr. Gammarino believes that the true cost of this initiative would not be known for 3 to 5 years. He testified that the program currently spends about 30 percent of its premium dollar for pharmaceuticals. This cost continues to be driven by the rapid development of new, expensive drug therapies which substitute for less expensive existing therapies, rising prices for existing drugs, and heightened demand fueled by direct-to-consumer advertising.

Mr. Gammarino reiterated BlueCross and BlueShield's concern over OPM's continued efforts to impose cost accounting standards on the FEHBP. In his view, the standards are fundamentally incompatible and inappropriate for the FEHBP, and for these reasons Congress had granted annual exemptions from them. He reminded the subcommittee that BlueCross and BlueShield would not sign any contract with OPM that contains the CAS clause or otherwise sought to implement the standards.

Mr. Harnage felt that while AFGE and OPM had been engaged in some dialog regarding the administration and pricing of the FEHBP, the relationship had fallen far short of what AFGE had wanted. He stressed the desire of AFGE to have a direct voice in negotiating the annual premiums and benefits. Mr. Harnage stated AFGE's strong opposition to proposals to contract directly for certain benefits on an employee-pay-all basis. Mr. Harnage felt cost accounting standards should be applied to the FEHBP to ensure the premium dollars are managed correctly.

Dr. Nystrom provided an economic and market analysis of FEHBP access to the Federal Supply Schedule for prescription drugs. He highlighted two potential economic consequences of such a plan: increased prices for non-FEHBP purchasers of prescription drugs and increased prices of drugs for agencies currently receiving discounts on pharmaceuticals from the Federal Supply Schedule. He reminded the subcommittee that the group of non-FEHBP purchasers includes about one-third of all Medicare beneficiaries. With annual pharmaceutical costs of \$5 billion, the FEHBP dwarfs the Federal Supply Schedule, which has sold an estimated \$1.6 billion in drugs for 1999.

#### *14. Wildland Firefighters Pay: Are There Inequities?*

*a. Summary.*—The subcommittee reviewed H.R. 2814, a bill that would authorize equal overtime pay provisions for all Federal employees who work as wildland firefighters. Currently, pay equity problems have resulted in non-supervisors being paid more than supervisory firefighters at the Department of the Interior and the

Department of Agriculture's Forest Service. The subcommittee is concerned about a reduction in the number of supervisory Federal wildland firefighters (the total number of firefighter teams decreased over 40 percent from 1992 to 1997) because workforce reductions jeopardize not only the safety of persons and property located in wildland areas, but also the firefighters who perform their duties with support and assistance. According to a GAO report, "Federal Wildfire Activities: Current Strategy and Issues Needing Attention," dated August 13, 1999, the Federal wildland firefighting workforce is becoming smaller, based in part, upon the current overtime pay structure under which many employees can earn more by refusing to accept more responsible positions that are exempt from the Fair Labor Standards Act, and many supervisory firefighters are nearing retirement age. Although H.R. 2814 originally had the support of agency officials familiar with the problem, the administration subsequently opposed it. Interestingly, although invited, officials from Interior and Agriculture declined to testify at the hearing on this issue.

*b. Benefits.*—The subcommittee learned that firefighters at Interior and Agriculture's Forest Service are working long hours battling wildfires that ravaged the Western part of the United States in 2000 with fewer crews than in previous years. The overtime pay disparity has affected the morale of many of the employees and made it difficult to attract highly qualified personnel.

*c. Hearings.*—The subcommittee held a hearing, "Wildland Firefighters Pay: Are There Inequities?," was held on Tuesday, September 26, 2000, in Washington, DC. Witnesses at the hearing were the following: the Honorable Richard Pombo (R-CA); the Honorable Tom Udall (D-NM); Kent Swartzlander, professional firefighter; and Henry Romero, Office of Personnel Management, Associate Director for Workforce Compensation & Performance.

Subcommittee Chairman Scarborough referred to the valiant work performed by firefighters in protecting the country's natural resources from destruction by fire. Mr. Scarborough pointed to the epidemic of widely publicized fires that have ravaged national forests this summer as proof of the importance of wildland firefighter's work. Mr. Scarborough stated that well-qualified managers and supervisors are necessary to maintain an efficient and effective wildland firefighting force. Thus, Congress must ensure that it continues to provide incentives to attract highly skilled and qualified individuals to fill firefighter positions.

Congressman Richard Pombo (R-CA), the author of H.R. 2814, testified that he introduced the bill after listening to firefighters in his district complain about pay inequity. Mr. Pombo told the subcommittee that over 6.9 million acres have burned in the United States this year. He referred to a hearing held June 7, 2000, before the House Resources Subcommittee, where witnesses testified that more wildland fires are expected to occur. Mr. Pombo attributed the shortage of firefighters to pay inequities. He stated that pay inequities also create a disincentive for less experienced firefighters to strive for management positions. Mr. Pombo expressed disappointment with the administration's opposition to H.R. 2814 after he had involved responsible agency officials in the drafting of his bill.

Congressman Tom Udall (D-NM) testified about the fires that swept through portions of his district in New Mexico earlier this year, destroying over 73,000 acres of lands. He told the subcommittee the Southwest Coordination Center in Albuquerque, NM has only filled 16 percent of the orders for skilled supervisors and managers this year. He also referred to fires in Florida, where over 1 million acres of land have burned since 1998. Mr. Udall believes that the shortage of firefighting personnel is a result of the pay equity issue. According to Mr. Udall, the pay inequity discourages many potential firefighters from advancing to supervisory positions.

Mr. Kent Swartzlander, a professional firefighter, with 26 years of experience as a firefighter, testified before the subcommittee. Mr. Swartzlander has performed over 2,000 hours of fire suppression. He testified that he is required to be available for assignment 24 hours a day, while only being paid for 8 hours a day if he remains in his home base. Mr. Swartzlander testified that Federal wildland firefighters sometimes spend up to 120 days away from their home fighting fires. He testified that OPM's classification of Federal firefighters as "forestry technicians" is ludicrous.

Mr. Henry Romero, Associate Director of Workforce Compensation and Performance Service at OPM testified before the subcommittee. Mr. Romero testified about the administration's plan to deal with overtime pay for Federal employees. OPM prefers to address the problem as it affects all Federal employees engaged in emergency work. Therefore, they are opposed to H.R. 2814, which deals only with Federal fighters engaged in emergency fire suppression. Mr. Romero testified that the administration's bill, H.R. 5333, would rectify the problem faced by Federal firefighters as well as other Federal employees including those at the National Transportation Safety Board and Federal Emergency Management Agency. The administration bill will raise the overtime pay cap from GS-10, Step 1, to GS-12, Step 1. In response to his questions, Mr. Romero conceded that under the administration's bill rank-file employees would continue to earn more than some key managers during emergencies.

#### *15. Oversight of Wage-Grade Pay in Georgia and Oklahoma.*

*a. Summary.*—The subcommittee reviewed the Federal Wage System to evaluate the effectiveness of the process for making wage-grade pay determinations for particular localities in Georgia and Oklahoma.

*b. Benefits.*—The subcommittee investigated whether pay determinations for wage-grade employees in Georgia and Oklahoma are sufficient in their ability to recruit and retain qualified civil servants. Additionally, the subcommittee explored the administrative remedies available to agencies and employees to address any discrepancies in wage-grade pay.

*c. Hearings.*—The subcommittee held a hearing entitled, "Oversight of Wage-Grade Pay in Georgia and Oklahoma" on Wednesday, October 4, 2000, in Washington, DC. Witnesses at the hearing were the following: the Honorable Saxby Chambliss (R-GA); Jim Davis, national secretary-treasurer, American Federation of Government Employees; Donald Winstead, Assistant Director for Com-

pensation Administration, Office of Personnel Management; Roger Blanchard, Assistant Deputy Chief of Staff for Personnel, U.S. Air Force. Dr. Diane Disney, Deputy Assistant Secretary for Civilian Personnel Policy, Department of Defense, submitted written testimony.

Subcommittee Chairman Scarborough stated he wanted to ensure the pay determinations were sufficient to recruit and retain qualified civil servants. He reminded subcommittee members that blue-collar workers provide valuable services for the government; it is only fair they are compensated adequately for their effort. In a system with over 256 local wage areas, attempting to resolve such issues legislatively would raise difficult, if not insurmountable obstacles, and would likely result in perpetual congressional intervention. But, he stressed that this did not relieve the subcommittee from its responsibility to ensure that the process for determining blue-collar wage rates is working correctly.

Congressman Chambliss testified that our military services are facing serious recruiting and retention problems, forcing the Department of Defense to compete intensely with the private sector to hire and keep the best and brightest of the workforce. Using Robins Air Force as an example, Mr. Chambliss stated that with an aging depot workforce, 50 percent of which are likely to retire in the next 5 years, it will be increasingly difficult to replace the valuable wage-grade workers soon leaving the civil service. Mr. Chambliss was puzzled that given the facts, Congress continued to tolerate such a gross disparity in the wage-grade pay scales in Georgia. He stressed the need for providing better pay and maximizing the effectiveness and efficiency of the depot system.

Mr. Davis testified that since its inception, the Federal wage system has been plagued with problems. Congressionally-imposed pay caps and the withdrawal of the Monroney protections for Department of Defense employees have prevented tens of thousands of Federal employees from receiving what the Federal wage system envisioned: wages that reflect prevailing rates for similar work in the local private economy. He stressed that if the Department of Defense wants to recruit qualified people, it should push for a conversion of wage-grade employees to the GS pay scale.

Mr. Winstead testified that the pay situations in both Georgia and Oklahoma are largely a consequence of the principle that levels of pay are to be maintained in line with prevailing levels for comparable work within each local wage area. The levels of pay vary from one wage area to another, and if the Federal Government did not compete on equal footing with private sector employees in each, our overall employment costs would rise unnecessarily. He stated that OPM is convinced the Federal Wage System is accomplishing the purposes for which it was established in 1972. However, OPM is committed to working expeditiously to use existing administrative authorities to deal with any recruitment or retention problems that were brought to its attention.

Mr. Blanchard stressed the Air Force's commitment to hiring and retaining the highest-skilled employees available. He reminded subcommittee members the other side of this balancing act is ensuring the blue-collar work force is cost-effective and efficient. This

is becoming more important as the Department of Defense goes through the competitive sourcing process for many of its functions.

Mr. Blanchard expressed the Air Force's desire to add flexibility to the Federal Wage System by expanding the authority to offer recruitment and relocation bonuses and retention allowances authorized as part of FEPCA. Currently, this flexibility is only available to General Schedule employees. The Air Force believes this additional flexibility together with the administrative flexibility already available would further enhance the Air Force's ability to react quickly to specific recruiting and retention problems.

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN  
RESOURCES

Hon. John L. Mica, *Chairman*

*1. National Drug Control Policy and Practices.*

*a. Summary.*—Pursuant to the Government Reform Committee's jurisdiction over the Office of National Drug Control Policy [ONDCP], as well as other departments and agencies engaged in drug control and counternarcotics efforts, the Subcommittee on Criminal Justice, Drug Policy, and Human Resources convened 16 oversight hearings during 1999 and 26 hearings during 2000 to assess the effectiveness of the National Drug Control Strategy developed by ONDCP and the strategy's implementation nationally and internationally, and related drug control issues and practices.

*Congressional Delegation.*—From August 27, 1999, through September 7, 1999, Subcommittee Chairman John L. Mica was joined by Congressmen Rohrabacher, Peterson, Sanders, Hinchey, and Romero-Barceló on a congressional delegation (CODEL) which visited Slovakia, Ukraine, Romania, Bulgaria, Hungary, and the Netherlands. A major purpose of the visit was to conduct in-country reviews of current U.S. counternarcotic efforts and determine the level of cooperation by transit countries. In the Netherlands, for example, briefings were given on the types and patterns of trafficking through the port of Rotterdam, a major gateway for illegal narcotics. The CODEL had meetings with high level officials including Presidents and Members of Parliament, trade officials, law enforcement and interior officials, ambassadors, and American Chamber representatives at all country stops. In Hungary, the CODEL visited a joint United States-Hungarian operated International Law Enforcement Academy [ILEA] to evaluate effectiveness of taxpayer dollars. The CODEL explored how current drug interdiction and international counternarcotic efforts could be coordinated more effectively.

*Counterdrug Operations Assessment Trips.*—From February 22–23, 2000, the House Committee on Government Reform sponsored a trip to Puerto Rico to meet with area law enforcement official who comprise the Executive Committee of the local High Intensity Drug Trafficking Area [HIDTA]. Subcommittee staff participated. The focus of the meeting was the increased drug threat in and around Puerto Rico, and the need for additional resources and enhanced cooperation among drug and law enforcement officials.

Participants learned that the significant increases in the Federal law enforcement effort to stem the flow of illegal drugs into Puerto Rico had waned since passage of the fiscal year-1999 Emergency Drug Supplemental. The Puerto Rico HIDTA was asked to submit a list of priority resource requirements to properly address the growing drug problem in Puerto Rico. The staff toured the Relocatable Over-the-Horizon Radar [ROTHR] site on the island of Vieques. The expected activation date for the site was estimated to be in late March 2000. The vulnerability of the ROTHR site to terrorist attack or possible island protests was raised by the staff. Efforts to address these security concerns were raised with the Department of Defense, who is responsible for all the ROTHR sites.

From April 25–29, 2000, the National Guard sponsored a counterdrug operations assessment of the United States Southern Command in Miami, FL and two of the four Forward Operating Locations [FOLs], specifically, Manta, Ecuador and Curaçao, Netherlands Antilles. A briefing was provided on the move from Panama to Miami, FL. Briefings were held on the importance of SouthCom's counterdrug mission, SouthCom's forces involved in counterdrug operations, and Plan Colombia. Additionally, briefings were held regarding the Joint Interagency Task Force East's [JIATF-East] command mission, the National Guard's counterdrug support role, current and planned future counterdrug operations and the role of insurgents, notably the FARC, in the drug trade in Latin America.

After the briefings at SouthCom, the participants traveled to the FOL site in Curaçao, Netherlands Antilles. Participants toured the FOL, received briefings on its operation, military construction initiatives, current and planned counterdrug military operations and quality of life for assigned U.S. military personnel on station. There were additional briefings on operation Coronet Nighthawk and the Senior Scout program. Additionally, the U.S. Customs Service provided an overview of maritime interdiction efforts.

Participants proceeded to the FOL site at Manta, Ecuador. They toured the FOL site, received briefings on its operation, military construction initiatives, specifically, the progress of runway construction, and current and planned counterdrug military operations. The Drug Enforcement Administration provided an overview of the drug trade in Ecuador and detailed the challenges of counterdrug operations in that region and the increasing role of the Colombian FARC guerrillas in Ecuador. Participants went on counterdrug monitoring missions.

On August 7–11, 2000, the National Guard sponsored a counterdrug assessment trip to the Appalachia HIDTA and the states of Kentucky, West Virginia and Tennessee. Participants visited the HITDA headquarters and the Civil Air Patrol in London, KY, the 130th Airlift Squadron in Charleston, WV, the 134th Air Refueling Wing at McGhee Tyson Air National Guard Base in Knoxville, TN and the Scott County National Guard Armory in Oneida, TN.

In each State, the National Guard took participants to observe and actively participate in marijuana eradication efforts. UH-60

Blackhawk helicopters were used for transportation to the marijuana growing areas.

*Congressional Hosting of International Drug Control Summit.*—In conjunction with the United Nations International Drug Control Programme [UNDCP], the U.S. Congress hosted this year's annual meeting of international parliamentarians in Washington, DC, on February 8–9, 2000. Subcommittee Chairman, John L. Mica (R-FL), and the subcommittee staff organized the event.

This groundbreaking international summit featured major addresses and vigorous roundtable debates focusing on many areas of drug control policy including: new global trafficking trends, the latest science on treatment, Plan Colombia, and money laundering. The goal of the International Drug Control Summit was to build consensus on priorities in drug control policy and provide participants from the European Community, Japan, Canada, and the United States, an opportunity to engage in a strategic dialog on the growing global drug crisis. Topics included: the latest illegal drug production and trafficking trends, drug enforcement, and demand reduction issues.

The participation of key drug control policymakers from around the world facilitated a careful examination of the multifaceted, transnational drug problem and the development of effective strategies for the 21st century. Among the participants were: Speaker of the House Dennis Hastert, key Members of Congress, senior administration officials including ONDCP Director Barry McCaffrey, members of the European Parliament, members of the Japanese Diet and Former Prime Minister Hashimoto, members of the Canadian Government, and representatives from several Latin American countries. Congressman Ben Gilman, chair of the House International Relations Committee, Congressman Dan Burton, chair of the House Government Reform Committee and Congressman Mica took lead roles in the program.

Highlights included a roundtable panel examining the Latin American perspective with Vice-President Jorge Quiroga of Bolivia and Colombian Police General Ishamel Trujillo among the featured speakers. The law enforcement round table featured William Ledwith, U.S. DEA Chief of International Operations, Paul Higdon, INTERPOL, Director of Criminal Intelligence, Jurgen Storbeck, EUROPOL Coordinator and Douglas Tweddle, World Customs Organization. Presentations were made on international money laundering, alternative development and enhancing the security belt around Afghanistan. Featured presenters included Pino Arlacchi, Executive Director of the UNDCP, Jack Stewart-Clark, former MEP Speaker and Rand Beers with the U.S. Department of State.

The Summit participants affirmed that international cooperation is a critical part of effective drug control. It is also recognized that the United Nations Office for Drug Control and Crime Prevention has an essential role in addressing the global challenges of the drug problem. Conclusions were reached that legislators and parliamentarians from around the world should continue to work together and share information about successful methods to reduce drug abuse, production and trafficking. A balanced approach—focusing on all aspects of drug control—was considered essential. Obtaining a significant reduction in the supply of and demand for ille-

gal drugs, as called for at the UN General Assembly Special Session of June 1998, was identified as a continuing priority. A series of specific drug control needs and steps for achieving them was identified.

*b. Benefits.*—The numerous hearings on the National Drug Control Strategy, its implementation and the identification of additional priorities and needs have resulted in responsive actions domestically and internationally that will likely enhance drug control efforts, protect lives and punish drug criminals. The hearings have identified the need to improve domestic agency capabilities in preventing and treating drug abuse domestically. Federal agencies responsible for preventing and treating drug abuse and addiction have been notified of specific needs and their responsibilities to meet them more effectively. For example, major deficiencies in the Department of Education's Safe and Drug Free School Program have been identified and the department reportedly has embarked upon a major improvement effort. Similarly, significant contracting issues identified in the ONDCP national media campaign reportedly are being addressed. Subcommittee hearings on the issue of extradition have contributed to the recent successful extradition of criminals and drug traffickers from Mexico and Colombia. Finally, subcommittee hearings regarding military and strategic needs in protecting our border and interdicting drugs have been resulted in operational changes and improvements, as well as hastened the deployment of needed resources. The subcommittee initiated a letter, signed by members of the Border Caucus and the Speaker's Task Force on Drugs calling on the President to create a single border coordinator with decisionmaking authority. While the U.S. domestic and international drug control efforts continue to require further improvements and commitments in resources, the subcommittee hearings have been a critical forum for identifying specific needs and facilitating meaningful and timely responses.

*c. Hearings.*—During the 106th Congress, the Subcommittee on Criminal Justice, Drug Policy, and National Security held 42 hearings that addressed various aspects of the National Drug Control Policy, its implementation and the Nation's continuing drug control efforts and needs.

(1) On February 25, 1999, the subcommittee, in its role as authorizing subcommittee for ONDCP, conducted a hearing to review its 1999 National Drug Control Strategy entitled, "Oversight of the 1999 National Drug Control Strategy." The report was endorsed and transmitted to Congress by President Clinton. The hearing examined the 1999 National Drug Control Strategy, as well as accompanying budget and performance measure documents. The 1999 National Drug Control Strategy outlined five specific goals: "Goal 1: Educate and enable America's youth to reject illegal drugs as well as alcohol and tobacco; Goal 2: Increase the safety of America's citizens by substantially reducing drug-related crime and violence; Goal 3: Reduce health and social costs to the public of illegal drug use; Goal 4: Shield America's air, land, and sea frontiers from the drug threat; and Goal 5: Break foreign and domestic drug sources of supply."

Each of the subcommittee hearings held in 1999 on topics of national drug control efforts addressed issues and activities associ-



ated with one or more of the goals of the National Drug Control Strategy. The first National Drug Control Strategy goal of educating and enabling American youth to reject illegal drugs was a key topic of several subcommittee hearings in 1999.

(2) On March 18, 1999, the subcommittee held a hearing entitled, "Oversight of Agency Efforts to Prevent and Treat Drug Abuse." The hearing addressed prevention and treatment aspects of the National Strategy, including the role of Federal agencies and programs. A topic of importance at the hearing was developments regarding ONDCP's National Youth Anti-Drug Media Campaign. The 5-year media campaign is dedicated to reducing teen drug use. The administration claims that the campaign is beginning to show results. The campaign began in January 1998 in 12 test sites and has now expanded nationwide. ONDCP claims that 95 percent of the target audience is being reached with anti-drug messages.

The efforts of the Substance Abuse and Mental Health Services Administration [SAMHSA], a component of the Department of Health and Human Services [HHS], were of interest to the subcommittee. SAMHSA is responsible for providing national leadership to ensure that knowledge, based on science and "state-of-the-art" practices, is used effectively for the prevention and treatment of addictive and mental disorders.

The subcommittee considered expansion of SAMHSA's Substance Abuse and Prevention and Treatment Block Grant program. This grant program awards funds to States for prevention activities and treatment services. The grants include funding that targets substance-using pregnant women, women with dependent children, and injection drug users.

SAMHSA also seeks to reduce the gap in treatment through its Targeted Capacity Expansion program that makes awards directly to States, counties, cities, and service providers. These grants are to target communities with serious and emerging drug problems. In 1999, this program is to include an HIV/AIDS component targeting minority populations at risk of contracting HIV/AIDS or living with HIV/AIDS.

Another component of Federal prevention and treatment is work performed by the National Institute on Drug Abuse [NIDA], a component of the HHS National Institutes of Health [NIH]. NIDA conducts clinical and epidemiological research to improve the understanding of drug abuse and addiction. Over the past decade, NIDA-supported scientists have sought to develop and improve pharmacological and behavioral treatment for drug addiction. To improve treatment nationally, NIDA is establishing a National Drug Abuse Treatment Clinical Trials Network to conduct large, rigorous, multi-site treatment studies in community setting using diverse patients.

(3) On October 14, 1999, the subcommittee held a hearing entitled, "The National Youth Anti-Drug Media Campaign." This hearing closely examined the National Youth Anti-Drug Media Campaign to ensure that it is being conducted efficiently and effectively, and that Federal funds are being expended in accordance with congressional intent.

ONDCP is responsible for conducting and administering the National Youth Anti-Drug Media Campaign. The predecessor of the

current campaign was developed by the Partnership for a Drug Free America [PDFA], a not-for-profit organization created in 1987. In a collaborative effort, the PDFA solicited anti-drug ads from various ad agencies that donated their creative talent to design and produce anti-drug television ads (pro bono). The PDFA solicited and obtained donated media airtime from the big three television networks to run the anti-drug ads as public service announcements [PSAs]. For over 10 years, the PDFA coordinated these activities with great success and at no expense to the American taxpayer. According to the annual University of Michigan Monitoring the Future survey, at the same time that the level anti-drug television ads were rising, attitudes about the social disapproval and the perceived risks of illegal drug use were also rising, and there was a corresponding decrease in illegal drug use among young people. The program seemed to be working.

Beginning in 1991, the donated airtime from the big three media networks began to decline significantly due to increased competition resulting from industry deregulation. Throughout the 1990's, the PDFA worked diligently to rebuild the donated airtimes to previous levels (e.g., in 1991 the estimated value of donated media airtime was \$350 million). In 1996 and 1997, the PDFA approached Congress for assistance. The PDFA worked with Congress to fund the President's budget request to replace the decline in donated media airtime. In 1996, the PDFA commissioned a study that an advertising agency that identified three target audiences and determined that the desired exposure rate. The minimum cost for such an effort was estimated to be \$175 million.

In 1997, Congress appropriated \$195 million for the anti-drug media campaign for fiscal year 1998, and another \$185 million was appropriated for fiscal year 1999. The funds, appropriated under the Treasury-Postal Appropriations Bill, were intended primarily to fund media buys. The ONDCP was selected as an appropriate organization to administer the new campaign, and a "match" requirement was established.

ONDCP commissioned a contractor to produce a Communications Strategy Statement to guide the overall anti-drug media campaign. According to the Communications Strategy Statement, the goal of the media campaign includes "preventing drug use and encouraging occasional user to discontinue use." The campaign now includes programs such as interactive Internet websites, entertainment outreach, corporate sponsorships, and a program on parenting strategies.

The central focus of this oversight hearing was to determine whether the media campaign is being administered efficiently and effectively. Among the issues considered at the hearing was that of spending less than was intended for media buys and more than was intended for other aspects of the campaign, which did not have a proven track record. Significant questions were raised as to the efficiency of ONDCP's current contracting practices, and the benefits of non-media buying activities.

(4) On October 21, 1999, the subcommittee held a hearing entitled, "Substance Abuse Treatment Parity: A Viable Solution to the Nation's Epidemic of Addiction?" It has been estimated that 26 million Americans are presently addicted to drugs and/or alcohol. The

cost of both drug and alcohol addiction to society—including costs for health care, substance addiction prevention and treatment, preventing and fighting substance-related crime, and lost resources resulting from reduced worker productivity or death—was estimated at \$246 billion for 1998.

Substance abuse has an enormous impact on our society, both economically and psychologically. This hearing examined options for decreasing the demand for drugs and alcohol by providing treatment options for addiction recovery. More specifically, the hearing heard testimony regarding options for including substance abuse treatment coverage under certain employee health benefit plans. One proposal would require health care providers and employers to provide similar coverage for substance abuse treatment as other medical health needs, such as dental and emergency care coverage.

A study by the Bureau of Labor Statistics [BLS] reported that more than 70 percent of those using illicit drugs and 75 percent of alcoholics are employed. Currently, however, only 2 percent of the alcoholics and addicts covered by health plans reportedly are able to receive adequate treatment. The BLS report indicated that fewer than 7 percent of employer provided health plans cover alcoholism and drug addiction treatment to the same degree as other medical conditions covered by health plans.

Information was considered as to whether substance abuse is better classified as a behavioral condition or a brain disease. Brain disease research indicates that addicts experience changes in brain dopamine levels. Research shows that the brain can change in both structure and function after repeated exposure to drugs. In November 1995, the National Institute on Drug Abuse [NIDA] declared drug addiction to be a brain disease. The hearing focused on policy and legislative options for providing both medicinal and behavioral treatment to substance abusers who are covered by health care plans.

Experts in the field of substance abuse prevention argue that treatment is an effective method to decrease the demand for drugs and alcohol, thus advancing the war on drugs. One study shows that every \$1 spent on treatment saves \$7 in health care costs, criminal justice costs and lost productivity from job absenteeism, injuries and sub-par work performance. Another recent study conducted by the Minnesota alcohol and drug authority reported that the State saved approximately \$22 million in annual health care costs by providing treatment. While these numbers sound impressive, employers are concerned about mandating the inclusion of substance abuse treatment coverage in employee health plans due to potential increase in costs.

Mental health is a closely related condition that underwent similar legislative debate earlier in the decade. The Mental Health Parity Act of 1996 (Title VII of Public Law 104-204, "MHPA"), signed into law on September 26, 1996, provides limited parity for mental health coverage under employee-sponsored group plans. The provision, which went into effect January 1, 1998, prevents insurers from establishing more restrictive annual and aggregate lifetime limits for mental health coverage than for other health coverage. The provision does not require that mental health benefits be offered as part of a health insurance package. Nor does it require

parity in co-payments or deductibles for mental health services, or require a minimum number of inpatient days or outpatient visits. While the Congressional Budget Office estimated the provision would cause insurance premiums to rise by 0.16 percent to 0.4 percent (depending on how employers react to the mandate), treatment requirement exemption can be granted if a plan's premiums increase by 1 percent or more due to required coverage. In addition to this waiver, health plans sponsored by employers with less than 50 employees are exempted from the provision.

A number of legislative proposals have been introduced to address substance abuse treatment parity issues. H.R. 1977, the "Substance Abuse Parity Act of 1999," introduced by Representative Jim Ramstad (R-MN) is one proposal. This proposal would require parity and nondiscriminatory application of treatment limitations and financial requirements to substance abuse treatment benefits under private group and individual health plans which cover both mental and medical/surgical benefits. As in the Mental Health Parity Act of 1996, this bill would provide an exemption for small employers with 50 or fewer employees. This bill would go beyond the parity provided by the MHPA by prohibiting plans from imposing stricter limits on the frequency of treatments, the number of visits, or other stipulations on treatment for substance abuse benefits than for medical benefits. Further, the bill would not allow different co-payments, deductibles, out-of-network charges, or out-of-pocket contributions for substance abuse benefits than for medical benefits. As in the MHPA, H.R. 1977 waives parity if premiums increase by more than 1 percent.

H.R. 1515, the "Mental Health and Substance Abuse Parity Act of 1999," introduced by Representative Marge Roukema (R-NJ), would extend treatment and financial parity to both mental health and substance abuse benefits, prohibiting group and individual health plans from imposing treatment limitations or financial requirements on the coverage of "behavioral health benefits" (mental health, substance abuse and chemical dependency benefits) if similar limitations or requirements are not imposed on medical and surgical benefits. H.R. 1515 also repeals the 1 percent exemption offered in both the Mental Health Parity Act and H.R. 1977.

S. 1447, the "Fairness in Treatment: The Drug and Alcohol Addiction Recovery Act of 1999," introduced by Senator Wellstone (D-MN), provides full parity for substance abuse treatment. Also, S. 1447 reduces the 50-employee exemption down to 25 employees, and it does not include the 1 percent cost increase exemption.

The second National Drug Control Strategy goal of increasing citizen safety by reducing crime and violence also was a key topic in several subcommittee hearings in 1999.

(5) On January 22, 1999, the subcommittee held a hearing entitled, "Our Drug Crisis: Where Do We Go From Here?" Since this hearing was held before the official organization of the subcommittee, it is also listed as a full committee hearing. Hearing testimony indicated that central Florida teens are taking drugs at an unusually high rate. Arrests reportedly are skyrocketing and central Florida teenagers are dying from heroin overdoses each year. Drugs are increasingly playing a role in Orlando area teen suicides. For

the first time, drug overdoses in 1998 surpassed homicides as a cause of death in greater Orlando.

According to the Drug Enforcement Administration [DEA], Colombian heroin smuggled via Puerto Rico is the most common form of heroin found in Florida. Because of the close ties between Puerto Rico and Orlando, Puerto Rico's drug problem has become central Florida's drug problem. The drugs, the crime, and the violence associated with Puerto Rico reportedly have moved into Orlando. Central Florida has been designated as a High Intensity Drug Trafficking Area [HIDTA], making local and State agencies eligible for available Federal resource to fight illegal drugs. In 1998, Congress provided \$1 million to fund the central Florida HIDTA. Local, State, and Federal officials are to use these resources to enhance and coordinate their intelligence gathering, law enforcement, interdiction, prevention and prosecution of drug criminals.

(6) On February 24, 1999, the subcommittee held a hearing entitled, "New York Mayor Rudolph Giuliani: Winning the War on Drugs and Crime." New York Mayor Rudolph Giuliani's first term in office resulted in a steep reduction in city crime rates. After his re-election, he promised to act as aggressively against illegal drugs.

In October 1997, the mayor acknowledged the scope of New York's drug problem: 70 to 80 percent of arrestees testing positive for drug use; substance abuse costing the city more than \$20 billion each year; \$21 out of very \$100 in taxes paid to New York City subsidizing the consequences of substance abuse; and 71 percent of children in foster care in New York City having at least one parent who was a substance abuser. The mayor's response was to announce a major anti-drug offensive to address drug abuse through enhanced treatment, education and law enforcement. The response included: 5 police anti-drug initiatives; increasing the number of drug-free school zones from 40 to 100; doubling the number of schools in the Safe Corridor program from 120 to 240; and designating 7 parks as drug-free zones. The mayor instituted a 24-hour, 7 day a week, toll-free drug hotline, encouraging New Yorkers to do their part in reporting drug activity, with an advertising campaign to make New Yorkers aware of the service.

The mayor also responded to lax State laws dealing with repeat misdemeanor drug sellers, by supporting jail terms. The Department of Probation began a program designed to target 1,000 juvenile probationers with court-imposed curfews as a result of a drug offense, using state-of-the-art tracking and beeper technology to monitor compliance on a 24-hour basis. The Board of Education was given resources to assign substance abuse specialists in each of the city's family courts, and to act as liaisons between the juvenile justice system and the school system. The Department of Correction was given resources to increase by 50 percent the number of drug treatment beds available in the Department's Substance Abuse Intervention Division—from 1,058 to 1,558 beds. The Department of Probation doubled its residential drug treatment capacity from 180 to 360 probationers. Outpatient drug treatment capacity increased from 890 to 965. Participating probationers have shown a 35 percent higher rate of completion of the terms of their probation than probationers who did not take part in drug treatment.

The mayor opened a drug court in Manhattan (with plans for courts in Bronx, Queens & Staten Island), to complement one operating in Brooklyn. Defendants take part in an intensive 18-month drug treatment program in exchange for reduced criminal charges and are monitored daily by case management court staff. The mayor created a Drug Treatment Coordinator unit within the mayor's office responsible for developing an on-line database of all available drug treatment services in the city, with a toll-free number.

Under Mayor Giuliani, DARE was expanded in city schools, with extra resources made available to augment DARE program activities, such as the Gang Resistance Education Assistance Treatment [GREAT]. Other mayoral initiatives include: drug-prevention youth programs in public housing; an anti-drug parent network program; making parents aware of the dangers of drugs, of counseling and of signs of drug use in their children; sponsorship of a clergy anti-drug abuse forum; a pro bono media anti-drug campaign through a major advertising agency; public service announcements to encourage mentoring; and mechanisms to measure the success of his anti-drug agenda.

Over the past 5 years, crime in New York City reportedly decreased by 47.5 percent and the homicide rate by 70 percent. Besides making life better for city residents, tourism is at historic levels.

(7) On May 13, 1999, the subcommittee held a hearing entitled, "International Law: The Importance of Extradition." "Extradition" is the formal surrender of a person by a State to another State for prosecution or punishment. Extradition to or from the United States is done pursuant to treaty. The United States has extradition treaties with over 100 nations. International terrorism and drug trafficking have made extradition an increasingly important law enforcement tool.

Extradition is triggered by a request submitted through diplomatic channels. In the United States, it proceeds through the Departments of Justice and State. The request is presented to a Federal magistrate who typically holds a hearing to determine whether such request is in compliance with an applicable treaty. The magistrate also considers whether the request provides sufficient evidence to satisfy "probable cause" that the fugitive committed the identified treaty offense(s), and whether other treaty requirements have been met. If these conditions are established, the magistrate certifies the case for extradition at the discretion of the Secretary of State. Except as provided by treaty, the magistrate does not inquire into the nature of foreign proceedings likely to follow extradition.

The laws of the country of refuge and the applicable extradition treaty govern extradition back to the United States of any fugitive located overseas. As a matter of practice, the fact that extradition may have been ignored, and a fugitive may have been forcibly returned to the United States for trial, typically constitutes no jurisdictional impediment to trial or punishment in the United States. Federal and foreign immigration laws sometime serve as a less controversial alternative to extradition to and from the United States.

The United States and Mexico have had a mutual extradition treaty since 1980. In March 1999, the Government of Mexico extradited a Mexican national, Tirso Angel Robales, charged with drug trafficking and escaping from a United States Federal prison. On March 23, 1999, Robales was handed over by officials of Interpol-Mexico to the United States Marshals Service. Robales was convicted in the United States in 1991 for possession with intent to distribute a controlled substance, criminal association to possess a controlled substance with intent to distribute and continuous operation of a criminal enterprise. He escaped in 1995 from California's Terminal Island correctional facility and fled to Mexico. When he escaped, Robales had almost 12 years pending on his sentence.

On December 4, 1995, United States authorities presented, under the provisions of the United States-Mexico Extradition Treaty, the formal request for his extradition. Mexican courts issued an arrest warrant on March 5, 1996. Robales was arrested on November 15, 1996. On February 10, 1997, judicial authorities opined that extradition should not be granted. In spite of the court's opinion, Mexico's Secretariat of Foreign Affairs granted extradition on February 28, 1997. Robales presented several appeals, including arguments of the unconstitutionality of both the extradition treaty and the decision granting extradition. The courts rejected these arguments. Extradition of Mexican nationals is not barred by the Constitution, but legislation allows an extradition from Mexico to the United States only in "exceptional cases." Prior to 1995, no Mexican national had ever been extradited. Robales is the first Mexican national, non-dual citizen, to be extradited from Mexico, and while not a major drug kingpin, he was extradited.

The U.S. Government has negotiated an assortment of treaties and agreements designated to serve as important tools in fighting drug trafficking. One type of bilateral agreement is the maritime counterdrug agreement, generally consisting of six parts and granting the United States full or partial permission for shipboarding, shiprider, pursuit, entry to investigate, overflight, and order to land. Bilateral agreements are not uniform and some provide very limited rights to U.S. law enforcement authorities.

The third National Drug Control Strategy goal of reducing health and social costs of drug abuse was a key topic in hearings conducted by the subcommittee.

(8) On June 16, 1999, the subcommittee held a hearing entitled, "Pros and Cons of Drug Legalization, Decriminalization, and Harm Reduction."

(9) This hearing was followed by a related hearing on July 13, 1999, entitled, "The Decriminalization of Illegal Drugs." At both hearings, testimony was received arguing for and against a relaxation of existing anti-drug laws and law enforcement activities. Among the highlights of the hearing was the identification of many uncertainties and risks associated with significant changes to current laws and enforcement practices. Substantial human and social costs attendant with decriminalization and legalization options were highlighted and debated.

Other subcommittee hearings (including those previously mentioned) have highlighted substance abuse prevention and treatment needs in the United States, and also are relevant to the third Na-

tional Drug Control Strategy goal of reducing negative health consequences and social costs associated with drug abuse and addiction.

The fourth National Drug Control Strategy goal of shielding America by air, land, and sea, was a key topic in at least five subcommittee hearings in 1999.

(10) On March 4, 1999, the subcommittee held a hearing entitled, "Oversight of United States/Mexico Counternarcotics Efforts."

(11) This hearing was shortly followed by another subcommittee hearing on March 24, 1999, entitled, "Oversight of Mexican Counternarcotics Efforts: Are We Getting Full Cooperation?" The purpose of the hearings was to examine the United States-Mexican cooperation in counternarcotic efforts. Serious concerns were raised over the degree of cooperation by Mexico with United States efforts to combat drug trafficking.

Hearing testimony indicated that cocaine is transshipped from Colombia to Mexico and then transported into the United States using various land, air, and sea routes. Mexico is also a major producer of marijuana, heroin, and methamphetamine. DEA estimates that Mexico has become the second-largest source of heroin in the United States. DEA also has identified an increase in methamphetamine "cooks" trained in Mexico who enter the United States to produce the drugs. While Mexico continues to mount significant eradication and supply reduction efforts, many of the 1998 eradication and drug seizure statistics are lower than those of 1997. Cocaine seizures reportedly were down 35 percent. Heroin seizures, on the other hand, were up 4 percent.

In the past 3 years, the United States has made approximately 60 extradition requests, and approximately 65 percent of these requests have been fulfilled. Mexico has requested approximately 58 extraditions from the United States, 48 percent that have been fulfilled. In 1998, three Mexican nationals were extradited to the United States. On November 13, 1997, the United States and Mexico signed a protocol to the current extradition treaty that will permit the temporary extradition of criminals for trial in the requesting country before they finish serving their sentence. This protocol was ratified by the United States Senate, and is under discussion in Mexico's Senate. There are a number of individuals whom Mexico has agreed to extradite, but who have filed appeals. It is unclear if and when these individuals will be extradited to the United States.

Money laundering has been a criminal offense in Mexico since 1990, however, banking regulations and enforcement efforts reportedly have been lagging. A specialized unit against money laundering was created in January 1998. The unit is to work closely with the U.S. Financial Crimes Enforcement Network (FinCEN), and other international anti-money laundering agencies and organizations.

"Operation Casablanca," concluded in May 1998, was the largest money laundering sting in U.S. history. The sting was conducted over 2 years by undercover agents from the U.S. Customs Service. Forty Mexican and Venezuelan bankers, businessmen, and suspected drug cartel members were arrested, and 70 others indicted are fugitives. Casablanca resulted in tensions in United States and



Mexico anti-drug efforts. United States officials apparently did not fully inform Mexican counterparts of the operation because they feared Mexican corruption would endanger agent lives. The United States has requested the extradition of five men wanted in the money-laundering case. The Mexico Attorney General's office had threatened to bring charges against United States Customs agents who had operated in Mexico, but later said it was unable to find proof they had committed any crimes under existing laws. Recently, the Mexican Government has publicly stated that it has concluded the investigation and will not take actions resulting from Operation Casablanca. Three of Mexico's most prominent banks are implicated in the investigation. Bancomer, Banca Serfin, and Confia banks were indicted, along with more than a dozen low- and mid-level bankers who were accused of knowingly participating in the laundering of Cali and Juarez drug cartel proceeds.

On June 1, 1998, Mexican law enforcement arrested two leaders of the Amezcua-Contreras organization, the most powerful and dominant methamphetamine trafficking organization in Mexico. Luis and Jesús Amezcua are incarcerated at the same Federal maximum security prison that holds their brother Adan, who was arrested November 10, 1997. On February 4, 1999, the Mexican Government announced a multi-faceted plan to assert its dedication to combating drug cartels. The \$400 million plan is intended to strengthen Mexico's anti-drug programs and agencies. The initiative will fund equipment such as infrared cameras for airplane surveillance, special x-ray machines at border crossings, and encrypted satellite-communications equipment.

(12) On May 4, 1999, the subcommittee held a hearing entitled, "Losing Panama: The Impact on Regional Counterdrug Capabilities." Panama, the hub of two oceans and two continents, has been home to the United States military since it seceded from Colombia in 1903. United States military forces in Panama have had several functions. A primary purpose for United States troops was to provide for the defense of the Panama Canal. Until September 1997, Panama served as the headquarters of the United States Southern Command (SOUTHCOM), a unified command responsible for all United States military operations throughout Latin America and the Caribbean, except for Mexico. In September 1997, SOUTHCOM moved to Miami, FL. Despite the move, SOUTHCOM has continued to provide support to Latin American nations combating drug trafficking, including such activities as aerial reconnaissance and counternarcotics training. Howard Air Force Base, in Panama, has provided secure staging for detection, monitoring, and intelligence collection.

In spring 1999, there were less than 4,000 United States troops in Panama (down from 10,000 in 1993), stationed on four major military installations—Fort Sherman, Fort Clayton, Howard Air Force Base, and Fort Kobbe. Six major installations were returned to Panamanian control by that date—Fort Davis and Fort Espinar were returned in September 1995; Fort Amador, at the Pacific entrance to the Canal, was returned in October 1996; Albrook Air Force Station was returned October 1997; Galeta Island was returned March 1999; and Rodman Naval Station was returned in March 1999. Implementation of the Panama Canal Treaty and the

Neutrality Treaty have been major pillars of the United States-Panama bilateral relationship. The Panama Canal Treaty is to terminate on December 31, 1999, at which time the Government of Panama will assume control of the Panama Canal. At the same time, all United States military forces must be out of Panama, and all remaining United States military facilities revert to Panama.

The Neutrality Treaty remains in force indefinitely and gives the United States the right to defend the neutrality of the Panama Canal. Roughly 13 percent of U.S. international shipborne commerce flows through the Canal. The figure for world trade is 4 percent. By the end of 1999, the United States military will have returned property consisting of about 70,000 acres and about 5,600 buildings to the Government of Panama. Estimates of the value of the land and improvements range upward from \$10 billion. The Panamanians plan to take advantage of reverting properties to make Panama a commercial and educational hub in the Western Hemisphere. The government plans on establishing new transshipment ports, a center of higher education, light manufacturing zones, and residential resort areas.

Panama serves as a major transit point for illicit drugs heading to the United States. This is due to its proximity to major drug-producing countries, location on key transportation routes, openness to trade, and weak controls along borders and coasts. Panama's dollar-based economy and loosely regulated banking sector have made Panama attractive to money laundering. Panama also is an important hub for the distribution of South American-origin cocaine. The drugs pass through Panamanian waters in fishing craft and "go-fast" boats and either continue on to other central American countries or are dropped off in Panama. The shipments that get dropped off in Panama are repackaged and moved northward on the Pan-American Highway or depart in sea freight containers. Cocaine and heroin are also moved to the United States and Europe by couriers transiting Panama by air.

On April 16, 1999, Defense Secretary William Cohen approved a plan to open new military operating facilities (Forward Operating Locations [FOLs]) on the Caribbean islands of Curaçao and Aruba, and also in Ecuador. These FOLs are intended to offset the loss of Howard Air Force Base. Interim agreements have been agreed upon between the U.S. Government and the host nations. "The Department of Defense is fully committed to ensuring that necessary steps are taken to bring the FOLs to full operational status," Cohen wrote in a memorandum. Among the features of the plan, Cohen said, is that "the Air Force is designated 'executive agent' for the FOLs at Curaçao/Aruba, and Manta, Ecuador. As such, the Air Force will develop, establish and maintain the operation of these facilities."

The service designated as executive agent for a particular FOL would be responsible for funding it, and the concern is great among all the services that the moneys currently identified for the counterdrug mission will not cover the cost to open multiple operating sites on the Dutch islands of Curaçao and Aruba, at Manta on Ecuador's Pacific coast, and possibly at Liberia, Costa Rica. Further complicating the matter is SOUTHCOM's insistence on counting Curaçao and Aruba as a single FOL. The two islands are about

30 miles apart and, from the standpoint of the military operators, would reportedly require duplicate facilities. By SOUTHCOM's account, the Air Force is responsible as the executive agent at only two new FOLs: Curaçao/Aruba as one, and Manta as another. The Navy would be responsible for a "third" site if an FOL is negotiated for Liberia, Costa Rica. A SOUTHCOM advance team was to be dispatched as early as this week to one or more of the FOLs to begin preparing the sites to accept assets on an expeditionary basis from Howard Air Force Base.

The United States will not own or control the facilities in Ecuador, Aruba or Curaçao. Rather, the United States will have operating rights, much as an airline operates at an airport. Critics say an important distinction, though, is that the United States will make a significant investment in building and upgrading facilities. Instead of permanently stationing aircraft at the three sites, the United States will rotate aircraft in and out on a temporary basis, probably from several weeks to months at a time. With the host nations performing many support functions, SOUTHCOM hopes to save on operating costs, which it currently projects at \$14 million a year for the three sites. But Navy and Air Force officials counter that the use of three new sites instead of one could increase operations and maintenance costs by basing aircraft and ships at several locations. They estimate start-up costs of \$50 million or more, and a possible permanent force greater than that SOUTHCOM had proposed. The current effort to secure alternate sites was touched off by the collapse last September of negotiations with Panama to establish a Multinational Counternarcotics Center at Howard Air Force Base. The two countries had been negotiating to turn Howard Air Force Base into an anti-drugs center with intelligence-gathering facilities, air power and 2,000 U.S. troops, plus soldiers from other countries. In July, however, the talks reached an impasse when Panama would not offer more than a possibly renewable contract for 4 years for the counternarcotics center.

No infrastructure work is planned until long-term agreements are signed with the host nations. DOD is planning that the appropriations for these upgrades and repairs will be handled by the Military Construction Subcommittee of the Committee on Appropriations. DOD is hopeful that these long-term agreements will be for 10 years. DOD has made initial estimates of the costs that will be necessary to complete the requisite upgrades and repairs to the new FOLs, ranging from \$78 to \$125 million.

(13) On September 24, 1999, the subcommittee held a hearing entitled, "Examining the Drug Threat Along the Southwest Border." There are 10 States (4 United States and 6 Mexican) that adjoin the 2,000-mile border. The four United States border States (California, Arizona, New Mexico, Texas) include 23 counties that touch the border and the 6 Mexican border States (Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, Tamaulipas) include 39 municipalities that touch the border.

There are five principal U.S. Governmental Departments concerned with drug control-related issues in the Southwest border region: Department of the Treasury (drug interdiction, anti-money laundering and anti-firearms trafficking); Department of Justice (drug and immigration enforcement, prosecutions); Department of

Transportation (drug interdiction); Department of State (cooperation with Mexico); and Department of Defense (counterdrug support). In addition, the Office of National Drug Control Policy [ONDCP] administers the High Intensity Drug Trafficking Area [HIDTA] program. The Departments of Interior and Agriculture also have responsibilities along the border.

Located at key points along this international border are 38 legal ports of entry, 3 of which are among the busiest in the world. The significant transportation networks in the Southwest border region include airports, railroads, and major United States and Mexican highways which facilitate the smuggling and delivery of drugs to other areas in the country, and money out of the United States. The region's strategic location adjacent to Mexico makes the region vitally important to drug trafficking organizations which ship cocaine, heroin, marijuana and methamphetamine into the United States. Mexico is both a major transshipment country for most drugs and responsible for the production of marijuana, Mexican heroin and methamphetamine. Its drug trade is dominated by some of the more powerful drug cartels.

In 1998, 278 million people, 86 million cars, and 4 million trucks and rail cars entered the United States from Mexico. More than half of the cocaine on America's streets and large quantities of heroin, methamphetamine, and marijuana enter the United States across the Southwest border.

Illegal drugs enter by all modes of conveyance—car, truck, train, and pedestrian border-crossers. The drugs cross the open desert on the backs of human “mules.” The drugs are tossed over border fences and then whisked away on foot or by vehicle. Planes and boats find gaps in United States-Mexican coverage and position drugs close to the border for eventual transfer to the United States. Small boats in the Gulf of Mexico and the eastern Pacific seek to outflank United States interdiction efforts and deliver drugs directly to the United States. Traffickers seek opportunities to corrupt local, State, and Federal officials to facilitate drug smuggling.

Rapidly growing commerce between the United States and Mexico has complicated efforts to keep drugs out of cross-border traffic. It has been reported that drug gangs have expanded into many legitimate businesses that can be used for smuggling. U.S. officials have reported purchases of airlines, trucking companies, new and used car dealerships, petroleum transport corporations and others. However, the increasing use of intermediaries as owners has made it almost impossible to trace their activities in detail.

Twenty-three separate Federal agencies and scores of State and local governments are involved in drug-control efforts along our borders, air, and seaports. Currently, no single official is in charge to oversee, integrate and coordinate Southwest border counterdrug efforts. The ONDCP Director has voiced support for creating a coordinating authority for the border with the ability to set objectives and priorities and to recommend to agency heads the deployment of resources.

Statistics compiled by the El Paso Intelligence Center [EPIC] indicate that 70 percent of the cocaine imported into this country is transported through the Southwest border area of the United States. In the past, Mexico-based criminal organizations limited

their activities to the cultivation of marijuana and opium poppies for subsequent production of marijuana and heroin. The organizations were also used by Colombian drug cartels to transport loads of cocaine into the United States, and to pass this cocaine on to other organizations for distribution in the United States. However, over the past 7 years, Mexico-based organized crime syndicates reportedly have gained increasing control over many aspects of the cocaine, methamphetamine, heroin and marijuana trade.

DEA arrests of Mexican nationals within the United States increased 65 percent between 1993 and 1997. Most of these arrests took place in cities that many Americans would not expect to be targeted by international drug syndicates—cities such as Des Moines, IA; Greensboro, NC; Yakima, WA; and New Rochelle, NY.

The damage caused by trafficking is enormous. Typically, large cocaine shipments are transported from Colombia, via commercial shipping and “go fast” boats, and off-loaded in Mexican port cities. The cocaine is transported through Mexico, usually by trucks, where it is warehoused in cities like Guadalajara or Juarez, which are operating bases for the major organizations. Cocaine loads are then driven across the United States-Mexico border and taken to distribution centers within the United States, such as Los Angeles, Chicago, or Phoenix.

Methamphetamine trafficking works in a similar fashion. With major organized crime groups in Mexico obtaining the precursor chemicals necessary for methamphetamine production from sources in other countries, such as China or India, as well as from rogue chemical suppliers in the United States. Methamphetamine labs capable of producing hundreds of pounds of methamphetamine on a weekly basis are established in Mexico and California, where the methamphetamine is then provided to traffickers to distribute across the United States.

The heroin that is available in the United States is coming predominantly from Colombia and Mexico. Heroin mortality figures in the United States are the highest ever recorded—close to 4,000 people have died in each of the last 4 years from heroin-related overdoses across the country. Heroin from Mexico now represents 17 percent of the heroin supply seized in the United States.

(14) On November 17, 1999, the subcommittee held a hearing entitled, “Cuba’s Link to Drug Trafficking.” Cuba’s location between the United States and this hemisphere’s major drug producing countries makes it a logical transshipment point for drug trafficking. While the Cuban Government has consistently denied official involvement in drug smuggling, Cuba does not publish comprehensive information regarding either its internal drug use or the level of drug smuggling activity.

Numerous drug smuggling cases involving Cuba have received public attention, including the highly publicized 1989 court martial and execution by the Castro government of a top military official and decorated combat hero, Major General Ochoa, Commander of Cuba’s Western Army. In this incident, the head of the Interior Ministry, Major General Jose Abrantes, also was arrested, tried and sentenced to 20 years in prison for complicity in drug smuggling. In 1993, United States Federal prosecutors in Miami reportedly drafted (but did not act upon) an indictment for cocaine smug-

gling against Raul Castro, Fidel Castro's brother and head of the Cuban Defense Ministry.

According to State Department's March 1999 International Narcotics Control Strategy [INCS] report, "The lack of authoritative information about the illegal narcotics situation in Cuba makes it difficult to assess the severity of Cuban's drug use and smuggling problems." The report indicates a moderate overall rise in drug use in Cuba, including the use of crack cocaine. Cuban officials blame a lack of resources for its inability to patrol its territorial waters. In a May 1999 letter, the ONDCP Director, General McCaffrey, stated, "The intelligence and law enforcement communities report that detected drug overflights of Cuba, although still not as numerous as in the other parts of the Caribbean, increased by almost 50 percent last year."

On December 3, 1998, the Colombian National Police seized six shipping containers in Cartagena, with 7.2 metric tons of cocaine. The shipment was consigned to a Havana company (51 percent owned by the Cuban Government with two Spanish associates). Cuba has asserted that the drugs were destined for the Spanish port of Valencia (where the Spaniards have other business interests). A congressional staff investigation concluded that there is no reliable evidence that the shipment was bound for Spain, and that the shipment was likely headed for the United States. This case raises serious questions about the role of the Cuban Government in the trafficking of narcotics through Cuba.

First enacted in 1986, the certification process requires the President to submit the majors list to Congress on November 1st of each year. The majors list (some 28 countries in 1999) are those countries that meet the definitions set out in the Foreign Assistance Act of 1961 [FAA]. A "major illicit drug producing country" under paragraph (2) of FAA is any country in which 1,000 hectares of illicit opium poppy or illicit coca is cultivated or harvested, or 5,000 hectares of illicit cannabis is cultivated or harvested in any year. A "major drug transit country" under paragraph (5) of FAA is any country that is a significant direct source of drugs to the United States or a country through which drugs are transported which significantly affects the United States. The FAA requires that 50 percent of the assistance appropriated for any country on the majors list not be obligated or expended unless the country is certified. By March 1st of each year the President is required to submit certification decisions to Congress (the annual State Department INCS report provides the justification for certification decisions). Based on the INCS report, the President may choose one of three options: (1) certify as fully cooperating with the United States; (2) decertify with a waiver; or (3) decertify.

Despite substantial evidence of Cuba being a major transit country in 1998 and 1999, on November 10, 1999, President Clinton notified the Congress by letter that Cuba was not included on the majors list. The hearing explored the rationale for the administration excluding Cuba from the list, and arguments supporting its inclusion.

The fifth National Drug Strategy goal of breaking foreign and domestic drug sources of supply was a key topic in two subcommittee hearings in 1999.

(15) On June 23, 1999, the subcommittee held a hearing entitled, "Getting Away With Murder, Is Mexico a Safe Haven for Killers?: The Del Toro Case." The focus of the hearing was an incident involving a tragic murder in Florida of the mother of six children, including 2-year quadruplets. The person identified as the killer, Jose Luis Del Toro, Jr., fled to Mexico. Del Toro was captured on November 20, 1997, in Monterey, Mexico. Del Toro was scheduled to be deported, because he was in Mexico illegally. However, within an hour of his scheduled deportation, Mexican officials requested that a formal extradition request be filed by January 22, 1998. On December 4, 1997, the United States Department of Justice informed the Florida prosecutor that the Mexican Government had demanded assurance that Del Toro would not receive the death penalty if convicted. The assurance was provided to facilitate the extradition. Upon approval of the extradition by the Mexican Foreign Ministry, Del Toro filed multiple court appeals, further delaying his extradition. As of the hearing date, it was 1 year and 7 months since Del Toro was arrested in Mexico, and 1½ years since the Florida State attorney granted Mexican demands on the death penalty. Within weeks following the hearing and its attendant publicity, Del Toro was extradited to the United States.

(16) On August 6, 1999, the subcommittee held a hearing entitled, "The Narcotics Threat From Columbia." According to United States Government [USG] estimates, Colombia is now the world leader in coca cultivation. Gross coca cultivation estimates in Colombia increased from 67,000 hectares in 1996 to 101,800 hectares in 1998, an increase of almost 50 percent. The USG reports that Colombian coca growers are now cultivating a more potent coca leaf. It is estimated that this new coca could increase potential Colombian cocaine production from 1998 levels of 165 metric tons to between 195 and 250 metric tons over the next 2 years.

Coca is grown chiefly on the eastern plains in Guaviare and neighboring areas, and also along the Ecuadorian and Peruvian borders in areas of Putumayo and Caqueta. In 1998, significant amounts of coca were discovered under cultivation in Bolivar and Norte de Santander. In the 1999 International Narcotics Control Strategy [INCS] report, the State Department (DOS) reported that Colombia remains the source country for over three-quarters of the world's cocaine. HCl laboratories can be found in all regions of the country, but primarily are located in the plains and jungle regions near the coca-growing zones under guerrilla control.

The Drug Enforcement Administration [DEA] reports that there has been a dramatic shift in the United States heroin market from Southeast Asian to Colombian heroin. Colombia now produces about 6 metric tons of heroin annually, almost all of which is destined for the United States. DEA's Heroin Signature Program estimates that 75 percent of the heroin seized in the United States is of Colombian origin. Colombian heroin is transported into the United States in small quantities by numerous couriers aboard commercial airlines, either directly from Colombia or through countries in central America or the Caribbean. Most opium is grown on the eastern slopes of the central Cordillera Mountains in Tolima, Huila and Cauca departments, plus in the Perija Mountains adjacent to Venezuela and, to a limited extent, in Antioquia depart-

ment. Most opiate laboratories produce small quantities of drugs and use simple equipment and limited amounts of precursor chemicals. Colombia accounts for an estimated 2 percent of the world's opium production.

Colombian guerrilla organizations are increasingly involved in drug trafficking related activities and are controlling more territory. The two main Colombian guerilla organizations are the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). It has been reported that the guerrillas earn between \$500 million and \$600 million annually from drug-related activities.

The FARC is the largest, and best-trained, and best-equipped guerrilla organization in Colombia. It is estimated that the FARC consists of 10,000–15,000 armed combatants. FARC combatants have initiated attacks against Colombian political, economic, military, and police targets. The FARC has well documented ties to narcotics traffickers, principally through the provision of armed protection for coca and poppy cultivation and narcotics production facilities, as well as through attacks on government narcotics eradication efforts.

The ELN is the second-largest guerrilla organization in Colombia. It is estimated that the ELN consists of 3,000–5,000 armed combatants. ELN combatants have conducted assaults on oil infrastructure, extortion, and hundreds of kidnappings for profit. ELN combatants have also forced coca and opium poppy cultivators to pay protection money and attacks government efforts to eradicate these crops.

Colombian President Andres Pastrana has initiated peace negotiations with the FARC and the ELN. These negotiations began in November 1998. In an effort to bring the FARC to the negotiating table, President Pastrana created a demilitarized zone covering about 42,000 square kilometers. The initial agreement was for the demilitarized zone to last for 3 months. In January 1999, the FARC broke off negotiations until April 1999. The FARC demanded that the Colombian Government take more aggressive action against the paramilitary organizations. In February 1999, the ELN broke off negotiations and demanded a demilitarized zone. The FARC-controlled demilitarized zone is still recognized by the Government of Colombia [GOC]. In July, peace talks were postponed when disagreements over the role that international observers will play and for a clearer definition of a “demilitarized zone” controlled by the FARC.

Despite the initiation of negotiations, the fighting has continued at an alarming pace. In a major offensive last fall, the FARC blew up one of the country's main oil pipelines. In February 1999, three Americans working with a remote indigenous Colombian group were kidnapped by FARC members and were found slain 2 weeks later on the Venezuelan side of the Arauca River that borders Colombia. Earlier in the year, the ELN hijacked a civilian airplane and committed two mass killings, including one attack on worshippers as they left a church in Cali.

In 1998, the USG/GOC eradication program had its best year ever, successfully spraying over 65,000 hectares of coca and 3,000 hectares of opium poppy. The traffickers responded by expanding



coca cultivation to remote areas under guerrilla control beyond the reach of the spray aircraft operating from existing bases. Low altitude spray operations continue to be threatened by ground fire. Colombian and United States owned aircraft on eradication missions were hit 48 times during 1998. GOC counterdrug operations in 1998 resulted in the seizure of almost 57 metric tons of coca products, 418 kilograms of opium products, and 57 metric tons of marijuana; the destruction of 145 cocaine base and 40 cocaine HCl labs and 10 heroin labs; the capture of over 1,130 metric tons of solid precursor chemicals and over 1.95 million gallons of liquid precursors; the seizure of over 300 vehicles, 300 boats, and 80 aircraft, and the arrest of over 1,400 persons.

In 1997, the GOC signed a maritime shipboarding agreement with the United States. The agreement, which allows for a faster approval process for shipboardings in international waters and sets guidelines for improved counterdrug cooperation with the Colombian navy, has been credited with the seizure of over 13 metric tons of cocaine since its signing. Closure and reversion to Panamanian sovereignty of Howard Air Force Base and facilities at Fort Sherman, Fort Kobbe, Rodman Naval Station, and Galeeta Island have undercut United States counterdrug efforts in the region.

On July 13, General McCaffrey released a discussion paper outlining proposed counterdrug program enhancements designed to meet the emerging drug control challenges in Colombia and the Andean Ridge. The program recommendations reflect preliminary interagency thinking. The major components include enhancements to: counterdrug operations in Southern Colombia; air interdiction; administration of justice; nationwide counterdrug operations; regional intelligence programs; interdiction support; alternative development programs; and USG interdiction and research and development.

(17) On January 27, 2000 the subcommittee held a hearing to discuss the diminishing assets that the Department of Defense [DOD] under the Clinton administration has contributed to the Nation's efforts to curb the supply of illegal drugs. The nature and extent of DOD's reduced contributions to the Nation's drug control efforts were examined, as well as the reasons behind this serious development. The immediate ramifications and potential long term consequences to the Nation's drug control initiatives were explored. The hearing focused on findings by the General Accounting Office [GAO] Drug Control report issued in December 1999, entitled: "Assets DOD Contributes to Reducing the Illegal Drug Supply Have Declined."

Despite the fact that DOD has critical responsibilities for interdicting drugs and stopping drugs at their source, GAO found that DOD's level of support to international drug control efforts has declined significantly since 1992. For example, the number of flight hours dedicated to detecting and monitoring illicit drug shipments has declined substantially—almost 70 percent. This decline is particularly significant in view of recent developments, including increasing narco-terrorist activities in Colombia, the recent closing of Howard Air Force Base in Panama and delays in establishing new air bases in the region, and evidence of record amounts of heroin entering the United States.

In 1999, closure of Howard Air Force Base and other U.S. facilities at Fort Sherman, Fort Kobbe, Rodman Naval Air Station, and Galeeta Island in Panama has undercut United States counterdrug efforts in the region. The failure to secure an agreement with Panama for continued access to these facilities forced the United States to identify three sites: Aruba and Curaçao, in the Netherlands Antilles, and Manta Ecuador. The U.S. Southern Command [SOUTHCOM] estimates that by 2002, it will be able to fly 85 percent of the counterdrug flights that were staged from Howard Air Force Base in 1997–1998. Even with all of the 1997–1998 assets available, SOUTHCOM will only be able to cover 15 percent of key trafficking routes 15 percent of the time. The administration is working to finalize plans for a fourth FOL in El Salvador.

This oversight hearing examined GAO findings and explored whether the administration's practices were consistent with DOD's mission and role under the National Drug Control Strategy, and consistent with recent White House pronouncements of increased support for stopping the production of illegal drugs abroad and their flow into the United States.

(18) On February 15, 2000, the subcommittee held an oversight hearing on the topic of: "The U.S. Response to the Crisis in Colombia." The hearing examined the administration's efforts to stem rising narcotics trafficking and terrorist violence in Colombia, and the FY-2000 supplemental aid proposal. This hearing and a subsequent hearing (on October 12, 2000) focused on the deteriorating situation in the oldest democracy in Latin America. In the past decade, approximately 40,000 Colombians died in narco-guerrilla violence and the Nation's stability is at risk. Colombia has nearly 40 million people and a faltering economy. It continues to produce cocaine and heroin, with significant amounts reaching the streets of neighborhoods in the United States.

According to United States Government estimates, Colombia is the world leader in coca cultivation. The 1999 United States State Department International Narcotics Control Strategy Report [INCSR], revealed that Colombia remains the source country for over three-quarters of the world's cocaine. Gross coca cultivation estimates in Colombia increased from 67,000 hectares in 1996 to 101,800 hectares in 1998, an increase of almost 50 percent. Because Colombian coca growers are now cultivating a more potent coca leaf and because more efficient production methods are now being used, it has been estimated that Colombian cocaine production could increase from 165 metric tons in 1998 to over 250 metric tons by the end of the year 2000.

The Drug Enforcement Administration [DEA] reports that there has been a dramatic shift in the United States heroin market from Southeast Asian heroin to Colombian heroin, especially on the East Coast of the United States. Colombia now produces about 6 metric tons of heroin annually, most destined for the United States. DEA's Heroin Signature Program estimates that fully 75 percent of the heroin seized in the United States originates in Colombia.

(19) On February 17, 2000, the subcommittee held an oversight hearing on the Substance Abuse and Mental Health Services Administration [SAMHSA]. The hearing focused on SAMHSA support for drug treatment services, including: (1) how effectively and effi-

ciently Federal resources are utilized; and (2) what improvements are needed.

On March 14, 2000, the subcommittee continued its hearing that began the previous month on February 17, examining the Substance Abuse and Mental Health Services Administration [SAMHSA]. The hearing continued to examine SAMHSA operations and program administration, including the agency's support for drug treatment services. The focus of this oversight included: 1) how effectively and efficiently Federal resources are utilized; and 2) what improvements are needed.

The Substance Abuse and Mental Health Services Administration, an agency of the Department of Health and Human Services [DHHS], is responsible for supporting mental health and substance abuse prevention and treatment services throughout the country by providing technical assistance, categorical grants, and block grants to the States. Created in 1992 (Public Law 102-321), SAMHSA administers the Substance Abuse Prevention and Treatment [SAPT] Block Grant, which provides funds to States for alcohol and drug abuse prevention, treatment, and rehabilitation programs and activities. SAMHSA also administers the Block Grant for Community Mental Health Services, which provides funds to States for mental health services and support through community mental health centers. In addition to administering the two block grants and providing technical assistance to States, SAMHSA funds children's mental health programs, services to mentally ill homeless persons, programs designed to improve the delivery of substance abuse and mental illness prevention and treatment services. SAMHSA's fiscal year 2000 appropriation is \$2.65 billion: \$1.96 billion for substance abuse related activities; \$632 million for mental health related activities; and \$59 million for program management (Public Law 106-113).

Over the last 30 years, Congress has created a variety of Federal programs supporting the prevention and treatment of, and research relating to, substance abuse and mental illness. From 1974 through 1992 these activities were administered in DHHS by the Alcohol, Drug Abuse, and Mental Health Administration [ADAMHA]. ADAMHA consisted of three research institutes: National Institute on Alcohol Abuse and Alcoholism [NIAAA]; National Institute on Drug Abuse [NIDA]; and, National Institute of Mental Health [NIMH] and two service offices: Office for Substance Abuse Prevention [OSAP] and Office for Treatment Improvement [OTI]. ADAMHA was responsible for administering the Alcohol, Drug Abuse, and Mental Health Services [ADMS] block grant, the major Federal program focused on these issues.

The ADAMHA Reorganization Act of 1992 (Public Law 102-321) replaced ADAMHA with SAMHSA, a services-oriented agency, transferred ADAMHA's three research institutes to the National Institutes of Health [NIH], and replaced the ADMS block grant with two separate block grants: 1) the Block Grant for Prevention and Treatment of Substance Abuse, which provides funds to States for alcohol and drug abuse prevention and treatment programs and activities, and the Block Grant for Community Mental Health Services, which provides funds to States for mental health services and support through community mental health centers. SAMHSA's sup-

port of drug treatment, through its Block Grants for Prevention and Treatment of Substance Abuse, was a key topic of the hearing.

(20) On February 29, 2000, the subcommittee held an oversight hearing on United States-Mexico counter-narcotics efforts. Held on the eve of the annual certification list release by the White House, the purpose of the hearing was to identify issues associated with United States-Mexico counter-narcotics activities. A number of concerns were raised regarding the level of cooperation between the United States and Mexico.

Cocaine continues to be transshipped from Colombia to Mexico and then transported into the United States using various land, air, and sea routes. Mexico is also a major producer of marijuana, heroin, and methamphetamine. Of increasing concern is the recent emergence of a higher purity Mexican heroin. DEA estimates that Mexico has become the second-largest source of heroin in the United States. Methamphetamine precursor chemicals, and increasingly the finished product, are smuggled in great volume into the United States. The DEA has also seen an increase in methamphetamine "cooks" trained in Mexico coming to the United States to produce the drug.

In the past several years, the United States has made approximately 70 extradition requests, and approximately 60 percent of these requests have been fulfilled. Mexico has requested at least 58 extraditions from the United States, 48 percent which have been fulfilled. To date, no major Mexican drug traffickers have been extradited to the United States.

Money Laundering has been a criminal offense in Mexico since 1990, however banking regulations and enforcement efforts are just beginning to catch up with the intent of the legislation. The Specialized Unit against Money Laundering was created in January 1998, to implement the law. They work closely with the U.S. Financial Crimes Enforcement Network [FINCEN], and other international anti-money laundering agencies.

(21) On March 6, 2000 at Woodland, CA, the subcommittee held a hearing to investigate the drug crisis in northern California. The hearing examined the effectiveness of local and Federal efforts to combat the growing drug problem in the region, and the coordination of efforts through the Central Valley California HIDTA. In addition, the hearing focused on methamphetamine use and production in the region.

The nine counties (Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern Counties) of the Central Valley California HIDTA area comprise a major agricultural center for the Nation. The region is populated by approximately 4 million residents although the population swells seasonally as the need for agricultural migrant labor fluctuates. The residents of the Central Valley are serviced by two international airports and hundreds of private airstrips. The Central Valley also contains several major interstate highways including Interstate 5 and Highway 99 which are the traffickers' favored routes of transportation for moving methamphetamine, heroin, and cocaine from Mexico and the Central Valley to northern California and the Pacific Northwest. Additionally, Interstate 80 runs east from San Francisco directly through Sacramento before traversing the length of the United

States through the Rocky Mountains and Midwestern States and provides a major pipeline for the transportation of controlled substances headed to the Midwest and Eastern United States. The Central Valley is also home to rail, bus, cargo, and shipping port facilities.

The Central Valley continues to be a primary manufacturing, transshipment, distribution, and consumption area for illegal narcotics, and for methamphetamine in particular. Within the last several years the area has experienced a dramatic increase in the number and scale of clandestine methamphetamine manufacturing labs operating within the region.

These labs, most of which are operated by multi-drug trafficking organizations based in Mexico, infest the Central Valley. These organizations tend to situate their labs and so called "super-labs" in the Central Valley due to its proximity to the State's principal precursor chemical supply companies and its major interstate highways. These large-scale, relatively sophisticated labs are set up long in advance of use, are well concealed, often heavily guarded, and can produce from 20 to 200 pounds of high purity methamphetamine per cooking cycle.

The Central Valley HIDTA has a fiscal year 2000 budget of \$800,000, run by an executive committee comprised of six local officials, one State and seven Federal officials.

(22) On March 7, 2000, at the U.S. Coast Guard Station in San Diego, CA, the subcommittee held a hearing to investigate the drug crisis in southern California. The hearing examined the effectiveness of local and Federal efforts to combat the growing drug problem in the region, and the coordination of efforts through the Southwest Border HIDTA and its California Border Alliance Group.

Designated as one of the original HDTAs in 1990, the Southwest Border HIDTA region is a critical line of defense in efforts to reduce drug availability in the United States. It is estimated that 59 percent of the cocaine entering the United States passes through Mexico from South America. Mexico is the No. 1 foreign producer and supplier of marijuana and methamphetamine to the United States; and Mexican heroin dominates the market in the western and southwester United States. The Southwest Border HIDTA (fiscal year 2000 budget: \$46,009,946) is located in San Diego, CA, and coordinates regional partnerships between southern California (California Border Alliance Group), Arizona (Arizona Alliance Planning Committee), New Mexico (New Mexico Partnership), West Texas (West Texas Partnership) and South Texas (South Texas Partnership). This territory consists of 39 legal crossing points.

Recent Southwest Border HIDTA initiatives include: (1) the Clandestine Laboratory Seizure System designed for centralized storage and remote retrieval of information relating to clandestine laboratory seizures for access by all HIDTA intelligence centers and law enforcement agencies; (2) the Southwest Border Unit, Research and Analysis Section that prepares organizational profiles of major drug trafficking organizations and trafficking along the Southwest Border by conducting research, analyzing and fusing local, State and Federal intelligence; and (3) the Southwest Border HIDTA Management and Coordination that develops border wide

initiatives, identifies successful efforts, and recommends resource allocations.

(23) On March 20, 2000, in Honolulu, HI, the subcommittee held a hearing to investigate drug challenges in Hawaii. The hearing examined the effectiveness of local and Federal efforts to combat the growing drug problem in the region, and the coordination of efforts through the Hawaii HIDTA.

Marijuana cultivation continues to be significant in Hawaii—the market price for 1 pound of Hawaiian-grown marijuana is in the \$5,000 to \$8,000 price range, which is the highest price for domestic marijuana in the country. Both methamphetamine powder and more refined crystal “ice” are also a threat to the State, with an increasing number of clandestine methamphetamine laboratories. Finally, Honolulu is a principle financial center for the Pacific Rim, and often serves as the initial entry point for Asian money wire transfers, making money laundering a chief concern for the State.

Earlier in the year, the Hawaii House Judiciary Committee approved the use of marijuana for medical purposes, bringing it one step closer to being the eighth State to pass legislation aimed at legalizing some use of marijuana. Additionally, in 1999, Hawaii became the first State to obtain Federal approval to begin testing the viability of industrial hemp as an agricultural resource for the State.

Located in the middle of the Pacific Ocean, the Hawaii HIDTA is positioned to collect and analyze international and regional intelligence relating to the drug threat posed by West Coast, Mexican and Asian/Pacific Islander drug traffickers operating in the Pacific Basin. The Hawaii HIDTA presently consists of two operational initiatives: (1) the Joint Investigative Support and Intelligence Center that gathers and disseminates intelligence relating to drug trafficking and money laundering activities, and (2) the Honolulu Airport Task Force that focuses on airport interdiction.

(24) On March 27, 2000, at the University of Maryland School of Nursing, the subcommittee held an oversight hearing on drug issues in Baltimore, Maryland. The hearing was entitled, “Alternatives to Incarceration: What Works and Why?” The hearing examined the growing drug problem in Baltimore and explored the impact of incarceration and the effectiveness of treatment alternatives.

The Washington/Baltimore HIDTA [W/B HIDTA], established in 1994, is 1 of 31 anti-drug task forces established and financed by the White House Office of National Drug Control Policy [ONDCP]. Since 1994, the total amount of funds allocated to the W/B HIDTA has been almost \$52 million. The region, consisting of Washington, DC, and counties in Maryland and Virginia, is a corridor for drugs being smuggled up and down the East Coast of the United States. The Port of Baltimore, with its huge quantities of bulk cargo entering the United States, is particularly vulnerable to maritime drug smuggling operations.

The W/B HIDTA provides police department executives and investigators with a truer picture of the crime problem in the region. It receives \$11.4 million per year for three program areas: treatment/criminal justice, law enforcement, and prevention.

The W/B HIDTA treatment/criminal justice initiatives for Baltimore City are aimed at breaking the cycle of drug abuse and crime through well-organized, criminal justice based treatment programs for persons under correctional custody. The initiatives have focused on dismantling violent drug trafficking organizations, closing down open-air drug markets and disrupting illicit drug smuggling organizations that affect the Baltimore Metropolitan area.

The 1999 threat assessment issued by the W/B HIDTA demonstrates that drug-related crime and homicides remain a major concern for Baltimore City. The W/B HIDTA has criticized the administration of the former mayor and recommended that priority be given to treatment of criminal offenders.

(25) On April 4, 2000, the subcommittee held an oversight hearing on drug treatment options for the justice system. The hearing focused on promising drug treatment options for eligible non-violent offenders provided by drug courts and prosecutor-based programs. The hearing also examined operations, results and evaluations of programs.

Federal funding to assist State courts in expediting and specializing in drug cases began in 1989, when the Department of Justice [DOJ] Bureau of Justice Assistance [BJA] announced funding for "Expediting Management of Drug Cases" as part of the Drug Control and System Improvement Discretionary Grant Program under the Anti-Drug Abuse Act of 1988. In 1991, BJA announced funding for "Drug Night Courts," under its discretionary grants of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. In April 1991, the National Institute of Justice [NIJ] assessed the effects of expedited case management of drug cases as follows: "Differentiated Case Management [DCM] and Expedited Drug Case Management [EDCM] are new approaches to adjudication that streamline police, prosecution, public defender and court procedures with little additional costs. They have been shown to speed processing times, increase dispositions, and reduce jail crowding." (See "Searching for Answers," A Report to the President, the Attorney General and the Congress, NIJ, April 1991.)

Congress has continued to increase Federal funding for drug courts, prosecutor training, and drug treatment for offenders since 1989, eventually leading to authorization of a special funding program for drug courts. Title V of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322) provided authority for the Attorney General to make grants to State and local governments and to court entities for drug court programs.

In 1997 approximately 20,000 defendants appeared before the Nation's 215 drug courts, with 160 additional courts in the planning stages. In October 1999, 416 drug courts were reported operating nationwide, including 81 juvenile, 11 tribal, 10 and 7 combined drug courts; 279 were in the planning stages, up from a dozen in 1994.

According to the Arrestee Drug Abuse Monitoring system [ADAM] data, between one half and three-quarters of all arrestees tested in 35 cities around the country had drugs in their system at the time of arrest. Drug courts are designed to allow judges to hasten the disposal of drug cases and to monitor drug treatment

of defendants as a means of ending their illicit use of drugs. Today, drug courts typically integrate alcohol and drug treatment services.

There are two main activities associated with drug courts, with some courts engaged in one or both activities: (1) expediting the disposal of drug cases and (2) monitoring drug treatment.

Funding for drug court programs established by the 1994 act totaled \$11.9 million in fiscal year 1995. Although Congress repealed the program's authorization in fiscal year 1996, it continued to fund the program at \$18 million in fiscal year 1996; and \$30 million each for fiscal year 1997 and fiscal year 1998. Under the Omnibus Consolidated and Supplemental Emergency Appropriations Act (Public Law 105-77), the Drug Courts program received \$40 million in fiscal year 1999. \$40 million again was appropriated for fiscal year 2000. Additional sources of Federal funding have included the Local Law Enforcement Block Grants [LLEBG] and the Juvenile Accountability Incentive Block Grants [JAIBG].

A Department of Justice [DOJ] funded evaluation of Dade County's program in 1993 compared defendants both within and outside the program over an 18-month period. Among the findings: fewer cases were dropped; lower incarceration rates resulted; rearrests decreased; longer periods of time elapsed before rearrest; and higher failure-to-appear rates, caused mainly by the more frequent appearances required of drug court defendants.

In 1997, GAO reviewed 20 evaluation studies undertaken between 1991 and 1997 covering 16 drug courts. GAO found that existing studies were not comparable and did not include systematic cost/benefit analyses. GAO determined that time in treatment varied, as did completion rates.

The National Drug Control Strategy: 2000 Annual Report issued by ONDCP in March 2000, states as follows: "A review of thirty evaluations involving twenty-four drug courts found that these facilities keep felony offenders in treatment or other structured services at roughly double the retention rate of community drug programs. Drug courts provide closer supervision than other treatment programs and substantially reduce drug use and criminal behavior."

(26) On April 12, 2000 the subcommittee held an oversight hearing on the emerging drug threat from Haiti. Haiti's location between the United States and the major drug producing countries in South America makes it a logical transshipment point. As the poorest country in the Western Hemisphere, Haiti is also very vulnerable to official narcotics corruption.

According to State Department's International Narcotics Control Strategy Report [INCRS] published in March 2000, "Haiti's weak democratic institutions, fledging police force, and eroding infrastructure provide South American-based narcotics traffickers with a path of very little resistance." Haiti is now responsible for 14 percent of the cocaine entering the United States from Colombia (up from 10 percent in 1998). The United States Government estimates that 67 metric tons of cocaine moved through Haiti last year (a 24 percent increase from the 1998 total). Haitian authorities continue to be deprived of long-needed criminal laws and law enforcement tools. The police to population ratio is one of the lowest in the world.



According to DEA, the primary method for smuggling large quantities of cocaine through the Caribbean to the United States is via maritime vessels. Colombian drug traffickers have shifted to using “go-fast” boats to smuggle cocaine into Haiti. These drugs are often transferred overland to the Dominican Republic for further shipment to the United States (including Puerto Rico) and Europe. Over one third of the drug flow was done by “airdrops” into mountainous regions of Haiti.

On February 29, 2000, President Clinton determined that it is in the “vital national interests” of the United States to certify Haiti. According to the Statement of Explanation, “A cutoff would require termination of important USG initiatives, including programs targeting electoral support, police development, economic growth, education, social stability, hunger and environmental degradation. If critical U.S. aid is withdrawn, and U.S. support for the electoral process and public security is curtailed, assistance to illicit traffickers of drugs and migrants will be the unintended consequence. The risks posed to U.S. vital interests by a cutoff of bilateral assistance outweigh the risks posed by Haiti’s failure to cooperate fully with the USG, or take adequate steps on its own, to combat the illicit drugs.”

Democratic elections in Haiti have been repeatedly postponed. Protests, violence and theft have marred the election process in Haiti. Mobs of Haitians have stormed election offices, burned and stole voter material and several deaths have resulted from the violence arising from electoral protests and demonstrations.

(27) On May 11, 2000, the subcommittee held an oversight hearing on drug sentencing practices, recent developments and issues. The hearing focused on Federal drug sentencing practices and Bureau of Prisons impacts, including drug treatment services. Additional topics explored included the use of mandatory minimum sentencing, and sentence reductions due to offender cooperation and prison “good time” credits.

The U.S. Sentencing Commission (hereafter “Commission”) is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members (the Attorney General and chair of the U.S. Parole Commission). Its principal purpose is to establish sentencing policies and practices for the Federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of Federal crimes. The Commission has the authority to submit guideline amendments to Congress each year between the beginning of a regular congressional session and May 1. Such amendments automatically take effect 180 days after submission unless a law is enacted to the contrary. For fiscal year 1999, the Commission’s budget was \$9,487,000.

The act establishing the Sentencing Commission provides for the development of guidelines that will further traditional purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation. The act contains detailed instructions as to how this determination should be made—the most important of which directs the Commission to create categories of offense behavior and offender characteristics. The Commission’s initial guidelines were submitted to Congress, and took effect, in 1987, applying to all of-

fenses committed after that date. The act abolished parole and substantially reduced and restructured good behavior adjustments.

The Commission established a sentencing table that contains 43 levels. Each level prescribes ranges that overlap with the ranges in the preceding and succeeding levels. A change of six levels roughly doubles the sentence. The guidelines are in keeping with the statutory requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or 6 months. According to the Commission, the table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion within each level. An offender's criminal history category (for each offense level there are six permissible sentencing subcategories arranged according to the seriousness of the criminal defendant's history). Points are assessed for past convictions, for misconduct committed while under judicial supervision such as bail or parole, and for crimes of violence. Juvenile as well as general and specific court martial convictions are counted. There are past criminal activities which not only determine a defendant's criminal history category point total, but also provide the basis for increasing a defendant's offense level, as in the case or career criminals, armed criminals, or professional criminals.

Normally, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the act allows the court to depart from the guidelines and sentence outside the prescribed range. The sentencing statute permits a court to depart from a guideline-specified sentence when it finds "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Commission in formulating the guidelines that should result in a sentence different from that described." 18 U.S.C. § 3553(b). In such instances, the court must specify reasons for departure. An appellate court may review the reasonableness of the departure. In sum, the court must impose a sentence within the guidelines unless: (1) the government moves for departure based upon the defendant's cooperation with law enforcement authorities; (2) the guidelines expressly authorize departure; or (3) the court feels that the Commission failed to consider adequately the kind of factors raised by a particular case when it developed the otherwise applicable guidelines.

Nearly 90 percent of all Federal criminal cases involve guilty pleas and many of these cases involve some form of plea agreement. The Commission provides guidance regarding plea agreements by issuing general policy statements concerning the acceptance of plea agreements, and will collect data on these practices. The Federal Rules of Criminal Procedure govern the acceptance or rejection of such agreements.

The statute provides that the guidelines are to "reflect the general appropriateness of imposing a sentence other than imprisonment in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense . . ." 28 U.S.C. § 994(j). More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through eight, the sentencing court may elect to sentence the offender to probation

(with or without confinement conditions) or to a prison term. For offense levels 9 and 10, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement, intermittent, or home detention). For offense levels 11 and 12, the court must impose at least one-half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement or home detention.

Mandatory minimums have existed in the American justice system throughout history. The most widely recognized are those that demand that offenders be sentenced to imprisonment for “not less than” a designated term of imprisonment. Some are triggered by the offense, others by the criminal record of the offender. Some of the “not less than” category are less “mandatory” than others, because Congress has provided a partial escape hatch or safety valve. For example, several of the drug-related mandatory minimums are subject to a “safety valve” that may render their minimum penalties less than mandatory for small time, first offenders.

The Controlled Substances Act [CSA] assigns various plants, drugs and chemicals to one of five schedules and authorizes the Attorney General to add or reassign substances to the schedules according to the risks they represent and medical benefits they provide. Schedule I contains heroin, lysergic acid diethylamide [LSD] and other substances that are highly susceptible to abuse, have no accepted medical use, and cannot safely be made available under prescription. Schedule II house cocaine and other substances found to be highly susceptible to abuse and highly addictive, but for which there may be beneficial medical uses. The remaining schedules reflect progressively less dangerous and addictive—and progressively more beneficial—classifications of substances. Within this basic scheme, the CSA and its offspring attack substance abuse and commerce in substance abuse at four levels: unlawful possession, production, distribution, and laundering of the proceeds illicit traffic generates.

In 1998, there were more than 123,000 Federal prisoners. (92.5 percent of the prisoners were male; 59 percent were serving time for drug offenses). For drug offenders released in 1998, the mean time served was about 40 months (41.4 months for trafficking; 9.3 months for possession); the median time served was 36.5 months (39.1 months for trafficking; 6 months for possession). In 1997, more than one-third (34.6 percent) of Federal prisoners serving time for drug offenses reported being under the influence of alcohol or drugs at the time of their offense (20 percent under influence of alcohol; 25 percent drugs). In 1997, 73 percent of all Federal prisoners reported prior drug use; 57.3 percent regularly; 44.8 percent within the month prior to offense; and 22.4 percent at the time of the offense. In 1997, among all Federal prisoners, 46.4 percent reported receiving prior drug treatment (39.2 percent while under correctional supervision; 28.2 percent since BOP admission).

(28) On Tuesday, May 16, 2000, the subcommittee held an oversight hearing on the National Youth Anti-Drug Media Campaign. The hearing examined the effectiveness and efficiency of the National Youth Anti-Drug Media Campaign, now in its third year. At roughly \$1B, this 5-year media campaign is the largest government

sponsored and government funded campaign of its kind in history. The ONDCP is responsible for conducting and administering the National Youth Anti-Drug Media Campaign. The anti-drug media campaign is now in phase III. The National Institute on Drug Abuse [NIDA] is conducting the evaluation of phase III.

The principle predecessor of anti-drug television ads was developed by the Partnership for a Drug Free America [PDFA], a not-for-profit organization created in 1987 to curb illegal use among America's youth. In a collaborative effort, the PDFA solicited anti-drug ads from various ad agencies who donated their creative talent to design and produce anti-drug television ads (pro bono). The PDFA also solicited and obtained donated media airtime from the big three television networks to run the anti-drug ads as public service announcements [PSAs]. For over 10 years, the PDFA coordinated these activities with great success and at no expense to the American taxpayer. According to the annual University of Michigan "Monitoring the Future" survey, at the same time that the level of anti-drug television ads was rising, attitudes about the social disapproval and the perceived risks of illegal drug use were also rising. Likewise, there was a corresponding decrease in illegal drug use among young people during the same period.

Beginning in 1991, the donated airtime from the big three media networks began to decline significantly due to increased competition resulting from industry deregulation. Throughout the nineties, the PDFA worked diligently to rebuild the donated air times to previous levels (e.g., in 1991 the estimated value of donated media air time was \$350 million). In 1996, the PDFA commissioned a study that identified three target audiences and determined that an effective media campaign would require an exposure rate of 4 times per day and frequency rate of 90 percent of the target audiences. The minimum cost for such an effort was determined to be \$175M (in 1996 dollars), which represented one-half of the \$350 million donated in 1991. The remaining \$175 million would come from donated media time and space. Realizing they needed help to reach their goals, the PDFA approached Congress for assistance. In 1997, the President's budget requested \$175 million.

In 1997, Congress appropriated \$195M (\$20 million over the President's request) for the National Youth Anti-drug Media Campaign for fiscal year 1998. Another \$185M was appropriated for fiscal year 1999 and again for fiscal year 2000. The funds were appropriated under the Treasury-Postal Appropriations Bill primarily to purchase media time and space. The ONDCP was selected as the most appropriate Federal entity to administer the new anti-drug media campaign. Initially, the ONDCP did not have the appropriate staff to properly administer the various contracts related to the campaign, so they relied on an existing Department of Defense contract to allocate the funds and later used HHS contractors. Congress established a 100 percent "match" requirement in the 1998 reauthorization of ONDCP.

The ONDCP commissioned a contractor to produce a "Communications Strategy Statement" for use in guiding the overall conduct of the anti-drug media campaign. According to the Communications Strategy Statement, published in 1997, the goal of the anti-drug media campaign is to "educate and enable America's

youth to reject illegal drugs . . .” and “. . . preventing drug use and encouraging occasional users to discontinue use.” Phase I of the Campaign (March 1998—September 1998) ran paid TV, radio and print media public service announcements [PSAs] in a 12-city pilot program. In phase II (September 1998—June 1998), the media campaign went nationwide. In phase III, which began in the summer of 1999, the campaign evolved into a comprehensive effort (beyond paid and donated advertising). Phase III includes interactive Internet Web sites, entertainment outreach, parenting strategies and a recently published corporate sponsorship plan.

In mid-January 2000 press reports surfaced concerning the ONDCP initiative to exchange match credit for the inclusion of anti-drug content in TV programming and print media articles. News reports on the issue appeared on every TV network and in every major newspaper in the country as the controversy erupted into a national discussion over Government censorship. Some reports charged that ONDCP was reviewing TV scripts before the programs aired and interfering with TV programming content. ONDCP denied the allegations, but later issued revised guidelines in an effort “to clarify pro-bono match component of the anti-drug media campaign.”

The central focus of the oversight hearing was to explore whether the anti-drug media campaign is working (i.e., whether it is making a difference in changing attitudes about illegal drug use and also drug use behaviors). Additional issues included the match credit component of the media campaign.

(29) On May 26, 2000, the subcommittee held an oversight hearing on the shipment of illegal narcotics in the mail system and via commercial carriers. News articles have highlighted the increased use of the U.S. mail system and various U.S. commercial shipping carriers to facilitate drug trafficking. Illegal drugs are being sent interstate and internationally.

Shipments of ecstasy from Europe have increased because the demand for the drug has skyrocketed among U.S. teenagers. Because ecstasy is formed in tiny tablets and does not require bulky packaging and several dozen tablets can be mailed in a standard envelop anywhere in the world for a relatively low cost. Mailing the drugs also acts to insulate the producer by minimizing the risk of getting caught.

The U.S. Postal Service facilitates the exchange of over 206 billion pieces of domestic mail annually. The various U.S. commercial shipping carriers facilitate the exchange of more than 2.8 billion domestic letters, packages and freight annually. The sheer volume of letter and package traffic offers a highly desirable way for smugglers to transport and distribute illegal drugs.

Websites, offering the sale of illegal drugs, direct their buyers to use the mail service and the commercial shipping companies to ship drugs because the producers and smugglers feel that there is less chance of detection and arrest than trying to employ individuals to smuggle illegal narcotics across State lines and across the world.

(30) On May 30, 2000, at the De La Salle High School in New Orleans, LA, the subcommittee held a hearing on the effectiveness of school drug testing programs and the Gulf Coast HIDTA.

In 1986, ONDCP established the Gulf Coast HIDTA for designated counties and parishes in Alabama, Mississippi and Louisiana. This area serves as a gateway for drugs due to the numerous deep water ports and 8,000 miles of coastline. Drug trafficking organizations utilize the deep water ports, railway and highway systems and airports to facilitate trafficking. The growing casino gaming industry in Louisiana and Mississippi attract drug trafficking organizations for money laundering activities. With a \$6 million budget, the Gulf Coast HIDTA provides funding to 12 drug enforcement initiatives, two intelligence support initiatives, one community empowerment initiative, and a management and coordination initiative. Forty-nine agencies participate in these initiatives. An initiative that receiving close scrutiny involved school drug testing.

Clearly, substance abuse by youth has reached epidemic levels in the United States and has been responsible for poor school performance and juvenile crime and violence. In an attempt to address these concerns and deter substance abuse, many school districts are developing drug testing policies. The U.S. Supreme Court in *Vernonia School District v. Acton*, 115 S. Ct. 2386 (1995) approved random drug testing by urinalysis for elementary and high school athletes. The court held that deterring drug abuse by school children was a compelling State interest and did not violate a student's fourth amendment right against unreasonable search and seizure. Since then, the U.S. Court of Appeals for the Seventh Circuit approved a drug testing program which tested all students engaged in any extracurricular activities.

In 1993, the Orleans Parish District Attorney's office [DA] developed a new diversionary program for non-violent, first time offenders with drug abuse problems. The program was funded by a Department of Justice [DOJ] National Institute of Justice [NIJ] grant. The program utilized hair drug testing. The DA encouraged school districts to adopt drug testing programs. In 1998, De La Salle High School implemented a student and faculty testing program. In addition to a number of private schools which have adopted the drug testing program, in January 1999 the Louisiana High School Athletic Associations [LHSAA] mandated that all Louisiana high schools participating in LHSAA sports implement a drug testing program.

In May 2000, the Orleans Parish School Board approved a pilot program to conduct random hair testing at Frederick A. Douglass Senior High School, a public high school. The policy requires consent from each student's parent. The test results are not used for law enforcement purposes. The results are used for counseling and treatment.

(31) On June 1, 2000 in Orlando, FL, the subcommittee held a hearing to investigate the drug crisis in the greater Orlando area. The hearing examined the effectiveness of local and Federal efforts to combat the growing problem of dangerous drugs, particularly "Club Drugs," in the region.

The Central Florida HIDTA covers seven counties in central Florida ranging from Pinellas County on the gulf coast in the Southwest area of the HIDTA to Volusia County on the Atlantic coast in the Northeast area of the HIDTA. This area is commonly referred to as the I-4 corridor. This area encompasses three inter-

national airport two major seaports, and several hundred miles of coastline. In 1998 this area experienced in excess of 72 heroin overdose deaths. National attention to this problem resulted in the designation of the Central Florida HIDTA.

All areas of central Florida show an increase in the use of methamphetamine and related violent crimes. Medical Examiners have indicated that deaths due to methamphetamine use have increased. Both marijuana and cocaine remain plentiful and drugs of choice.

(32) On June 5, 2000, at West Mesquite High School in Mesquite, TX, the subcommittee held a hearing on the effectiveness of drug prevention efforts in local communities and schools. Federal, State and local information and ideas on the topic of local drug challenges and successful prevention initiatives were discussed. Testimony was provided by law enforcement and education professionals, as well as students who had resisted and overcome drug abuse.

(33) On June 9, 2000, the held an oversight hearing entitled, "Counterdrug Implications of the U.S. Leaving Panama." Prior to December 31, 1999, Panama, which is located at the hub of two oceans and two continents, had been home to a significant United States military presence since it seceded from Colombia in 1903. United States military forces in Panama served several functions. The primary purpose of the United States troops was to provide for the defense of the Panama Canal. Until 1997, Panama served as the headquarters of the United States Southern Command [SOUTHCOM], a unified command responsible for all United States military operations throughout Latin America and the Caribbean (excluding Mexico). In September 1997, SOUTHCOM moved to Miami, FL. Despite the move, SOUTHCOM has continued to provide support to Latin American nations combating drug trafficking, such as aerial reconnaissance and counternarcotics training. Starting in 1988, the Department of Defense had "detection and monitoring" responsibility for U.S. counternarcotics efforts. Until last year, Howard Air Force Base in Panama provided secure staging for detection, monitoring, and intelligence collecting assets.

The Panama Canal Treaty terminated at noon on December 31, 1999, at which time the Government of Panama assumed complete control of the Panama Canal and all remaining United States military facilities. The Neutrality Treaty remains in force indefinitely and gives the United States the right to defend the neutrality of the Panama Canal. Roughly 13 percent of U.S. international shipborne commerce flows through the Canal. The United States is the No. 1 user of the Panama Canal, which carries 13,000 ships per year. Four percent of the world's trade transits through the Panama Canal.

Today, there are no permanently stationed United States troops in Panama (down from 10,000 in 1993). In leaving Panama last year, the United States military abandoned four major military installations—Fort Sherman, Fort Clayton, Howard Air Force Base, and Fort Kobbe. Six major installations had been returned to Panamanian control earlier—Fort Davis and Fort Espinar were returned in September 1995; Fort Amador, at the Pacific entrance to the Canal, was returned in October 1996; Albrook Air Force Station was returned October 1997; Galeta Island was returned March

1999; and Rodman Naval Station was returned in March 1999. By the end of 1999, the United States military had returned property consisting of about 70,000 acres and about 5,600 buildings to the Government of Panama. Estimates of the value of the land and infrastructure range from \$10–\$13 billion. The Panamanians plan to take advantage of reverting properties to make Panama a commercial and educational hub in the Western Hemisphere. The government plans on establishing new transshipment ports, a center of higher education, light manufacturing zones, and residential resort areas.

Panama serves as a major transit point for illicit drugs heading to the United States. This is due to its proximity to major drug-producing countries like Colombia, location on key transportation routes, openness to trade, and weak controls along borders and coastlines. Panama's strategic location between the drug producing countries of South America and the United States and its United States dollar based economy, and large, well established, and until recently, loosely regulated banking sector make Panama particularly vulnerable to criminal organizations involved in illegal drug trafficking and money laundering. The Colon Free Trade Zone (established in 1948) also make Panama a prime target for the transshipment of illegal goods which are co-mingled with cargo to avoid detection.

In addition, border incursions by Colombia rebel groups (the FARC and the ELN) into the Darien in southern Panama are increasingly common. In October 1999, nearly 60 Colombians were murdered by FARC guerrillas in the Uraba Department of northern Colombia. The FARC reported fled into Panama to avoid pursuit by Colombian Security Forces. Smuggling of arms through Panama from war ravaged Central America to arms-thirsty rebels and drug smugglers in Colombia and Peru is rampant. Panama, which does not have an army, also does not have sufficient border agents to patrol its borders.

In December 1989, when the United States invaded Panama to oust the former dictator General Manuel Noriega, the Panamanian Defense Forces were disestablished. Panama now has no military. Panamanian security forces are comprised of three components (the Panamanian National Police [PNP], the Coast Guard-type National Maritime Service [NMS] and the National Air Service [NAS].

When the United States shut down operations at Howard Air Force Base in Panama on May 1, 1999, it had significant impact on United States counterdrug surveillance flights. On April 16, 1999, Defense Secretary William Cohen had approved a plan drafted by the United States Southern Command to open new military operating facilities (Forward Operating Locations [FOLs]) on the Caribbean islands of Curaçao and Aruba and in Ecuador. These FOLs are intended to offset the loss of Howard Air Force Base. Ten-year agreements have been agreed upon between the U.S. Government and the respective host nations. Runway and other infrastructure improvement are necessary before these FOLs are fully operational, although flights are now being flown out of Aruba and Curaçao and limited flights out of Manta, EC as well.

The United States does not own or control the facilities in Ecuador, Aruba or Curaçao. Instead of permanently stationing aircraft



at the three sites, the United States rotates aircraft in and out on a temporary basis, from several weeks to months at a time. With the host nations performing many support functions, SOUTHCOM hopes to save on operating costs, which it currently projects at \$14 million a year for the three sites. But Navy and Air Force officials counter that the use of three new sites instead of one could increase operations and maintenance costs.

(34) On June 23, 2000, the subcommittee held a hearing on the topic of "money laundering." The hearing covered topics regarding where and how money laundering occurs, especially involving international drug traffickers, and what is being done to combat the problem.

Money laundering has been described as "the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate." The act of money laundering is difficult to investigate and prosecute. More particularly, often it is hard to successfully prosecute a person who, using funds or property which are the proceeds of some crime, directs a financial transaction which is intended to conceal or disguise those proceeds so that the money appears to be from a legitimate source.

The global nature of money laundering and the tremendous sums of money involved have had the effect of making traditional international borders irrelevant and have enabled corrupt foreign officials to systematically divert public financial assets to their own use. Money laundering has also tainted our own financial institutions and, if unchecked, will undermine public trust in these institutions' integrity. There is a growing concern that rapid advances in technology, coupled with the globalization of financial and business institutions, is contributing to uncontrolled illegal laundering of huge sums of money that can threaten the world's financial stability. Finally, money laundering is impacting and involving non-financial businesses and professions which are related to financial institutions.

The Department of the Treasury and the Department of Justice are the primary Federal agencies with responsibility for enforcing the criminal prohibitions of money laundering. Under Treasury are the Financial Crimes Network [FINCEN], Internal Revenue Service Criminal, Investigations [IRS-CI], Customs, Secret Service and Alcohol, Tobacco and Firearms [ATF]. Under the Department of Justice, which is responsible for enforcement of all Federal law, are the Asset Forfeiture and Money Laundering Section [AFMLS], the FBI, the Special Operations Division [SOD] and the Drug Enforcement Agency [DEA]. Also involved are the Department of State, the U.S. Postal Service and the Office of National Drug Control Policy. Assisting through information sharing and other cooperative means with the recordkeeping and reporting requirements are: Federal banking regulators, the Securities and Exchange Commission [SEC], the Internal Revenue Service [IRS] and the Commodity Futures Trading Commission [CFTC].

(35) On June 26, 2000 in Sioux City, IA, the subcommittee held a hearing to investigate the methamphetamine drug crisis in Iowa and the Midwest. The hearing examined the effectiveness of local and Federal efforts to combat the growing drug problem in the re-

gion. The hearing focused on methamphetamine use, production and trafficking in the region as well as the coordinating efforts of the Midwest HIDTA.

In February 1997, Iowa became one of the five Midwest States (Iowa, Nebraska, Missouri, Kansas, South Dakota) to form the new methamphetamine specific Midwest High Intensity Drug Trafficking Area [HIDTA]. In 1999, North Dakota became the sixth State to join the Midwest HIDTA which now has a total annual budget of \$11.9 million. Iowa receives approximately \$1.2 million of the \$11.9 million for its enforcement initiative.

The Midwest HIDTA is responsible for promoting a comprehensive, cooperative strategy by law enforcement at the Federal, State, and local level to address needs associated with methamphetamine production and distribution. The establishment of the Midwest Intelligence Center is a priority of the Midwest HIDTA and the ONDCP.

(36) On June 30, 2000 the subcommittee held an oversight hearing entitled, "Black-Tar Heroin, Meth, Cocaine Continue to Flood U.S. from Mexico." The heroin that is available in the United States is now coming predominantly from Colombia and Mexico. Heroin mortality figures in the United States are the highest ever recorded—close to 4,000 people have died in each of the last 4 years from heroin-related overdoses across the country. Heroin from Mexico now represents 14 percent of the heroin supply seized in the United States, and it is estimated that organized crime figures in Mexico produced a total of 6 metric tons of the drug last year.

Mexico-based trafficking groups entered the illicit methamphetamine market in 1995 and now dominate the trade. With their ability to obtain large quantities of precursor chemicals on the international market, their access to already established smuggling and distribution networks, and their control over laboratories capable of large-scale production and distribution, these criminal groups from Mexico dominate trafficking in the United States.

Statistics compiled by the El Paso Intelligence Center [EPIC] indicate that 70 percent of the cocaine imported into this country is transported through the southwest border area of the United States. In the past, Mexico-based criminal organizations had limited their activities to the cultivation of marijuana and opium poppies for subsequent production of marijuana and heroin. However, over the past 7 years or more, Mexico-based organized crime syndicates have gained increasing control over many aspects of the methamphetamine, heroin, cocaine and marijuana trade.

(37) On July 11, 2000, the subcommittee held the second oversight hearing on the National Youth Anti-Drug Media Campaign. The hearing examined the effectiveness and efficiency of the National Youth Anti-Drug Media Campaign, now in its third year. The National Institute on Drug Abuse [NIDA] is responsible for conducting the evaluation of phase III and has contracted with Westat, Inc. and the Annenberg School of Communication at the University of Pennsylvania.

(38) On September 18, 2000 at the Atlanta International School located in Atlanta, GA, the subcommittee held a hearing to investigate critical drug crisis issues particularly in Atlanta and neigh-

boring areas. The hearing examined closely the effectiveness of local, State and Federal efforts to combat the growing problem of so-called “club drugs” in the region.

Club drugs (including “ecstasy,” “special-K,” “meth,” “GHB” and “roofies”) are drugs of choice at many all-night dance parties called “raves” or “trances.” Gaining in popularity in the 1990’s, club drugs include a wide variety of illegal drugs as well as prescription drugs taken illegally. Some are stimulants, some are depressants, and some are hallucinogens. They are all harmful and potentially deadly, and can produce immediate, as well as long-term, health problems. The use of ecstasy is a nationwide phenomenon. A federally sponsored survey of high-school students indicated that ecstasy increased 55 percent from 1998 to 1999. The Drug Abuse Warning Network [DAWN] estimates that 8 percent of high school seniors have used ecstasy at least once in their lifetime.

(39) On September 19, 2000 the subcommittee held a hearing to examine drug trends, their consequences and implications for policies and programs.

Numerous reports have been published and press releases issued on topics of drug abuse in America, based upon findings of some of the Nation’s leading surveys and other research projects. Some surveys and research findings provide evidence of progress in combating drug abuse; others verify failures and disturbing trends that merit continuing concern and further efforts. An accurate assessment of the progress and failures of our drug demand reduction efforts is needed to: measure our progress in meeting national goals; identify where failures have occurred; determine what improvements are needed; and plan for how the improvements might be achieved. Within the Executive Branch, the Office of National Drug Control Policy [ONDCP] is assigned this responsibility.

This subcommittee has oversight responsibility for ONDCP and its demand reduction activities, as well as the drug abuse and demand reduction efforts of the major Federal departments and agencies that play key roles, including the Departments of Health and Human Services [HHS] Education [ED] and Justice [DOJ].

This hearing included testimony of representatives from HHS and DOJ programs that sponsor or conduct drug abuse surveys and other research on drug use trends. Testimony was heard from a representative of ONDCP as to how these trends have been considered, analyzed and used in identifying continuing needs and responses to them (i.e., policy and program implications). Finally, the hearing examined consequences and implications of these trends.

(40) On October 4, 2000 the subcommittee held a third oversight hearing on the National Youth Anti-Drug Media Campaign. The hearing examined issues of contract administration and accountability. Developments identified issues as to whether the Federal Government’s largest and most expensive media campaign is experiencing problems in regard to ensuring that hundreds of millions of dollars in contracts for the purpose of buying media time are being effectively and efficiently administered and monitored.

In July 2000, GAO published its review of the experiences of ONDCP in meeting various congressional mandates, and the progress of evaluation efforts. That report indicated that ONDCP generally was meeting certain requirements to provide financial re-

ports to specific congressional committees, and had complied with selected statutory spending restrictions imposed for fiscal years 1998 and 1999. It found “ONDCP’s success in meeting the congressionally mandated program requirements was mixed.” (“Anti-Drug Media Campaign: ONDCP Met Most Mandates, but Evaluations of Impact Are Inconclusive,” p. 5)

The hearing focused on issues regarding the Media Campaign’s contract administration, including ONDCP contract administration practices and oversight, and past and planned contractual arrangements with other Federal agencies. The subcommittee was provided documents that raise issues of excessive costs and questionable billing practices. Internal ONDCP documents identified problems with the primary contract for the Media Campaign, which is a “cost plus” type of contract. Problems and issues identified include: possible excessive staffing levels (representing almost 250 full or part-time staff) and top-heavy staffing arrangements, questionable salary levels, apparently altered time sheets, late billings, unallowable compensation, and apparently faulty management practices. An outside consultant obtained by ONDCP estimated that costs under the contract appeared to be out of line with industry standards, substantial overspending was indicated, and potential savings could reach into the millions of dollars. Issues were raised as to why ongoing audits had not been planned, why ONDCP or HHS contract management officials did not order an immediate audit upon notice of possible serious irregularities, and plans for how contract management and accountability issues would be resolved in a timely manner in the future.

(41) On October 12, 2000, the subcommittee held a hearing on Colombia entitled, “Getting United States Aid to Colombia.” The hearing examined United States efforts to deliver promised United States aid to Colombia in the most cost effective and expedite manner. The hearing focused on GAO findings that were critical of past administration efforts to provide approved United States aid and equipment to Colombia. Additional criticisms were reported by the Department of State Inspector General’s office in a June 2000 report. The hearing examined criticisms and explored options for improving processes to better implement the \$1.3 billion aid package approved this year.

(42) On October 31, 2000, at Port Everglades, FL, the subcommittee held a hearing to investigate the security of Florida seaports, specifically the ports of Miami and Port Everglades. The hearing focused on drug smuggling challenges in south Florida, security measures being taken, and the findings and recommendations of the Florida Seaport Security Assessment report released in September 2000.

The Florida Seaport Security Assessment was conducted by contractors for Florida’s Office of the Governor. The primary threat examined by the study was drug trafficking in Florida seaports, primarily cocaine smuggling. The Florida Department of Law Enforcement estimates that 150 to 200 metric tons of cocaine annually enter the United States via Florida. With over 1,350 miles of coastline, much of the cocaine enters by sea. Florida is home to the top 3 cruise ports in the world and 4 of the 20 busiest ports in the United States. Florida’s proximity to Latin American source coun-

tries makes Florida a conduit for the illegal drug trade. The U.S. Customs Service reports that in 1998, a full 65 percent of U.S. cocaine seizures were made in Florida.

The study categorized Florida's major ports into three risk groups: (1) "maximum security" (Miami, Port Everglades, Jacksonville, Tampa); (2) "moderate security" (Palm Beach, Canaveral, Manatee, Fernandina, Pensacola, Panama City); and (3) "minimum security" (Ft. Pierce, Key West, Port St. Joe, St. Petersburg).

The study generally found that Florida seaports are very vulnerable to drug smuggling and have not adopted adequate measures to tighten security. The study found that U.S. Customs staffing was inadequate to conduct needed inspections in Florida ports. While the ports of Miami and Port Everglades have relatively high percentages of imports inspected by Customs officials (12 percent and 7.5 percent respectively), the statewide average is only around 2 percent. Coverage of exports was found to be more deficient. The study recommended additional staffing and improved assignment practices.

The report specifically recommended additional and improved non-intrusive inspection technology [NIIT] equipment. The study reported that there are currently only two NIIT systems at Florida seaports (one in Miami and one in Port Everglades). The report was also critical of the lack of a "life-cycle" approach to procuring, operating and maintaining such equipment. The study recommended the adoption of uniform "minimum" standards for security at all Florida seaports, better leadership and intelligence sharing to address port security needs, and that further study to determine which State agency should be assigned oversight responsibility for all Florida seaport security. The study also recommended bringing HIDTA resources to bear on security issues and the establishment of a North Florida HIDTA.

## *2. Public Safety and Criminal Justice Priorities.*

*a. Summary.*—Subcommittee hearings have addressed a range of topics related to crime and public safety that received national attention in 1999 and 2000. In the area of crime prevention (as well as drug abuse prevention), the hearing on school violence provided a forum for experts and practitioners to share their thoughts on understanding, preventing and responding to violent crime in the Nation's schools. The subcommittee hearing on the role of the Department of Housing and Urban Development [HUD] in promoting litigation against gun manufacturers explored the rationale for HUD involvement and identified problems associated with Federal agency support to private litigants in this controversial and complex area. A later hearing on a successful approach to drug and gun-related violence—Project Exile—examined why the administration has not done more to replicate this promising approach to saving lives and reducing crime in other jurisdictions. Other hearings addressed numerous public safety and criminal justice priorities in context of drug control issues.

*b. Benefits.*—A product of the hearing on school violence was the identification of deficiencies and inefficiencies in current Federal programs and practices to combat crime, such as the Department of Education's Safe and Drug-Free Schools program, as well as pre-

vention and treatment programs affiliated with the Substance Abuse and Mental Health Services Administration [SAMHSA], a component of the Department of Health and Human Services [HHS]. On the topic of gun violence, the hearings identified significant legal and policy issues associated with Federal involvement in civil litigation against gun manufacturers and the failures of the Department of Justice and the Bureau of Alcohol, Tobacco and Firearms, a component of the Department of Treasury, to assist and replicate proven approaches to curbing gun violence through effective enforcement of existing Federal gun laws.

*c. Hearings.*—In 1999, the subcommittee held hearings on topics of school violence, Federal agency involvement in litigation against gun manufacturers, and successful approaches to combating gun-related crimes and violence through the effective enforcement of gun laws.

(1) On May 20, 1999, the subcommittee held a hearing entitled, “School Violence: What Is Being Done to Combat School Violence? What Should Be Done?” The problem of school violence is an issue of critical importance to our communities and Nation. The tragedy at Columbine High School focused national attention on the seriousness of violence in our schools and the impacts felt across our Nation. The National School Safety Center keeps track of school associated violent deaths nationally. Since 1992, more than 250 deaths have occurred that are associated with schools. There is increased concern with multiple killings associated with schools, and school associated deaths occurring in suburban and rural areas. The Department of Justice’s Bureau of Justice Statistics announced that, in 1996, students between the ages of 12 and 18 experienced about 225,000 incidents of nonfatal serious violence while at school and about 671,000 incidents away from school. Students living in urban areas experienced higher levels of victimization than students in suburban and rural areas both at and away from school. Given the continuing seriousness of this problem, the hearing examined programs and initiatives being pursued at the Federal, State and local levels.

At the Federal level, the Department of Health and Human Services [HHS] is responsible for providing leadership, information and targeted assistance to States and communities. Created in 1992 as an agency within HHS, the Substance Abuse and Mental Health Services Administration [SAMHSA] directs Federal policy and advises the HHS Secretary on ways to improve the quality and availability of substance abuse prevention, addiction treatment and mental health services. SAMHSA’s budget in 1999 was \$2.5 billion. With a staff of approximately 600, SAMHSA administers Federal block grants to States for substance abuse and mental health services and programs. Mental health and substance abuse are considered to be topics of interest in determining why juvenile violence and criminal behaviors occur.

The U.S. Department of Education administers the Safe and Drug-Free Schools Program, established by the 1986 Safe and Drug-Free Schools and Communities Act [SDFSCA]. The Improving America’s Schools Act of 1994 reauthorized the act, adding violence prevention to the program’s original emphasis on substance abuse education. The purpose of the act, as reauthorized, is: “to support

programs to meet the seventh National Education Goal by preventing violence in and around schools and by strengthening programs that prevent the illegal use of alcohol, tobacco, and drugs, involve parents, and are coordinated with related Federal, State, and community efforts and resources." Since 1986, the program has distributed more than \$6 billion to the States and approximately 15,000 school districts. Grants are distributed to States primarily on the basis of the number of school-age youth. State agencies receive 80 percent of the total State allotment, and Governor's offices receive 20 percent. Most of the State grant money is passed on to local agencies, which target 30 percent to high-need districts. The fiscal year 1999 appropriation for the program is \$566 million (\$441 million for State grants, \$90 million for national programs, and \$35 million for a new "Coordinative Initiative"). According to a 1997 evaluation of the program, few programs were effective and delivery was inconsistent. Recent research findings presented to the Brookings Institution, Brown Center for Education Research, have raised serious questions about the efficacy of this program. The assessment by a leading researcher characterizes the program as "symbolic pork."

The Nation's school administrators, principals, psychologists, teachers and students represent the front-line in our efforts to identify the potential for school violence and to take actions to prevent it. Accordingly, the subcommittee examined challenges faced in our schools, and the reasons that underlie them.

(2) On August 4, 1999, the subcommittee held a hearing entitled, "What Is HUD's Role in Litigation Against Gun Manufacturers?" On Wednesday, July 28, 1999, the Wall Street Journal published an article entitled, "HUD May Join Assault on Gun Makers." According to a source in the article, HUD had asked outside law firms to consider options for a lawsuit to be brought against gun manufacturers by the 3,400 public housing authorities that receive Federal funding.

The justification for the lawsuit reportedly was based on the premise that public housing areas tend to harbor a disproportionate amount of gun-related violence, therefore the gun manufacturers should provide funding to increase security measures and emergency medical services for the afflicted neighborhoods. While HUD would not necessarily be a direct litigant in the suit, the Wall Street Journal article indicated that the agency was considering organizing the federally funded housing authorities for purposes of a lawsuit. According to the news article, the Department of Justice could be a potential impediment to HUD entering into the litigation.

At the time of the hearing, there were 23 cities and counties throughout the country that already had waged court fights against gun manufacturers. The hearing examined litigation issues, including the appropriateness of HUD intervening into this litigation.

(3) On November 4, 1999, the subcommittee held a hearing entitled, "Project Exile: A Case Study in Successful Gun Law Enforcement." Prior to 1997, for almost a decade, gun violence had plagued the city of Richmond, VA. The city had become one of the top five cities in the Nation with the highest per capita murder rates. In 1997, the U.S. attorney's office in Richmond instituted a coordi-

nated effort with local police, State police, Federal investigators, and local and Federal prosecutors to respond to this problem. The response was an initiative identified as "Project Exile." The initiative enlisted support and assistance from a coalition of businesses, business and nonprofit organizations, and community and church leaders.

The approach taken in Project Exile was to prosecute in Federal court cases involving felons with guns, gun/drug cases, and gun/domestic violence cases. Federal prosecutions had the advantage of stiffer bond rules and tougher sentencing guidelines, with mandatory minimum sentences. Additionally, a significant outreach and advertising effort was conducted, with substantial private sector financial contributions and assistance. The media message was simple and direct: "An illegal gun will get you 5 years in Federal prison." The message was conveyed by television, radio, billboards, and business cards. A telephone number was provided for anonymous tips.

After 1 year, more than 200 armed criminals were removed from Richmond's streets. More importantly, for the period November 1997 through May 1998, homicides were down 65 percent from the same preceding time period. In 1999, homicides in Richmond continued to drop. Project Exile has received bipartisan support, and is being studied for replication in various cities across the country. The Department of Justice has been criticized for not doing enough to support efforts aimed at implementing the approach in other jurisdictions.

### *3. International Commerce and Trade.*

*a. Summary.*—Subcommittee hearings on the critical economic issue of the Nation's trade deficit explored reasons that underlie the deficit as well as implications for our Nation's future. A topic of specific importance to the subcommittee was that of unfair trading practices. A related issue was examined in the hearing on defense offsets. That hearing identified benefits and costs to current practices in allowing defense offsets.

*b. Benefits.*—The subcommittee's examination of the U.S. trade deficit highlighted the need to encourage and promote U.S. exports, and to identify and prevent unfair trade practices. The following hearing on defense offsets revealed the lack of comprehensive and reliable information in determining the magnitude and scope of current practices in engaging in offsets. The subcommittee requested that GAO produce a report to gather better information on the quantity and nature of offsets and to determine whether an official mechanism should be created to gather the information. Better information on the benefits and costs will enable the Nation to better regulate and monitor offsets in the world marketplace, and to ensure that national security interests are protected.

*c. Hearings.*—In 1999, the subcommittee held hearings on the Nation's growing trade deficit, and the costs and benefits of defense offsets.

(1) On March 25, 1999, the subcommittee held a hearing entitled, "A Record Trade Deficit, How Can the U.S. Government Prevent a Looming Trade Crisis?" The hearing examined the increasing U.S. trade deficit that, in 1998, reached an all-time high of \$233.4 bil-



lion. This deficit represented an increase of approximately 50 percent over the 1997 deficit. The Commerce Department predicted that the 1999 U.S. deficit could reach \$300 billion. In 1998, the growing deficit was accompanied by a fall in U.S. exports of goods and services. The hearing highlighted critical problems and risks associated with the growing deficit, including the role of unfair trading practices and the possibility that the deficit during an economic downturn could undermine U.S. public and industry support for free trade.

(2) On June 29, 1999, the subcommittee held a hearing entitled, "Defense Offsets: Are They Taking Away Our Jobs?" Offsets generally reflect practices where a purchasing entity, usually a government, demands that a seller not only provide a service or product, but in addition helps the purchaser to obtain additional technology, business, or investment. For example, offset agreements may commit the seller firm to provide technology, purchase locally produced components, or provide other forms of assistance to the buyer country that go beyond compensation economically necessary to support the sale.

Offsets are particularly prevalent in military sales contracts with foreign countries. By signing a contract with the U.S. Government or a U.S. company to purchase military equipment, a foreign government essentially agrees to spend money abroad that could theoretically be spent domestically to directly promote industry and employment. In order to justify this expenditure, foreign governments often seek to ensure that the transaction will directly benefit their own economy. Ordinarily, offset agreements specify the type and monetary value of the offsets required. While an individual agreement is usually specific in stating its offset requirements, these offset agreements can contain a variety of activities that U.S. contractors agree to undertake to satisfy their obligations.

Offsets generally fall into two categories: direct and indirect offsets. Direct offsets are side benefits to the purchasing country that directly relate to the goods and services sold in the transaction. Indirect offsets involve goods and services unrelated to the exports referenced in the contract. The General Accounting Office has identified several different types of offsets. Co-production, subcontracting, technology transfers and procurements are the most prevalent forms of offsets used in the aerospace industry. Co-production occurs when defense companies agree to assemble, build, or produce articles for the weapon system sale in the buyer's country. Subcontracting occurs when a U.S. contractor procures defense-related components and subsystems for exports from suppliers in countries where the contractor has offset obligations. In a study done by the General Accounting Office, co-production and subcontracting accounted for 20 percent of the reviewed transactions. Technology transfers are commonly used to satisfy offset obligations and often accompany co-production and subcontracting activities. Technology transfers are also commonly used in indirect offsets, unrelated to the contract at hand. Technology transfers may take the form of research and development conducted abroad, technical assistance, or training to the buyer country. Procurement is an indirect offset activity that involves the purchase of goods and services unrelated to the sale. If an American company is involved in an offset agree-

ment with a foreign country, the American company will often purchase unrelated items from the foreign country in an effort to strengthen relations with the foreign country.

In April 1990, the first formal statement on offsets policy by the U.S. Government declared a policy of noninvolvement in defense offsets. Any exceptions to the policy must be approved by the President through the National Security Council. Policy statements in the 1997 National Export Strategy augmented this policy on offsets by: discouraging foreign governments from requiring offsets; giving U.S. support to any U.S. company forced to comply with an offsets agreement; and acknowledging that further monitoring is needed.

The aerospace industry is central to a discussion of offsets. U.S. technology and weapon systems, notably aerospace, are some of the best available on the world market. The Bureau of Export Administration's database (1993–1996) indicates that more than 90 percent of the dollar value of all new offset agreements (\$13.8 of \$15.1 billion) were written against aerospace exports. Domestic and international sales by U.S. aerospace companies in 1998 are estimated at \$140 billion, or about 3 percent of all U.S. manufacturing activity. The industry currently employs approximately 890,000 Americans. The industry's export performance has been most remarkable, particularly when compared to that of other U.S. industries. In 1997, aerospace exports totaled \$59 billion, while imports of aerospace products reached about \$22 billion. This means the U.S. trade surplus in aerospace products was roughly \$37 billion, a continuation of a long-term trend of positive trade balances.

Today about 50 percent of U.S. aerospace products are sold to the U.S. Government for defense, space, and air traffic control. Of the other 50 percent, about 75 percent is exported to both commercial and military buyers. Government purchases are expected to remain flat, so that most growth in the industry will depend on success in the international market place.

This hearing discussed the impact of offsets on the U.S. economy and whether or not offsets unfairly take jobs away from the United States.

#### *4. Immigration and Naturalization Service Operations and Resources.*

*a. Summary.*—The subcommittee hearing on the role of the Immigration and Naturalization Service [INS] in assisting State and local efforts to enforce laws and protect communities and businesses, revealed the need for significant operational improvements. Despite the commitment of substantial Federal resources to meet INS responsibilities, the hearing revealed that INS is deficient in its obligations to States and local governments, and to U.S. citizens.

*b. Benefits.*—The need for greater enforcement of our Federal laws and coordination with local officials by INS was demonstrated. Improvements reportedly are underway. The subcommittee will continue to monitor INS progress to ensure that public safety is enhanced, our businesses and economy protected, our public dollars spent more wisely and immigration laws better enforced.

*c. Hearings.*—On April 19, 1999, the subcommittee held a hearing entitled, "INS Support for Local Efforts: Are There Sufficient

Federal Resources?” The hearing focused attention on problems encountered by local law enforcement officials, including problems posed by the failure of the Federal Government to apprehend and deport illegal aliens, especially those with criminal histories.

From fiscal year 1993 to fiscal year 1998, Congress more than doubled the budget of the Immigration and Naturalization Service [INS], from \$1.5 to \$3.8 billion. INS staffing during this period increased from approximately 18,000 to nearly 29,000 permanent positions, representing a 60 percent increase. INS is now the largest corps of Federal civilian employees empowered to make arrests and carry firearms. At the end of fiscal year 1997, the Federal Bureau of Prisons [BOP] estimated that 27 percent of its inmates in Federal and federally contracted correctional facilities were non-citizens subject to removal proceedings. From fiscal year 1993 to fiscal year 1998, funding for the Detention and Deportation Program grew from \$193 to \$733 million—an increase of 280 percent.

The hearing addressed the need to respond to increasing State problems associated with the influx of illegal aliens.

#### *5. Student Education Loans.*

*a. Summary.*—The subcommittee examined the operations of the Department of Education’s student loan programs and identified numerous problems and deficiencies. The hearing explored a number of the problems recently identified in reviews conducted on the agency’s operations, including reviews by the General Accounting Office [GAO] and the Department’s Office of Inspector General. In particular, the subcommittee examined issues associated with the fairness and efficiency of the Department’s Direct Loan Program in comparison with competing loan programs regulated by the Department.

*b. Benefits.*—The hearings benefited the Department and other loan providers and servicing organizations by identifying deficiencies in Department of Education operations that result in problems and inefficiencies. Avoidable loan default consequences were identified for which changed regulations and practices are needed. As a consequence, the Department of Education is reportedly addressing some of the identified problems, and further streamlining its loan operations. The benefits of improved operations and fewer errors should accrue to many thousands of loan recipients across the Nation.

*c. Hearings.*—On June 17, 1999, the subcommittee held a hearing entitled, “Department of Education’s Student Loan Programs: Are Tax Dollars At Risk?” The hearing examined problems and issues associated with the Department of Education’s regulation and administration of student loan programs.

Title IV of the Higher Education Act [HEA], reauthorized in the 105th Congress, provides nearly \$42 billion in federally supported student assistance (including grants, loans and work assistance), representing the largest source of aid for students. In fiscal year 1998, the combined student loans of the Federal Family Education Loan Program [FFELP] and the Federal Direct Loan Program ([FDLP] or “Direct Loan” Program) equaled \$31.6 billion. The types of loans issued include: need-based subsidized Stafford loans (government pays interest while borrower is in school); unsubsidized

Stafford loans; Federal plus loans (for parents of undergraduates); and Federal consolidation loans. Student loan volume is increasing—from \$24 billion in fiscal year 1994 to \$32 billion in fiscal year 1998. The average cumulative debt for undergraduates in 1995–1996 was almost \$12,000. Both FFELP and the Direct Loan Program are entitlements, with funding provided on a permanent indefinite basis, not subject to appropriations. Borrower defaults represent a significant Federal cost. Upon default, the guaranty agency or Federal Government engages in collection efforts. According to the General Accounting Office [GAO], the Federal Government paid out over \$3.3 billion to cover defaulted student loans in fiscal year 1997. CRS reports annual default rates in fiscal year 1998 were \$2 billion; collections in fiscal year 1998 were \$1.8 billion. Cumulative FFELP defaults since fiscal year 1966 through fiscal year 1996 were \$28.8 billion, out of total loan volume of more than \$220 billion. In recent years, default rates have declined and are now calculated at slightly below 10 percent, although implications of the definition and calculation of “default” are unclear.

FFELP is one of the largest public/private partnerships sponsored by the Federal Government. FFELP, authorized by Part B of Title IV of the HEA, insures and subsidizes loans that private lenders make to students or their parents to assist with costs of post-secondary education. FFELP loans account for about two-thirds of the estimated \$32.2 billion loan volume for fiscal year 1999. The Federal Government guarantees lenders against loss through borrower default, or death, permanent disability, or, in limited instances, bankruptcy. Besides lenders, FFELP involves secondary markets that buy loans from lenders and provide liquidity in the program, and the State and national nonprofit guaranty agencies that insure lenders against borrower default and provide other administrative services.

In 1993, the Federal Direct Loan Program was authorized under Part D of the HEA. The Direct Loan Program competes with FFELP for student loan business. The Direct Loan Program has made more than \$30 billion in loans to students pursuing post-secondary education, and currently accounts for about one-third of total student loan volume. Unlike FFELP, the Direct Loan Program loans are made by the Federal Government to students through their schools, without utilizing private capital or guaranty agencies. Schools may serve as direct loan originators, or the loans may be originated by Education Department contractors. The Direct Loan Program has additional repayment options, including income contingent repayment.

Outside reviews have identified significant issues and challenges facing the Department of Education in administering its loan programs. Since the establishment of the Federal Direct Loan Program, specific issues have been identified and questions raised regarding the program’s administrative costs, effectiveness and efficiency. The Advisory Committee on Student Financial Assistance, created by Congress as an independent source of advice and counsel to Congress and the Secretary of Education on student aid policy, has issued a number of reports identifying issues and recommending improvements regarding the Department’s student loan programs.

The GAO, in its January 1999 report "Education Department: Major Challenges and Program Risks," designated student loan programs as a "high risk" for fraud, waste, abuse, or mismanagement. The GAO report concluded that: "Education continues to lack the financial and programmatic information necessary to effectively budget for and manage its student financial programs and to accurately estimate the government's liabilities. For example, Education continues to lack accurate, reliable data on costs associated with outstanding student loans." GAO noted that the Education Department is responsible for tracking approximately 93 million student loans and collecting more than \$150 billion owed by students.

Macro International, Inc. ("Macro") contracted with the Education Department to evaluate the administration of the Direct Loan Program. Part of the evaluation being conducted by Macro—comparing administrative costs of the Direct Loan Program to FFELP administrative costs—was canceled by the Department. Macro issued a 1999 report covering Direct Loan Program administration for the years 1993–1998. A follow-up to the Macro cost comparison effort was completed by the Department's Office of Inspector General [OIG]. The OIG report (March 1999) included found that: "inefficiencies likely affect the Department's administration of the two programs [FFELP and FDLP]. To approximate the effect of these inefficiencies, we compared our estimate of the Department's cost to manage the FDLP—\$17 per loan—to the average cost that we estimated (based on Treasury research) that large private lenders would have incurred to manage the FDLP—\$13 per loan." Specific factors—including incompatible systems and missing data—were identified as apparently contributing to cost inefficiencies.

The Semiannual Report to Congress (October 1, 1998–March 31, 1999) by the Department of Education OIG, identifies problems and issues associated with the Department's student loan programs, ranging from fraud investigations and prosecutions to improving the management of default aversion programs.

Other topics associated with the Education Department's student loan programs discussed at the hearing included: the Direct Loan Program's advantages due to higher administrative costs and the Department's regulatory authority over competitors; educational institutions' apparently preferences for FFELP; the adequacy of default prevention, loan consolidation, loan collection, and reconciliation practices; and challenges facing the Department's new Performance Based Organization.

## 6. *Health Issues.*

*a. Summary.*—Among the most important and complex health issues facing the United States and other nations of the world is that of ensuring the most effective and safe administration of vaccines possible to combat serious and deadly diseases and illnesses. The subcommittee hearings identified problems associated vaccine administration for Hepatitis B, and problems associated with the Nation's vaccine injury compensation practices. A hearing devoted to the international HIV/AIDS epidemic revealed serious questions regarding the administration's policies that restrict the availability

of drug treatment in certain foreign nations, such as South Africa. Two hearings devoted to Federal human subjects research oversight revealed serious shortcomings. Finally, a field hearing examined the quality of care being received by seniors and how regulatory policies and practices of the Department of Health and Human Services [HHS] impact such care.

*b. Benefits.*—The hearings provide a forum that brought attention to numerous vaccine administration issues and vaccine injury compensation needs. Soon after the hearing on Hepatitis B, the U.S. Surgeon General announced changes to existing vaccination practices due to issues that had surfaced. After the subcommittee hearing on vaccine injury compensation practices, the Department of Justice began immediate training efforts for its attorneys dedicated to handling these claims. Further recommended actions were communicated to the Federal agencies and court officials by a bipartisan letter issued by the chairmen and ranking members of the full committee and subcommittee. The subcommittee and the full committee endorsed recommended reforms in the vaccine injury compensation program, reflected in bipartisan acceptance of the sixth report of the Committee on Government Reform (House Report No. 106–977), issued on October 12, 2000. Benefits of the hearings on human subjects research included bipartisan support for agency oversight improvements and reforms that would better protect the lives of those involved. The hearing on HHS regulation of healthcare and impacts on seniors revealed a continuing need for increased efficiencies and fairness.

*c. Hearings.*—In 1999, the subcommittee held hearings on the safety of specific childhood vaccines and vaccination practices, the workings of the Federal program for compensating vaccine injuries, U.S. policies and practices that may limit other nations in providing much needed drug treatment to millions of HIV/AIDS infected persons, and oversight of human subjects research.

(1) On May 18, 1999, the subcommittee held a hearing entitled, “Hepatitis B Vaccine: Helping or Hurting Public Health?” Hepatitis B vaccines currently administered are made using recombinant DNA technology. In 1986, the Food and Drug Administration gave certain pharmaceutical companies a license to market the first recombinant DNA vaccine. The vaccine is administered in three separate doses. The Centers for Disease Control [CDC] reports that Hepatitis B vaccines provide 95 percent protection against chronic Hepatitis B infection.

In 1991, the CDC issued guidelines recommending three doses of the vaccine for at-risk groups including: people with multiple ex partners, intravenous drug users, health professionals coming into contact with blood and every child born after 1990. Based on these guidelines, 42 States mandated the vaccine as a requirement for entering kindergarten. These State mandates have been of concern to some parents groups who argue that parents should not have to vaccinate their child if they have serious doubts about its appropriateness. In January 1995, the CDC recommended universal immunization of children up to age 18. The CDC and the Federal Drug Administration [FDA] maintain the Vaccine Adverse Events Reporting System, which was established in 1986. While reports of

adverse reactions to vaccines are usually reported by physicians, anyone can submit a report to VAERS.

The National Vaccine Information Center [NVIC], an advocacy group dedicated to preventing vaccine injuries and deaths through public education, reported that between 1990 and 1998 the system received 24,775 reports of adverse reactions to vaccinations including the Hepatitis B vaccination. The Center reported that more than two-thirds (16,000) of these reactions were from patients who had received only the Hepatitis B vaccine. The CDC asserted that Hepatitis B vaccines have been shown to be very safe when given to infants, children or adults. More than 20 million persons have received Hepatitis B vaccine in the United States.

(2) On July 22, 1999, the subcommittee held a hearing entitled, "What Is the U.S. Role in Combating the Global HIV/AIDS Epidemic?" Although the Acquired Immuno Deficiency Syndrome [AIDS] gained the world's attention less than 20 years ago, the virus has quickly grown to become one of the leading causes of death worldwide. Since 1994, AIDS has been the leading killer among adults between 25 and 44 years of age. Over 33 million adults and children are currently estimated to be living with HIV/AIDS. According to World Health Organization estimates, 11 men, women and children were infected with HIV/AIDS per minute in 1998, bringing the total new infections for 1998 close to 6 million. Since the beginning of the epidemic, 13.9 million people have died due to the AIDS virus.

Many of the viruses and diseases throughout history have remained relatively isolated to a specific region of the globe. The AIDS epidemic, however, has grown to impact almost every country in the world. The increasing globalization of the world's economy has further accelerated the spread of AIDS. Among the hardest hit in recent years have been the populations of developing countries. Of the 33.4 million people currently estimated to be living with HIV/AIDS worldwide, 95 percent (31.7 million) live in the developing world. Young adults in the prime of their productive and reproductive lives make up the most populous portion of the infected population. The impact of this statistic is worth noting for many reasons, including economic considerations in addition to health and humanitarian. In developing countries (as well as in industrialized countries), an epidemic that is concentrated among the young adult population will inevitably impact the productivity of the economy at large. As examples, productivity will decrease, the pool of skilled managers will diminish, health care systems will become overburdened, orphanhood will increase, life expectancy will decrease, all of which will further aggravate the struggling economies of all developing countries.

Of the 33.4 million people infected worldwide, almost 23 million victims live in Africa. Of this 23 million, 22.5 million inhabit the region south of Saharan desert. While only one-tenth of the world's population lives in sub-Saharan Africa, the region accounts for 83 percent of all AIDS deaths. An UNAIDS report entitled, "AIDS Epidemic Update: December 1998" estimates that 11.5 sub-Saharan Africans have died from the AIDS virus, a quarter were children. Sub-Saharan Africa has also faced the fastest spread of HIV/AIDS

in the world. Of the 5.8 million new HIV infections worldwide reported in 1998, 4 million came from sub-Saharan Africa.

Though 95 percent of all new HIV infections occur in developing countries, more than 90 percent of resources spent on HIV/AIDS prevention and care are devoted to people in industrialized countries. In other words, anti-HIV drugs are unavailable to more than 90 percent of the world's HIV sufferers. Furthermore, the developing world simply cannot afford the current high costs of treatment. AZT and the newer AIDS drugs cost between \$500 and \$1,000 a month, yet in sub-Saharan Africa, for instance, the average annual income is \$500 a year.

A central issue in the drug treatment access debate is how best to increase access to treatment drugs. In order to circumvent paying the high costs for AIDS drugs, for example, some developing countries are promoting parallel imports and compulsory licensing to increase the availability of AIDS drugs in their countries.

Parallel imports (sometimes referred to as "gray market" imports) are cross border trade in a product, without the permission of the manufacturer or publisher. Parallel imports take place when there exists significant price differences for the same good in different markets. Parallel imports impact the pharmaceutical industry because of the substantial price differences in different markets. These varying prices are primarily due to differing levels of market competition and differences in intellectual property laws and regulations.

When parallel importing is used with patented goods such as pharmaceuticals, an issue may arise regarding the "exhaustion" of intellectual property rights and the resale of a legally purchased good. For example, if a French company legally purchases a patented AIDS treatment drug from an American drug company, the French company can turn around and sell the drug to the South African Government, perhaps at a dramatically reduced price.

Compulsory licenses are licenses that are granted by a government to use patents, copyrighted works or other types of intellectual property. Compulsory licenses are used by a government to intervene in the market and limit patent and other intellectual property rights in order to prevent unfair market prices. The authority to issue a compulsory license is important, even when the right isn't exercised, because it may temper the exercise of market power or the abuse of a patent. In terms of pharmaceutical production, in times of a national emergency, trade agreements may permit the government of a developing country to grant production rights to a local company.

These two market access methods lie at the heart of the HIV/AIDS drug trade dispute. On the one hand, the drug producing companies argue that these methods practices may promote generic drugs that undermine research incentives and place unregulated, substandard drugs on the market. Much of the revenue from highly priced drugs, pharmaceuticals argue, gets reinvested in costly research initiatives. If countries are allowed to produce their own drug products, then companies will be less likely to invest in the research necessary to discover new and improved drugs. In addition, compulsory licensing and parallel importing increase the availability of generic, unregulated drugs. AIDS treatment drugs



are much more sophisticated than your typical over the counter drug. These AIDS drugs must be taken on a regimented schedule, under certain conditions, and often times the drugs must be stored at certain temperatures. Pharmaceuticals fear that if generic drugs are not properly distributed, new strands of HIV may develop that will be resistant to the treatments.

In addition to the arguments above, drug company supporters suggest that compulsory licensing and parallel importing are in violation of the World Trade Organization agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPS]. However, due to disagreements at the time of the TRIPS negotiations, rules governing parallel importing and compulsory licensing were intentionally left ambiguous, leaving settlements up to the players involved. TRIPS provides for compulsory licenses of patents in Article 31, but also provides a number of restrictions on the use of compulsory licenses. TRIPS addresses parallel importing indirectly by addressing the exhaustion of intellectual property rights. The agreement also provides "For the purposes of dispute settlement . . . nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights." Parallel importing disputes cannot come before the WTO for the purposes of dispute settlement.

In 1997, the South African legislature passed the "Medicines and Related Substances Control Amendment Act No. 90 of 1997" that essentially gave the Minister of Health the ability to parallel import and compulsory license as needed. The goal of this legislation was presumably to make more HIV/AIDS treatment drugs available to a country experiencing a national emergency because of the HIV/AIDS epidemic. However, pharmaceutical companies worldwide gathered together to take the bill to the South African court to test its constitutionality. The legislation has been held up in court since its passage and has not been implemented. South Africa's 1997 Medicines Act has become the central focus of the drug treatment trade dispute. The pharmaceutical companies have gained the assistance of the administration in disputing the South African Medicines Act.

On April 30, 1999, the Office of the U.S. Trade Representative announced the results of its Special 301 annual review, which "examines in detail the adequacy and effectiveness of intellectual property protection in over 70 countries." The USTR placed South Africa on a "watch list," determining to conduct an out-of-cycle review of South Africa's intellectual property laws this September. The Trade Representative called upon the Government of South Africa to "clarify that the powers granted in the Medicines Act are consistent with its international obligations and will not be used to weaken or abrogate pharmaceutical protection."

In addition to pressure from the administration, a rider was inserted into the fiscal year 1999 omnibus appropriations law cutting off aid to the Government of South Africa, pending a State Department report outlining its efforts to "negotiate the repeal, suspension, or termination of section 15(c) of South Africa's Medicines and Related Substances Control Amendment Act No. 90 of 1997."

With a majority of the HIV/AIDS research resources being spent in industrialized countries, and with 95 percent of HIV/AIDS vic-

tims living in developing countries, a simple and comprehensive solution to the growing global HIV/AIDS problem is not apparent. This hearing examined the nature and magnitude of the epidemic and effective approaches to combating it—including breakthroughs in the discovery of promising vaccines and the expanded availability of drug treatments.

(3) On September 28, 1999, the subcommittee held a hearing entitled, “Compensating Vaccine Injuries: Are Reforms Needed?” The National Vaccine Injury Compensation Program, Subtitle 2 of Title XXI of the Public Health Service Act was enacted on October 1, 1988. The program is administered jointly by the Department of Health and Human Services [HHS], the U.S. Court of Federal Claims (the Court), and the Department of Justice [DOJ]. The program was designed as a Federal “no-fault” system designed to compensate those individuals, or families of individuals, who have been injured by childhood vaccines. Vaccines covered under the program include: diphtheria, tetanus, pertussis, (DTP, DTaP, DT, TT, or Td), measles, mumps, rubella (MMR or any components), and polio (OPV or IPV), whether administered individually or in combination. Hepatitis B, *Haemophilus influenzae* type b, and varicella (chicken pox) vaccines were added for coverage under the program in 1997, and the Rotavirus vaccine was added to the program in 1998. Eight years’ retroactive coverage is provided for vaccine-related adverse events associated with these newly added vaccines. The program is funded by a 75-cent per-dose excise tax paid by the vaccine manufacturer.

A claim may be made for any injury or death thought to be the result of a covered vaccine. Claims may be filed by the injured individual; or a parent, legal guardian, or trustee may file on behalf of a child or an incapacitated person. Compensable injuries are either those listed in the Vaccine Injury Table, or those which petitioners can demonstrate were caused by the vaccine.

The program was set up to work in the following manner: First, an individual claiming injury or death from a vaccine files a petition for compensation with the Court and with the Secretary of HHS. The Secretary of HHS is named as the respondent. Next, a physician at the Division of Vaccine Injury Compensation, HHS, reviews the petition to determine whether it meets the medical criteria for compensation and makes a recommendation on compensability. This recommendation is provided to the Court through a report filed by DOJ, although it is not binding. The HHS position is represented by an attorney from DOJ in hearings before a “Special Master.” The Special Master is a full-time attorney appointed by the judges of the Court to decide vaccine injury compensation cases. The Special Masters operate in a manner that is similar to other Federal administrative judges, applying evidentiary burdens and adjudicative standards to available facts and expert testimony. Special Masters prefer to be acknowledged as judges. Their decisions may be appealed to the Court, then to the Federal Circuit Court of Appeals, and finally to the U.S. Supreme Court. No action may be filed under this program if a civil action is pending for damages related to the vaccine injury, or if damages were awarded by a court or in a settlement of a civil action against the vaccine manufacturer or administrator.

Petitioners are not required to have attorney representation during this process, but petitioners almost always obtain legal counsel to represent them for reasons that include: strict procedural rules, complex medical evidence, onerous evidentiary and burden of proof standards, and adversarial hearing practices and compensation determinations involving DOJ attorneys. The act provides for the payment of reasonable attorney's fees and costs, regardless of the Court's decision on compensability, providing the case is brought in good faith and there is a reasonable basis for the claim.

Guidelines for vaccine related injuries are as follows: 1) reasonable compensation for past and future unreimbursable medical, custodial care, and rehabilitation costs; 2) \$250,000 cap for actual and projected pain and suffering, emotional distress; 3) lost earnings; 4) reasonable attorneys' fees and costs; and 5) deadline for filing: within 36 months after the first symptoms appeared.

Guidelines for vaccine related deaths are as follows: 1) \$250,000 for the estate of the deceased; 2) reasonable attorneys' fees and costs; and 3) deadline for filing: within 24 months of death and within 48 months after the onset of the vaccine-related injury from which the death occurred.

Since the program's inception, approximately 6,000 petitions have been filed with the program, 75 percent of which involved pre-1988 vaccine injury allegations. Of cases adjudicated, more than 3,500 have resulted in dismissal. Over the past 11 years, the National Vaccine Injury Compensation Program has allocated over \$1 billion in compensation.

The National Vaccine Injury Compensation Program was established to provide a no-fault alternative to litigating adverse reactions to childhood vaccinations for certain childhood diseases. The number of adverse reactions to childhood vaccines is small relative to the number of injuries for other products, medical malpractice, or motor vehicle injuries. The program was designed to operate expeditiously. In December 1989, Congress amended the statute, in part to simplify court procedures. The Conference Report explaining the amendment admonished all involved with the program to rededicate themselves "to the creation of an expeditious, less adversarial, and fair system." In cases not clearly falling within coverage of the Vaccine Injury Table, some petitioners claim that causation and compensation issues have become very adversarial, including reports of questionable tactics in attempting to discredit petitioner's expert witnesses. There are reports of cases being handled in an adversarial manner for many years before a final verdict, as well as appeals by DOJ of adverse decisions.

As amended and currently applied, the Vaccine Injury Table—which is central to compensation adjudications—is considered by some petitioners to be unnecessarily restrictive. It is argued that if a claim does not fit squarely within the table, the research used to support the criteria in the table is relied upon by DOJ to argue against petitioner claims, with a frequently insurmountable medical/scientific burden (a preponderance of the evidence standard) resting upon the claimant to show causation. This is particularly difficult in areas where scientific research is incomplete and evolving. If the likelihood of causation is found to be 50 percent or less and the case is not covered by the Vaccine Injury Table, the peti-

tioner loses. Also, petitioners claim that the amount of compensation is determined restrictively, with recent opinions relying on sovereign immunity principles to favor decreased award amounts.

Currently, the program has \$1.4 billion in trust for making vaccine injury compensation awards. During fiscal year 1999 (through August 30, 1999), 392 petitions have been filed, and awards so far this year have totaled \$99.2 million. Awards to individuals with an injury judged to be vaccine related have averaged \$800,737. At a full committee hearing in August, Surgeon General Satcher revealed that HHS Secretary Shalala is considering proposing the reduction of the per-dosage tax paid into the fund. In addition, the idea of devoting a large portion of the National Vaccine Injury Compensation Program's moneys to vaccine research was discussed.

While the fund contains a significant sum of money, the subcommittee raised the issue of whether efforts to reduce funding sources (vaccine taxes) or to use the moneys for other purposes (e.g., vaccine research) were premature. Vaccine research is now exploding, with many promising vaccines on the horizon. It is predictable that childhood vaccinations will grow in number, as will required vaccinations by those in the health field and other recipients. Adverse reactions will continue to occur.

A number of legislative proposals have been introduced to amend the Public Health Service Act, the act that mandates the Vaccine Injury Compensation Program. These proposals range from extending the deadlines for submissions for claims and petitions, to reducing the tax on vaccines from 75 cents per dose down to 50 cents per dose. The Advisory Commission on Childhood Vaccines [ACCV] also proposed a number of changes to the program. These recommendations have been consolidated into one bill that HHS has sent to Congress for consideration. Following the hearing, a bipartisan letter signed by the chairmen and ranking members of the full committee and subcommittee was sent to HHS, DOJ, and the Court, requesting that interim improvements be made in the operation of the vaccine compensation program.

(4) On December 9, 1999, the subcommittee held a field hearing in New York City, NY, entitled, "Do Current Federal Regulations Adequately Protect People Who Participate in Medical Research?" to examine the Office of Protection from Research Risks [OPRR] within the Department of Health and Human Services [HHS], and its oversight of human subjects research associated with Federal funding. Specifically, the hearing examined whether adequate protections are in place, including whether institutional review boards [IRBs] are operating properly and recommendations of the HHS Office of Inspector General [OIG] and the National Bioethics Advisory Commission [NBAC] are being implemented.

Due to a growing concern over the safety of human research subjects, and the exponential growth of research involving medical and pharmaceutical industries, Congress determined that legal and regulatory safeguards to protect human subjects should be established. In regulations stemming from the National Research Act of 1974, and in FDA regulations issued in 1981, the Institutional Review Board [IRB] process was formally required.

Institutional Review Boards review and approve research plans before research is carried out. This review encompassed the research protocol, the informed consent document to be signed by the subjects, any advertisements to be used in recruiting subjects and other relevant documents. In carrying out this review, IRBs seek to ensure any risks subjects may incur are warranted in relation to the anticipated benefits, that informed consent documents clearly convey the risks and the true nature of research, advertisements are not misleading and the selection of subjects is equitable and justified. IRBs review informed consent documents that are the vehicles for providing information to potential research subjects. In addition to the initial review, IRBs are responsible for conducting continuing oversight of research studies involving human subjects. This hearing discussed specific research and incidents involving research subjects.

To provide oversight for these research projects, OPRR has set up agreements with more than 4,000 federally funded institutions to ensure common ethical standards for research activities. Each institution that receives funding must establish an Institutional Review Board [IRB] made up of doctors, scientists and patient representatives to clarify the standards that accompany Federal funding for research (e.g., Federal regulations require that a non-scientist and an individual not affiliated with the institution be included on every IRB). Under OPRR guidelines, all potential research subjects are to be fully briefed on the purpose, duration and procedures of a research project before agreeing to participation. OPRR also provides guidance to IRBs and administrators on the complex ethical issues relating to the use of animals and human subjects in research. OPRR has the authority to investigate and, if necessary, require corrective action or even suspend HHS funding to an institution until problems are resolved.

In the early 1990's, the New York State Psychiatric Institute and the Mount Sinai School of Medicine and Queens College conducted studies that became the focus of OPRR investigations. Both institutions engaged in studies involving the administration of the drug fenfluramine to children who were determined by the researchers to be at risk of aggressive behavior. In these studies, researchers administered fenfluramine to produce increased levels of serotonin, a chemical produced by the brain that may help regulate behavior. Following administration of fenfluramine, researchers extracted blood through an intravenous catheter and measured changes in a blood chemical that is a by-product of serotonin production. The goal of the studies was to determine whether the serotonin levels in children may be affected by fenfluramine.

The New York State Psychiatric Institute conducted its research on minority males aged 6–10 had an older sibling who was a juvenile offender. None of these children had ever been involved with the criminal justice system or exhibited violent behavior. The Mount Sinai School of Medicine conducted its research on white children over 12 years of age, all of whom came to the School for some kind of assistance, whether it was for attention deficit disorder, depression, or another form of mental disorder. Children in this study who were taking medication were subjected to a 1 month “washout” period during which they were removed from all medica-

tion. Both studies followed the same procedures, and both studies were the subjects of complaints filed with OPRR.

In June 1998, OPRR issued its findings concerning the complaints. OPRR sharply criticized Mount Sinai and Queens College for procedural and substantive deficiencies in the research. OPRR found that it was impermissible to conduct the research on “normal control children” because they did not have the condition being studied and therefore could not legally be subjected to a greater than minimal risk experiment. OPRR did not penalize New York Psychiatric Institute. While OPRR found that the fenfluramine challenge exceeded the limits of minimal risk as defined by Federal law, it found the research unobjectionable because the IRB found that the “procedure was likely to yield generalizable knowledge about the subjects’ condition which is of vital importance for the understanding or amelioration the subjects’ condition.”

The issue at stake in both studies dealt with the appropriateness of the human subjects, both those chosen and those excluded. The Mount Sinai study ended up receiving restrictions because it administered the tests on a control group of healthy children without signs of mental disorder or at risk of aggressive behavior. Prior hearings by the subcommittee in the 105th Congress had focused on this specific incident.

The HHS Inspector General’s Office issued a series of four reports on the effectiveness of IRBs in protecting human research subjects. The Inspector General made a number of findings and recommendations.

Among the findings, the Inspector General noted that IRBs face major changes in the research environment, primarily that medical institutions are subject to increasing cost pressures due to the rise of managed care. In conjunction with the increase in managed care, a greater proportion of research is funded by commercial sponsors, and many research protocols are now multi-center trials involving thousands of subjects. This makes the IRB’s task of overseeing research plans and human subject safety increasingly difficult.

A second finding of the IG reports was that IRBs “review too much, too quickly, with too little expertise.” This has become especially apparent with the recent increase in multi-center trials that have flooded the IRBs with adverse-events reports that the IRB must review. One IRB reported receiving 200 such reports a month. In addition to the burdensome increase of adverse-event reports, the IG found that most of the review work done by IRBs involves paperwork, not on-site reviewing, and most of the review work results from investigating a complaint instead of resulting from regular oversight practices.

A third IG finding was that IRBs experience conflicts that threaten their independence. Members of IRBs can be linked to the commercial groups that fund the research project. Pressures may arise from connections that are monetary, or less tangible influences such as the commercial group pressuring the IRB to expedite the plan’s approval.

In response to the findings listed above, the Inspector General made a series of recommendations to create a more streamlined approach to providing human-subjects protections, both at the local

and Federal levels, while at the same time calling for a greater emphasis on accountability, performance and results.

Institutional Review Boards should be granted more flexibility, but at the same time they should be held more accountable for their actions. For example, under current Federal regulations, IRBs must conduct full reviews of every research plan it oversees. The IG recommends that IRBs be allowed to strategize their reviews, focusing most of their attention on the studies most at risk of OPRR violations. At the same time, however, IRBs should undergo performance based evaluations made available to the public.

The Inspector General report also recommends a reengineering of the Federal oversight process. In order to free up scarce OPRR resources currently devoted to reviewing and negotiating clinical research plans, the IG suggests reorienting the NIH/OPRR research approval process so that it rests essentially on an institutional attestation to conform to the IRB requirements set forth in Federal regulations. In addition, the IG recommends incorporating into their oversight efforts specific lines of inquiry to determine how well IRBs are actually protecting humans. This would call for the IRB to examine the processes of recruiting, selecting and gaining informed consent from human subjects to understand how the processes actually work.

The IG also recommends strengthening the continuing protection for research subjects, moving beyond reliance on a signed informed consent document to ensure the integrity of the consent process itself. Existing groups like Data Safety Monitoring Boards could play a key role in this process of continuing protection, freeing the IRB up for other purposes.

One other recommendation the IG reports makes is to enhance the education for research investigators and IRB members. For example, institutions that receive Federal funding for human subject research should have a program to educate investigators about human subject protections, a policy that is not currently in effect.

The Inspector General's reports stressed that the effectiveness of the current system of human subjects protections is in need of reform—IRBs are struggling under intense workload and resource constraints, and the situation will likely intensify if funding for research is increased and if IRBs are expected to take on additional responsibilities.

The hearing found that HHS and OPRR had not implemented major recommendations by the OIG and others, and that significant program deficiencies and dangers continue.

(5) On April 10, 2000, in Fort Wayne, IN, the subcommittee held an oversight field hearing on the Health Care Financing Administration [HCFA], a component of the Department of Health and Human Services [HHS]. The hearing focused on HCFA's administration of Medicare benefits, including an examination of contractor practices and performance. Specific attention was devoted to issues of whether HCFA's regulations are unduly burdensome and deny due process to providers and beneficiaries. Service providers and patients expressed serious concerns and confusion regarding current regulations and practices.

HCFA is the HHS agency with primary responsibility for administering the Medicare program. HCFA was created in 1977 to pull

together the management of the Medicare and Medicaid programs. With expenditures of \$316 billion, assets of \$212 billion, and liabilities of \$39 billion, HCFA is the largest component of HHS. HCFA is also the largest single purchaser of health care in the world. In 1999, Medicare and Medicaid outlays represented 33.7 cents of every dollar of health care spent in the United States. The HHS Inspector General, in testimony before a congressional subcommittee on March 15, 2000, noted that Medicare has 39.5 million beneficiaries, 870 million claims processed and paid annually, complex reimbursement rules, and decentralized operations—resulting in the program being at risk for payment errors.

Medicare makes payments based on a standard claim form. Providers typically bill Medicare using standard procedure codes without submitting detailed supporting medical records. However, regulations specifically require providers to retain supporting documentation and make it available upon request.

Medicare is designed to provide health care coverage to people who are age 65 and older and to certain disabled persons. For fiscal year 1999, the total cost of the Medicare program was in excess of \$200 billion, of which approximately \$37 billion was spent on Medicare beneficiaries enrolled in prepaid health care plans commonly referred to as “managed care organizations,” and about \$170 billion for the remaining 85 percent of beneficiaries who chose Medicare’s traditional pay-for-visit, or fee-for-service program. Medicare Part A—hospital insurance—covers inpatient hospital care, some home health care, skilled nursing care and hospice services. Medicare Part B—supplementary medical insurance—covers the services which are provided by physicians, outpatient laboratories, and other service providers and suppliers.

(6) On May 3, 2000, the subcommittee held a second hearing to discuss the Department of Health and Human Services [HHS] Office of Protection from Research Risks [OPRR]. The hearing examined HHS responses to the HHS Inspector General’s recommendations to improve human research protection. The hearing identified continued deficiencies in OPRR policies and practices, and significant delays in fully implementing recommended and needed reforms. HHS selected new leadership for the program and reportedly further improvements are underway.

## *7. Housing and Urban Development Problems.*

*a. Summary.*—Subcommittee hearings on specific programs of the Department of Housing and Urban Development [HUD] revealed serious problems that support the agency “at risk” designation by the General Accounting Office [GAO]. HUD Federal Housing Authority [FHA] management and marketing efforts were found to have experienced serious and extensive waste, because it awarded a major contract covering 27 States to a company that proved incapable of performing its responsibilities. In addition, HUD developed and implemented an ill-defined “Community Builder” program in a novel and questionable manner, resulting in the imposition of appropriations restrictions by Congress and critical reviews by the HUD Office of Inspector General.

*b. Benefits.*—The subcommittee hearing identified serious problems of apparent waste and mismanagement. The findings have re-



sulted in significant program changes and agency remedial actions. Also, continued monitoring is underway to identify and prevent further waste, and to provide remedies for some deserving businesses and individuals harmed by the defaulting HUD contractor. Continued monitoring is also underway to ensure that HUD does not repeat the mistakes made in administering the Community Builder program, and to better ensure that proper employment policies and practices are followed.

*c. Hearings.*—On November 3, 1999, the subcommittee held a hearing entitled, “Providing Adequate Housing: Is HUD Fulfilling Its Mission?” The hearing examined two issues: (1) HUD’s new property management and marketing program and agency problems with maintaining and selling houses to low and moderate income families; and (2) HUD’s creation and administration of a new program that was intended to promote “community building.”

The first hearing topic of HUD’s new Marketing and Management initiative focused upon the failure of a major contract award to Intown Management Group. Intown went bankrupt soon after getting a \$367 million contract from HUD, leaving many of its subcontractors and homeowners in financial distress. News reports indicate that one of the principals had a prior criminal conviction. The Assistant Secretary for Housing indicated that a clerk within the HUD Office of Inspector General might have been responsible for a deficient background check on the contractor. Subsequently, the Office of Inspector General indicated that it checks only its own records, as was communicated to HUD officials.

The second hearing topic was HUD’s community builders program, which hired 778 community builders at senior GS levels with accompanying high salaries during a period of planned budget cutting and personnel downsizing. Approximately one-half of the new hires involved the creation of temporary fellowships, utilizing special “excepted service” hiring authorities. Serious questions were raised about the selection and hiring process, the proper application of veteran preference requirements, nebulous roles and responsibilities assigned to community builders, identified and potential conflicts of interest, and conflicting performance assessments and accomplishments of those involved. The Senate Appropriations Committee on September 16, 1999, stated, “In many cases, the Community Builders do not appear to act like HUD staff, but seemingly act in the capacity of lobbyists for a particular community or group.” And the conference report on HUD appropriations went even further saying, “. . . HUD must rebuild itself from within . . . Therefore, the conferees are terminating the external Community Builders program effective September 1, 2000 . . .” The hearing highlighted continuing management problems, unnecessary expenses and the need to reduce risks in HUD’s operations and programs.

#### *8. The White House and the Privacy Act.*

*a. Summary.*—The hearing verified the importance of preventing privacy abuses by ensuring that White House officials are bound to the same requirements of the Privacy Act that apply to other Federal agencies and officials. Past privacy abuses by the Clinton ad-

ministration and the Department of Justice were highlighted. Reforms were urged.

*b. Benefits.*—The hearing identified the specific need for Congress to consider legislation to ensure that White House officials comply with Privacy Act requirements applicable to other Federal agencies and officials.

*c. Hearings.*—On July 21, 2000, the subcommittee held a hearing on the topic of “The Privacy Act and the Presidency.” The hearing explored how the Privacy Act was intended to protect citizen privacy, and how these protections apply to the Executive Office of the President.

The Privacy Act of 1974 (hereafter “the Privacy Act”) is intended to provide individuals with safeguards against the loss of their privacy through misuse of their records by Federal agencies. The act and the Freedom of Information Act [FOIA] are the two major statutes that control information disclosure practices within the government. The Privacy Act is intended to protect an individual from the unauthorized collection of personal and inaccurate information, and from the release of certain information maintained in agency files.

A fundamental purpose of FOIA is to provide an informed citizenry with information necessary to provide a check on activities and corruption in government. FOIA generally provides a right to access Federal agency records unless protected from disclosure by specific exemptions.

The Privacy Act recognizes that an individual’s right to privacy is a personal and fundamental right protected by the Constitution, the respect for which is essential to a democratic form of government. In general, the Privacy Act enables a citizen to learn how records are collected, maintained, used, and disseminated by the Federal Government, as well as limiting the Federal Government’s collection, maintenance, use and dissemination of certain personal information from those records.

Under the Privacy Act, an individual is provided with an additional safeguard in that he or she is permitted access to personal information, and to make changes to inaccurate, incomplete, untimely, or irrelevant information.

The Privacy Act applies to personal information which is maintained by agencies in the executive branch of the Federal Government, including cabinet departments, military departments, government corporations, government controlled corporations, independent regulatory agencies and other establishments within the executive branch. The act does not apply to records which are kept by State and local governments, or by private companies and organizations. The Privacy Act only grants rights to U.S. citizens and aliens who have been lawfully admitted for permanent residence. A non-resident foreign national cannot use the act to protect his or her personal information.

Generally, only those records maintained in a system of records are subject to the Privacy Act. A system of records is defined as a group of records from which information is retrieved by name, Social Security number, or other identifying symbol that has been assigned to an individual. The word, “record” is itself defined to include most personal, individually identifiable information which is

maintained by an agency about an individual including, but not limited to information concerning education, financial transactions, medical history, criminal history, or employment history.

The Privacy Act provides for criminal penalties under the following circumstances: (1) Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully disclosed the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. (2) Any officer or employee of any agency who willfully maintains a record system without meeting the notice requirements of this section shall be guilty of a misdemeanor and fined not more than \$5,000. (3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

The Privacy Act also allows agency heads to promulgate rules to exempt record systems if the system is maintained by the CIA or maintained by an agency which has as a primary function any activity pertaining to criminal law enforcement. Specific exemptions, government contractors, mailing lists and matching agreements are addressed in subsequent sections. Finally, the Office of Management and Budget is given the responsibility for developing and prescribing guidelines and regulations for agencies to use in their implementations of the regulations and to provide these agencies with continuing oversight assistance of the act's implementation.

There have been occasions when citizens have challenged whether or not the Privacy Act applies to the Executive Office of the President [EOP] and, if it does, whether that office feels bound by its provisions. One of these cases is *Alexander v. Federal Bureau of Investigation* (1997). The case resulted from the matter known as "Filegate," involving the FBI's handing over of hundreds of personnel files of former political appointees and government employees from the Reagan and Bush administrations to the White House. The plaintiffs alleged that the White House violated the Privacy Act and that the EOP is included within coverage of the act as it applies to "agencies." The definition of "agency" as used in the Freedom of Information Act has been held to specifically apply to the EOP. The Clinton administration responded to this suit by arguing that the Office of Personnel Security and the Office of Records Management, both units within the EOP, were not subject to the Privacy Act. On March 29, 2000 the Federal District Court hearing the case rejected the administration's argument and held that "under the Privacy Act, the word 'agency' includes the EOP . . ." DOJ continues to argue that the Privacy Act does not apply to the President and the White House.

On May 26, 2000, in a related proceeding, the administration was unsuccessful in trying to protect information sought by plaintiffs during discovery. The Department of Justice, on behalf of EOP, filed an emergency petition for a writ of mandamus, seeking to vacate the March 29 ruling. The court of appeals ruled that the

administration had not met the burden of proof for relief. In sum, the court of appeals: (1) found that the 1997 decision of the district court concerning the applicability of the Privacy Act to the EOP could be reviewed in the appeal of the final judgment in the *Alexander* litigation; (2) disapproved some of the language in the lower court's March 29 decision as dicta; and (3) determined that the 1997 decision was not binding on White House operations in matters unrelated to the *Alexander* case.

During the Clinton administration, Privacy Act issues reportedly have surfaced in matters involving Ms. Kathleen Willey, Ms. Linda Tripp and others. The Department of Defense [DOD] Office of Inspector General [OIG] concluded that DOD employees who took information from Ms. Tripp's government employment application and released it to a reporter violated the Privacy Act. The OIG recommended that the Secretary of Defense consider appropriate corrective action. Secretary Cohen sent letters to the two officials which expressed his "disappointment" in their judgment and described their actions in releasing the information as "hasty and ill-considered." In the past, DOJ has been involved in defending Privacy Act lawsuits, and has paid numerous settlements.

With the exception of the representative of DOJ, legal scholars and experienced attorneys who testified expressed strong support for legislation to ensure that Privacy Act protections apply to actions of White House officials. A statement was read from a person reporting serious White House abuses in apparent violation of the Privacy Act. Another witness reported past abuses by DOJ that resulted in substantial monetary awards against DOJ. Except for the witness representing DOJ, there was agreement among witnesses that there exists a serious need to prevent future privacy abuses by officials at the White House. DOJ reported that it had no official position on the issue of expanded applicability of the Privacy Act to White House officials and their actions.

#### SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

Hon. Thomas M. Davis, *Chairman*

##### *1. New Visions for the District of Columbia.*

*a. Summary.*—Chairman Tom Davis convened this oversight hearing with the purpose of reviewing the progress of the city especially as it related to Public Law 104–8 and Public Law 105–33. This law created the District of Columbia Financial Management and Assistance Authority (D.C. Control Board). Public Law 105–33 made significant management reform changes in the city whereas control of key city agencies were shifted from the Mayor's office to the D.C. Control Board under the auspices of a chief management officer. With a newly elected Mayor of the District of Columbia and a recently appointed chair of the D.C. Control Board, Chairman Davis was interested in the "health" of the city. Notedly, crime was down and home sales were up, however the emphasis was on the continuing need to restore Washington's image in the eyes of the world. Although the city is far more stable than it was 5 years ago, it still has a way to go. Regional priorities include traffic, economic

development, education, and public safety. It has been the philosophy of the chairman that a healthy city makes for a healthy region.

Mayor Anthony Williams of the District of Columbia (formerly the Chief Financial Officer for the District) testified that his administration will be one of openness and accessibility. He acknowledged the importance of his partners, City Council chair, Linda Cropp, and D.C. Control Board chair, Alice Rivlin as they go forward in the District's rehabilitation. The Mayor went on to highlight the progress that the District has made to date such as: balancing the budget for the past 3 years; receiving an upgrade of the District's Bond Rating from Wall Street; receiving a clean audit demonstrating that the city's financial house was in order; and generating a budget surplus of nearly \$400 million in fiscal 1998. He testified of other achievements in public safety, notably that the homicides in the District have declined by 46 percent since 1991, and are at their lowest levels in 12 years. Mayor Williams also testified that he wanted to foster a strong Federal relationship with the Congress and the White House and the D.C. Control Board. The Mayor went on to focus on his vision for the city, "One Government-Good Government-Self-Government, One City, One Government." The Mayor placed several initiatives on his agenda: the District's children and programs to support them; human service network; workforce development; economic development; leverage public-private partnerships; health care priorities; service delivery improvements such as public works, licenses and permits; and restoring hope and confidence in the District government.

Dr. Alice Rivlin, chair of the District of Columbia Financial Management Responsibility and Assistance Authority (D.C. Control Board) testified on the District's recent progress. She reflected optimism along with the new Mayor of the new era of an effective and responsive city government. She cautioned however that while fiscal progress has been gratifying, it is important to understand that the city still faces an uncertain financial future. Her case in point was that deferred maintenance and inadequate investment have left a legacy of decayed and outmoded infrastructure from bursting pipes to leaky roofs that will take substantial resources to make the situation right. Dr. Rivlin also discussed the relationship with the elected officials. She said that the Control Board along with the Mayor had signed a memorandum of agreement [MOA] describing their new relationship. Dr. Rivlin made clear that the memorandum makes clear while the Control Board retains all its responsibilities under statute, the Mayor will be in charge of the day to day operation of the city and supervision of the executive branch departments. She said that there must be no confusion about who is in charge of delivering services—the Mayor is. Dr. Rivlin went on to explain some of the other details of the MOA. Dr. Rivlin also explained the Control Board's relationship with the City Council. She said to ensure effective communication, the Control Board had invited the chairwoman of the City Council along with the Mayor to attend meetings of the Control Board in a non-voting capacity. She mentioned her optimism of working on the fiscal year 2000 budget together with the city officials. Dr. Rivlin also said that the District must make the transition to normal governance. She said that although it is not there yet, the District was on its way to ac-

completing the goals and objectives of the congressional statutes of 1995 (Public Law 104–8) and 1997 (Public Law 105–33).

D.C. City Council Chair Linda Cropp testified that although the District has recovered much more quickly than other cities that have faced similar problems, it still needs to make much more progress in managing the government and improving basic municipal services such as public schools, public works, and public safety. Council Chair Cropp said that the council was pleased that the Control Board had returned the day to day operations of nine agencies and four cross cutting issues to the elected Mayor of the District. Mrs. Cropp said that the Council is committed to working side by side with Mayor Williams and Dr. Rivlin in achieving both short-term and long-term results for both the residents and businesses of the District. Mrs. Cropp also noted a comprehensive study in which the Council had requested by the National Conference of State Legislatures. She said this study is part of an ongoing process to review and reform the city's legislative operations so that the Council like the rest of the government can optimize their performance. There were other reforms which the Council Chair enumerated in which she saw as steps to a revitalized District of Columbia.

*b. Benefits.*—With a new Mayor in place, Chairman Davis announced that he was introducing legislation to enforce a recently signed memorandum of agreement [MOA] between the D.C. Control Board and the Mayor. In it Chairman Davis' legislation would enforce the provisions of the MOA and shift substantial authority from the Control Board to the city's elected Mayor and to give the Mayor the greater flexibility he has sought over top personnel. Chairman Davis also announced at this hearing of his plans to introduce legislation to afford high school graduates from the District of Columbia opportunities to pay in-State tuition at the State universities outside the city.

*c. Hearings.*—On January 22, 1999, Chairman Davis convened an oversight hearing entitled, "New Visions for the District of Columbia." Those testifying were Honorable Anthony Williams, Mayor of Washington, DC; Dr. Alice Rivlin, chair of the District of Columbia Financial Responsibility and Management Assistance Authority; and Honorable Linda Cropp, chair, District of Columbia City Council.

## *2. District of Columbia's Year 2000 Conversion Compliance.*

*a. Summary.*—There were two hearings on this subject matter. Chairman Davis convened the first hearing on the year 2000 conversion issue, commonly referred to as Y2K on February 19, 1999. His concern was that this enormous challenge was not a high priority for the District of Columbia but for the rest of the world as well. The chairman acknowledged the leadership of two of his colleagues who are also members on the subcommittee for their national expertise and leadership in this field, Representative Steve Horn and Representative Connie Morella. These two members serve as co-Chairs of the House of Representatives Committee on Y2K Compliance. The chairman noted that the Y2K matter is a unique management issue for both the public and private sector. The systems may not be able to differentiate between the year 2000 and the

year 1900. Microprocessors also have been programmed with the same two-digit year and are therefore subject to the same failure potential. Several challenges are drawn in a special way to the District's challenges of the Y2K issue. The regional compacts which exist among various governmental entities require us to examine these matters in a more comprehensive manner. Examples include the D.C. Water and Sewer Authority, and the Metropolitan Washington Area Transit Authority. Regional cooperative agreements dealing with emergency response and emergency preparedness, along with several health and human services activities, just reinforces the need to work together to insure to the extent possible that none of these important public services are jeopardized. Additionally, the transportation and public safety activities which are critical to the ability of the Federal agencies to function efficiently are critical. The chairman reassured the city officials that he was committed to working closely with the District's technology office and others to help the city address these challenges.

Mayor Anthony Williams of the District of Columbia testified that the Y2K project is proceeding in large part because of the financial and technical support that the city was receiving from Congress. He said that the success of the Y2K project is important because it mandates the District government review its systems in preparation for 21st century information technology applications. The Mayor said that the District had started late but is finishing strong. He said that the District's strategy has been to concurrently execute tasks that other cities executed sequentially. The Mayor referred to the detailed testimony which would be given by his chief technology officer later in the hearing. He said that he was confident that the District will meet its target dates for completion of the Y2K implementation.

Mr. John Hill, executive director of the D.C. Control Board testified that the Control Board was effectively implementing an aggressive program to ensure that all major government services are provided throughout the millennium period.

Mrs. Kathy Patterson, D.C. City Council member and chair of the council's Committee on Government Operations, testified that after a slow initial start, the District has mobilized resources and launched an aggressive program to meet the Y2K challenge. She said that she saw the three roles for the legislature in promoting a successful Y2K conversion: (1) oversight; (2) provide resources; (3) use of law to aid the conversion. She said that her committee will continue to monitor the Y2K conversion; to clear away regulatory and statutory obstacles; and to promote intergovernmental, regional, and public/private cooperation.

Mrs. Suzanne Peck, chief technology officer for the District of Columbia government, testified in detail of the current status of the District's remediation and conversion for Y2K. She said that the District's system inventory consists of 336 business applications. Of the 336 applications, 84 are Y2K ready, 117 require remediation and testing, and 135 have been remediated by their agencies and require testing only. Approximately 10 million lines of codes have been identified for remediation across the 117 applications in 16 different agencies. Mrs. Peck said that it is important to remember that when Y2K is over the District's overall technology infrastruc-

ture will need to be addressed. She said that the Y2K efforts are focused exclusively on existing, legacy information systems with the singular goal of fixing code so the millennium date changes will be recognized. The original management reform projects for information technology in the District are also focused in large part on stabilizing the information infrastructure rather than advancing it. She said that her office was looking forward to a group of follow-on projects which will establish the District of Columbia as an internationally recognized technology city, competing for and sharing in the technology growth of the region. She said that she envisions these projects as expanded and more user-friendly technological environment in which to do business with the District government.

Mr. Jack Brock, Director of Government wide and Defense Information Systems Accounting and Information Management Division, U.S. General Accounting Office, testified that in a recent overview of the District's recent efforts, his office found the following in which the District had done: (1) identified 18 agencies that are critical to providing vital services to the city; (2) identified and prioritized 75 core business processes and over 200 mission-critical systems that support these processes; (3) developed a detailed project plan for remediating, testing, and implementing its mission-critical systems; (4) prepared and tested a contingency planning methodology and has begun to apply the methodology in developing business continuity and contingency plans for core business processes; (5) developed a system testing strategy; (6) strengthened its year 2000 organization by hiring additional staff; and (7) developed crisis management procedures to be used in the event a year 2000 failure is imminent or occurs. Mr. Brock further said that the District's schedule for year 2000 compliance offers little opportunity for further compression, no margin for error, and little room for corrective action if test results show continued problems with mission critical systems. GAO's recommendation to partially compensate was that the District place increased emphasis on (1) completing business continuity and contingency plans as early as possible to allow for testing and funding and (2) ensuring that contingency plans and priorities are updated to reflect information that becomes available as the Y2K project progresses, including new risk assessments based on the successes and failures encountered in the validation phase of the project. Second, GAO recommended that those who are the stakeholders (Mayor, agency heads, Control Board) must participate in making critical decisions throughout the remainder of the project by continued provision of resources and support for the program and taking action necessary to eliminate obstacles that could reduce the Y2K Program Office's chances of successfully executing its project plan.

At the second hearing on September 24, 1999, Chairman Davis reemphasized his concern for the mitigation project. Because the Y2K remediation efforts started late, GAO reported serious problems along with communication, cooperation, and coordination. At this hearing, Chairman Davis was also concerned that a New Year's Eve "Millennium Celebration" of some sort was being planned for the District at the urging of the White House. Testi-



mony addressed the impact and the ability of various local agencies to respond to potential Y2K problems.

Mayor Williams testified at the second hearing that he was still committed to the promise of Y2K compliance. He said that despite of their late start, he believes that much progress had been made. He also said that he had initiated a resource review panel to conduct detailed implementation reviews. Mayor Williams said that while he was pleased with the city's progress, he takes nothing for granted. He tasked the city administrator with conducting an independent review of the District's Y2K efforts. After the findings of a consulting firm, he said that he has two concerns: (1) the lack of stringent financial management and tracking for the Y2K effort; and (2) responsibility is shared between the Y2K project office and the individual agencies, the management structure is fragmented. He said that his administration is addressing every contingency so that the city's services will continue to be delivered on January 1, 2000.

Control Board Vice-Chair Connie Newman testified at the second hearing that recent reports indicated that marked progress had been made on a variety of critical projects underway to ready the District for January 1, 2000. She said that with respect to work that remains to be completed, the Control Board is working with the District officials to ensure that the highest priority be given to achieving Y2K readiness of all systems impacting health, safety, or economic welfare. Additionally, she said that the Control Board was monitoring the testing of contingency plans, and working with the Mayor's office to ensure that adequate resources will be in place to respond to any emergencies that may arise in the New Year.

D.C. Councilmember Kathy Patterson testified during the second hearing that although the District started its Y2K effort late, it had made considerable progress during the past year and have adhered closely to the timetables set in June 1998. Some tasks she said have fallen behind schedule, while others have been completed ahead of time. Mrs Patterson said that the Council has been a critical partner in the District's Y2K effort in providing oversight and in clearing away statutory and regulatory roadblocks. She said that the Council had worked closely and cooperatively with the Mayor, chief technology officer, and the Control Board and that they will continue to do so. She said that the partnership is important to have the Congress and the administration involved. She said that the Federal Government has contributed more than \$100 million to the District's Y2K project which has been essential to their progress.

Chief Technology Officer Suzanne Peck testified during the second hearing that the District's systems and assessment process discovered 34 new systems, bringing the total to 370 business applications in the District's systems inventory. Of these 370 applications, 242 (65 percent) were Y2K ready. Of the remaining 128 applications, 25 remain to be remediated, 40 have been remediated and are in testing, and 63 are in process of testing only. All 128 systems will complete their testing by the end of October 1999. All 370 applications will have been returned to production by the end of November 1999. She said that of the city's 370 systems, 223 are

designated as mission-critical. Of these 223 mission critical systems, 130 are Y2K ready as they stand; 23 remain to be remediated; 39 have been remediated and are in testing; and 31 are in process of testing only. The last 223 systems will be completing their testing by the end of October 1999 she said. Mrs. Peck also said that she was planning a group of projects to establish infrastructure for the electronic government initiative or "technology city." Mrs. Peck said however, that the mission critical agencies such as the Police department and D.C. General Hospital have first call on her technical, financial and human resources.

During the second hearing, GAO reported that the District has taken actions to strengthen its Y2K project management and continuity and contingency planning. For example, the District has done the following: (1) hired an outside contractor to review its project plan; (2) hired an outside contractor to oversee the contingency planning effort; (3) participated in the Metropolitan Council of Governments' Contingency Planning drill held on September 1, 1999; (beginning in June 1999), started to regularly convene its Year 2000 Steering Committee; (4) taken steps to establish consistent status reporting across agencies and reconcile differences in data reported by the agencies and the year 2000 program office which were discovered when preparing the District's most recent Y2K status report for the OMB.

*b. Benefits.*—On October 2, 1998, this subcommittee, along with the Subcommittee on Government Management, Information, and Technology, and the Subcommittee on Technology, conducted an oversight hearing related to the District of Columbia's year 2000 compliance effort. That hearing clearly established the fact that the District's Y2K compliance effort did not begin in any meaningful way until June 1998. That fact, in and of itself, put the effort into the "emergency" mode. The hearing that day provided an opportunity to define the magnitude of the challenge, including the corresponding risk, and the projected cost. It was also clearly established that because of the enemy of time, that the District would have no choice but to proceed with much of the remediation and testing effort simultaneously. This potentially has explosive ramifications, which could threaten not only the ability of the government of the District of Columbia to provide uninterrupted services, but also the ability, among other things, of the Federal workforce to get to their employment locations. On January 28, 1999, the District of Columbia's Office of the Inspector General issued its first management alert letter on the District of Columbia's year 2000 readiness status. The OIG letter confirmed that a number of milestone dates related to Y2K efforts in the Metropolitan Police Department, the Department of Employment Services, and the Office of the Chief Financial Officer, had been met, yet there remained significant issues which had to be addressed.

GAO testified at the second hearing by capitalizing on recent Y2K related experience, the District can implement management processes and controls needed to ensure that its technology assets are effectively supporting city operations. For example: (1) The District has learned that Y2K efforts cannot succeed without the involvement of top-level managers at the agency level and citywide level. Best practices have shown that top executives need to be

similarly engaged in periodic assessments of major information technology investments to prioritize projects and make sound funding decisions. Such involvement is also critical to breaking down cultural and organizational impediments; (2) the District has recognized that having complete and accurate information on information systems can facilitate remediation, testing, and validation efforts. Maintaining reliable, up-to-date system information, including a system inventory, is also fundamental to well managed information technology programs since it can provide senior managers with timely and accurate information on system costs, schedule and performance; (3) the District has developed a better understanding of its core business processes and made some progress in prioritizing its mission-critical system based on their impact on these processes and the relative importance of the processes themselves. Once the Y2K program is completed, the District can build on these efforts to ensure that information technology initiatives will optimize businesses processes as well as to identify and retire duplicative or unproductive systems; (4) like many organizations, the District found that special measures were needed to build the technical expertise required to assist with all phases of the Y2K correction information technology management.

*c. Hearings.*—On February 19, 1999, Chairman Davis convened a hearing entitled, “Status of the District of Columbia’s Year 2000 Conversion Compliance.” Those testifying were Honorable Anthony Williams, Mayor, Washington, DC; Honorable John Hill, executive director, District of Columbia Responsibility and Management Assistance Authority; Honorable Kathy Patterson, councilmember, D.C. City Council; Mrs. Suzanne Peck, chief technology officer, D.C. government; and Mr. Jack Brock, Director of Governmentwide and Defense Information Systems Accounting and Information Management Division, U.S. General Accounting Office.

The second oversight hearing was on September 24, 1999, on the status of the District of Columbia’s year 2000 conversion compliance and technology improvement plan. The slate of witnesses included all of the above listed witnesses with the exception of Mr. John Hill. In his place to represent the Control Board was Vice-Chair Connie Newman and Mrs. Gloria Jarmon, Director, Health, Education and Human Services Accounting and Financial Management Issues Accounting and Information Management Division, U.S. General Accounting Office.

### *3. District of Columbia Public Schools.*

*a. Summary.*—The purpose of this hearing was to review many of the issues and challenges and to examine the status of a number of reform efforts in the District of Columbia Public Schools. Chairman Davis stressed that there was a need to provide opportunities to achieve academic excellence in facilities that are safe; that have efficient heating and air conditioning; whose roofs don’t leak; and that can be modernized. The hearing focused on the availability of opportunities for the schools to advance in technology, fiber optic cable, arts and science laboratories, and special programming activities.

Mayor Anthony Williams of the District of Columbia testified that his vision for education has three central components: (1) the

District's children deserve the best possible schools with first class teachers; (2) the District's approach to education must recognize that an equal part of a child's learning and development takes place outside the classroom—parents are first teachers; and (3) the District must mobilize all the resources of the community toward the education of the District's young people—involving parents, teachers, civic leaders, faith organizations, as well as the business community in the life of every child.

D.C. City Councilmember Kevin Chavous, chairman of the Committee on Education on the Council testified that his committee has held an unprecedented number of hearings involving the District of Columbia Public Schools and Charter Schools over the last 6 months. He said that the topics included school bus transportation and certification of school bus drivers, as well as various other special education issues, student truancy and drop-out prevention policies and programs, public charter schools, long range facilities master plan, interagency collaboration and school based management. He said that there remains work to be done in support of the public education reform in the District. He stated his commitment to continue working together in support of public education with the Mayor, Control Board, superintendent and others. He said the school system had already begun to see a positive change with the superintendent, Mrs. Arlene Ackerman and pledged his support of her.

D.C. Control Board Vice Chair Constance Newman testified that the Control Board devotes considerable time and attention to providing oversight over the D.C. Public Schools. She said that the Board's oversight efforts have focused on ensuring that the serious deficiencies in governance, academic performance, management, and the physical environment identified in the Board's November 1996 report, "Children in Crisis: A Report on the Failure of the D.C. Public Schools," are corrected and that overall improvements in education are realized.

D.C. Public School Superintendent Arlene Ackerman testified that the schools opened on time. She said that she hopes there will never be a question concerning basic educational issues again and that she would like to focus on the larger issues that face all urban systems as they try to provide youth with the skills and knowledge necessary to turn dreams into reality. She said that the central office and principals and teachers in each school have been busy with reform agenda. The focus she said was improving teaching and learning. Mrs Ackerman also said that she had invested more in professional development and plan to expand the department's efforts to reach every teacher with sustained learning opportunities. She talked about the department's partnership with the U.S. Army Corps of Engineers in making important capital improvements. The department's plans call for full school rehabilitation for one school in each ward next year while they wait for the elected Board's long range facility plan. She pledged her commitment to the children in that she agreed that to assure safe environments where principals and teachers have the adequate resources and support. Other subjects in which she testified to were principal evaluations, teacher evaluations, instructional technology, student achievement, special education, weighted student formula, and other reforms.

Mrs. Maudine Cooper, chairwoman of the District of Columbia Emergency Transition Education Board of Trustees testified that over the past 11 months the board have witnessed a true renaissance in both spirit and actual reforms in the District's public school system. She said that spirit is catching and reforms are evident. She also gave testimony in detail concerning the Capital Improvement Plan and rehabilitation and modernization of facilities, academic plan, technology plan, teacher certification, budget in relation to resources to fulfill the academic excellence strategic plan, and the status of present as well as prospective public charter schools.

*b. Benefits.*—Chairman Davis expressed confidence in the city by the recent events, including the decision of the bond houses in New York to upgrade the District's debt rating as evidence that overall efforts in the city across a wide front were producing results. Chairman Davis praised the superintendent for laying a foundation for future success. A priority mission as pointed out by Chairman Davis was to develop, update, and implement an academic plan which meets the needs of the school population and prepares students to compete in a global economy. However, in following the light of the management reform effort, it was stressed to the city schools officials to take care to operate in an environment in which students can learn without fear for their personal safety and an environment that invites stakeholders to share in the effort to develop creative solutions. The subcommittee's goal was to promote to the schools an environment that is not driven by crisis.

*c. Hearings.*—On April 30, 1999, Chairman Davis convened an oversight hearing entitled, "Status of the District of Columbia Public Schools Plan for Capital Improvements and Academic Excellence." Those testifying were Honorable Anthony Williams, Mayor, Washington, DC; Honorable Kevin Chavous, chairman, Education Committee, DC City Council; Honorable Constance Newman, vice-chair, District of Columbia Financial Responsibility and Management Assistance Authority; Mrs. Arlene Ackerman, superintendent of D.C. Public Schools; and Mrs. Maudine Cooper, chairwoman, District of Columbia Public Schools Transitional Education Board of Trustees.

*4. Public Law 104–8, District of Columbia Financial Responsibility and Management Assistance Authority (D.C. Control Board).*

*a. Summary.*—On April 17, 1995 Public Law 104–8, originating in this subcommittee, was signed by the President. It created the D.C. Control Board and, in part conferred upon it responsibility and authority. Based on the substantial progress which was then made, in 1997 Public Law 105–33 was enacted, entitled the National Capital Revitalization and Self-Government Improvement Act of 1997 under which, in part, the Federal Government assumed certain responsibilities in the District of Columbia normally performed by States and the District was, in part, directed to pursue certain management reforms.

*b. Benefits.*—The District of Columbia has largely recovered from the catastrophic conditions which existed in January 1995, when the subcommittee was created. At that time the city faced a crisis of epic proportions.

*c. Hearings.*—On January 21, 2000 the subcommittee continued its ongoing investigation of major issues in the District of Columbia by conducting an oversight hearing focusing on efforts to monitor revitalization. Specific issues included the current and prospective financial condition in the Nation's Capitol, the progress of management reform initiatives undertaken by the District of Columbia government, mental health and public safety issues, and technology improvements. Witnesses included Mayor Anthony Williams, Control Board chair Alice Rivlin, and Linda Cropp, chair of the District of Columbia City Council.

#### 5. Receiverships.

*a. Summary.*—For more than 20 years the District of Columbia has been subject to significant court orders. Due to consistent failure to comply with various consent agreement, four entities were in receivership at the beginning of 2000. Federal and local court-appointed receivers governed operations and influenced the budgets of the District's mental health system, public housing, medical and mental health services for jail inmates and children and family services. Special Masters had been appointed by Federal courts to monitor compliance with mandates. These receiverships have made it very difficult for the city and Congress to control operations.

*b. Benefits.*—The receiverships for public housing has ended successfully. The receiver for the Child and Family Services Agency [CFSA] has resigned and the parties to the La Shawn case, which triggered the receivership, have agreed to the terms for the transfer of CFSA from receivership to the District of Columbia government. Federal Judge Thomas Hogan has agreed to the terms.

*c. Hearings.*—On May 5, 2000 the subcommittee investigated one of the receiverships then in force and effect in the District of Columbia by holding an oversight hearing entitled, "For Better or Worse? An Examination of the State of the District of Columbia's Child and Family Services Receivership." Witnesses included: Tom Delay, Majority Whip, U.S. House of Representatives; Cynthia Fagnoni, Director, Education, Workforce, and Income Security Issues, U.S. General Accounting Office; Judith Meltzer, deputy director, the Center for the Study of Social Policy; Ernestine F. Jones, general receiver, the District of Columbia Child and Family Services; Carolyn Graham, deputy mayor for Children, Youth and Families, District of Columbia; Grace Lopes, special counsel, Receivership and Institutional Litigation; Kimberly A. Shellman, executive director, the District of Columbia Children's Advocacy Center.

On June 30, 2000 the subcommittee continued its investigation into receiverships in the District of Columbia by conducting an oversight hearing entitled, "Beyond Community Standards and a Constitutional Level of Care: A Review of Services, Costs, and Staffing Levels by the Corrections Medical Receiver for the District of Columbia Jail." Witnesses included: Laurie Ekstrand, Director of Administration of Justice Issues, General Government Division, U.S. General Accounting Office; Ronald Shansky, M.D., corrections medical receiver; Karen Schneider, Special Office for the U.S. District Court for the District of Columbia; Erik Christian, deputy

mayor for Public Health and Justice; and John Clark, District of Columbia corrections trustee.

On September 20, 2000 the subcommittee continued its investigation of receiverships in the District of Columbia by holding a follow-up hearing entitled, "Best Interests of the Child? A Reexamination of the District of Columbia's Child and Family Services Receivership." Witnesses included: Ernestine F. Jones, general receiver, the District of Columbia Child and Family Services; Carolyn Graham, deputy mayor for Children, Youth and Families, District of Columbia; Grace Lopes, special counsel, Receiverships and Institutional Litigation; Linda Mouzon, executive director, Social Services Administration, Maryland Department of Human Resources.

The subcommittee also continued its investigation into the Transitional Receivership for the District of Columbia Commission on Mental Health Services, which is scheduled to terminate by April 2001, when the city will regain control of the agency. The subcommittee examined the progress of the Receivership in developing community-based mental health care and improving and expanding the services provided to its clients. The subcommittee worked with: Kathryn G. Allen, Associate Director of Health Financing and Public Health Issues, General Accounting Office; Dennis R. Jones, transitional receiver; Carolyn Graham, deputy mayor for Children and Families; Grace M. Lopes, Esq., special counsel for Receiverships and Institutional Litigation; and Susan Burke, Esq., of Covington and Burlington.

*6. The Washington Metropolitan Area Transit Authority [WMATA].*

*a. Summary.*—In 1967, WMATA was created by a legislative compact between Maryland, Virginia, and the District of Columbia. Since then it has been responsible for planning, financing, construction, and operating a comprehensive mass transit system for the Washington Metropolitan Area. WMATA started building the Metrorail system in 1969, and the first phase of operation began in 1976. By 2001, WMATA expects to complete the originally planned 103-mile Metrorail system. In addition, Metrobus service began in 1973, when WMATA purchased four private bus companies. In fiscal year 1999 WMATA had a service area population of 3.4 million people and provided 339 Metrorail and Metrobus passenger trips. Unfortunately, for about a year WMATA has been experiencing safety and reliability problems. The subcommittee saw a need to focus attention on improved communication, infrastructure, escalator repairs, overcrowding and emergency response.

*b. Benefits.*—By investigating WMATA the subcommittee helped to highlight growing concerns, facilitate ongoing maintenance efforts, and bring the regional partners together under congressional aegis.

*c. Hearings.*—On October 6 the subcommittee conducted an informational and oversight hearing of WMATA. The hearing was entitled, "Examining Metro's Track Record." Witnesses included: Nuria Fernandez, Acting Administrator, Federal Transit Administration, U.S. Department of Transportation; Gladys W. Mack, chairman, Board of Directors, WMATA; Christopher Zimmerman, second vice chairman, Board of Directors, WMATA; the Honorable Decatur Trotter, vice chairman, Board of Directors, WMATA; Richard

White, general manager and chief executive officer, WMATA; Ron Tober, chairman, American Public Transportation Association; Dorothy Dugger, deputy general manager, San Francisco Bay Area Rapid Transit [BART]; Honorable Kathy Porter, chairman, Transportation Planning Board, Metropolitan Washington Council of Governments; and Michael Carvalho, Transportation and Environment Committee, Greater Washington Board of Trade. A statement for the record was also included by Danny Alvarez, director, Miami-Dade Transit Agency.

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

Hon. Stephen Horn, *Chairman*

*1. Year 2000 Computer Challenge.*

*a. Summary.*—The Subcommittee on Government Management, Information, and Technology held its first hearing on the year 2000 [Y2K] problem in April 1996. In the 106th Congress, the subcommittee held 25 hearings on the issue, including 6 field hearings. The hearings covered many topics including health care, domestic and international travel, defense, and local government preparations. The subcommittee also focused intensely on the executive branch, State and local governments, and private sector efforts to prepare computer systems and applications for the year 2000.

In addition to the subcommittee's review of computer systems, it began a massive oversight undertaking to review the year 2000 readiness of the Federal Government's most essential "high impact programs" such as Medicare, Temporary Assistance for Needy Families, and the Nation's air traffic control system. The Office of Management and Budget, in consultation with Federal agencies, identified 43 "high impact programs" that affect the lives of millions of families and individuals. Ten of these programs are Federal programs that are State-administered. In June, we found that only 2 of the 43 programs were ready. In September, agencies reported that seven of these programs were ready. By November, the executive branch reported that 25 of the 43 programs were ready, leaving 18 that were not, including the 10 State-run programs that provide essential services such as child nutrition; food stamps; nutrition for women, infants, and children; child care; child support enforcement; child welfare; low income home energy assistance program; temporary assistance for needy families; and unemployment insurance.

During the 106th Congress, the subcommittee also issued four quarterly report cards—one of the hallmarks of the subcommittee's year 2000 oversight work. In February 1999, the Federal Government received a "C+." As a result of much hard work, by November, that grade had risen to a "B+."

The year 2000 problem has many facets that pose great challenges particularly in light of the unmovable deadline of January 1. This effort has produced, perhaps, the most massive and coordinated worldwide computer repair efforts in history. Although much progress has been made, significant work remains. Rigorous management oversight and practical business continuity and contin-



agency plans must remain top priorities if the job is to be completed on time.

As noted above, the subcommittee held 25 hearings on this issue during the 106th Congress, of which 15 were held jointly with the Science Committee's Subcommittee on Technology. The first hearing focused on the status of the executive branch's year 2000 efforts. John Koskinen, chairman of the President's Council on Year 2000 Conversion provided an assessment of the council's work with State and local governments, as well as its work with foreign nations. Mr. Koskinen noted that Federal computer remediation was progressing and striving to meet the President's March 31, 1999, deadline for all Federal computer systems to be fixed. The committees also received testimony from the Lawrence Gershwin, National Intelligence Council, who provided a declassified assessment of the status of year 2000 efforts among foreign governments. Mr. Gershwin noted that year 2000 readiness data on foreign countries were sketchy. He also discussed concern over Russian nuclear power plants.

Joel Willemssen of the General Accounting Office [GAO] testified that national, Federal, State, and local efforts must increase substantially to ensure that major service disruptions do not occur. He stressed that strong leadership and partnerships are essential if Government programs are to meet the needs of the public after the turn of the century. Mr. Willemssen also testified that agencies must perform end-to-end testing of their critical, core business processes to ensure that mission-critical systems can reliably exchange data with other systems and are protected from errors that could be introduced by external systems.

The subcommittee's second hearing presented testimony on the efforts of the U.S. Postal Service [USPS], to prepare for the technical challenges associated with the year 2000 problem. The Postal Service is a critically important part of the Nation's infrastructure. Moreover, the subcommittees learned that the Postal Service is a vital part of the Y2K contingency plans of hundreds, if not thousands, of public and private agencies, organizations, corporations and individuals who currently rely on computers to exchange information. If those computer systems fail, nearly all will depend on the Postal Service to deliver their business and personal transactions.

The USPS Inspector General and the GAO testified that the Postal Service had a long way to go to complete necessary computer systems remediation efforts and develop practical contingency plans. The Postal Service represented by Norman E. Lorentz, senior vice president, and chief technology officer, agreed that much work remained to be done, but the work was proceeding on schedule. The subcommittee also learned that the Postal Service had not thoroughly developed an overall, detailed year 2000 program plan. The Postal Service's initial plan was developed as a result of this hearing and was delivered to the subcommittee on March 12, 1999.

The purpose of the third joint subcommittee hearing was to receive a status report on the year 2000 efforts of the Department of Health and Human Services [HHS]. Specifically, the subcommittees obtained information about HHS' payment management sys-

tem, which processes about \$170 billion annually, or approximately 75 percent of all Federal grant-in-aid funds. The HHS and GAO testified that this monolithic system was not yet year 2000 compliant, but would be ready by the early summer. In addition, the Health Care Financing Administration [HCFA] reported that it had 75 external computer systems that were deemed compliant. However, we learned that each of these 75 systems had been reported as compliant “with qualifications,” meaning that fixes still remained.

The fourth hearing focused on the year 2000 efforts at the Department of Defense [DOD]. According to Jack Brock of the General Accounting Office, this year 2000 dilemma was particularly daunting for the Defense Department for two reasons. First, the Department’s size and scope of operations, criticality of mission, and heavy reliance on a diverse portfolio of information technology are unparalleled in either the public- or private-sector. Second, despite considerable progress during the prior 3 months, the Defense Department was still far behind schedule. The problem occurred largely because the Department had not had the necessary oversight and management framework to handle large-scale department-wide information technology projects.

However, Dr. John Hamre, of the Department of Defense, testified that the Department had fixed most of its mission critical systems and was working hard to finish the remaining work. In addition, the Defense Department was developing and exercising continuity of operations plans for all key functions and processes. In particular, Dr. Hamre noted that the Department had focused special attention on nuclear systems and had already tested them several times. He closed by saying that the Defense Department is looking ahead, and plans to use its Y2K experience as a foundation for future information technology operations.

The subcommittees’ fifth hearing sought information on the prospects of litigation arising from potential year 2000 computer problems. Some industry groups estimated that year 2000-related litigation could cost as much as \$1 trillion—nearly double the estimated cost of actual computer repairs and testing worldwide. Thomas J. Donohue, president and chief executive officer of the U.S. Chamber of Commerce and chief executive officer of the U.S. Chamber Institute for Legal Reform, testified that he has a unique perception because he represented the interests of both potential Y2K plaintiffs and defendants. He testified that pending Y2K legislation would not alter the rights of people who are physically injured or otherwise truly harmed by a Y2K failure. Moreover, draft legislation before the House specifically excluded from its purview claims for personal injury. Finally, the legislation would allow those who are harmed because of a year 2000 problem to have access to the legal system and be fully compensated for their real losses. He also stated that the legislation encouraged remediation, and precluded costly litigation while allowing those with legitimate claims to have access to the legal system. In addition, it gave the courts the means to efficiently resolve Y2K-related disputes.

However, another witness, Howard L. Nations, former vice president, American Trial Lawyers Association, testified that there was no need for Federal year 2000 legislation. He stated that year 2000

legislation was not needed because the principles of common law, State statutes and the Uniform Commercial Code, which has been approved in all 50 States, provide sufficient guidelines to measure the conduct of business entities, provide motivation for immediate remedial action, and remedies for wrongdoing. Mr. Nations added that the business law in question provides both rules and remedies. Responsible business leaders and consumers who have followed these business rules in matters relating to Y2K are now entitled to rely upon the remedies that business law provides in order to recover from those who ignore the rules and cause damage, he said. After lengthy negotiations between Congress and the administration, President Clinton signed the "Y2K act" into law in July 1999.

The purpose of the sixth hearing was to receive a status report on the efforts of the Department of Transportation [DOT] and the Federal Aviation Administration [FAA] to prepare for Y2K technical challenges. FAA Administrator Jane Garvey testified that the FAA was meeting its milestones for planned activities. She stated that the FAA's project plan, published in March 1998, laid out a schedule for the FAA to complete renovation by September 30, 1998, validation by March 31, 1999, and implementation by June 30, 1999. In July 1999, the FAA reported that all of its mission-critical systems had been implemented by the June 30 deadline.

Mr. Willemssen, GAO, reported that the FAA had made tremendous progress in the last year. However, much work remained to be done to complete validation and implementation of FAA's mission-critical systems. The FAA continued to face challenges in making its internal systems year 2000 compliant, he said. Additionally, Mr. Willemssen stated that the risk of failures caused by external entities, such as airports and foreign air traffic control systems could seriously affect FAA's ability to provide aviation services—which could have a dramatic effect on the flow of air traffic nationally and internationally. In order to mitigate the risk that critical internal or external systems will fail, FAA needed to develop sound business continuity and contingency plans, Mr. Willemssen said. Ken Mead, Department of Transportation Inspector General, testified that with less than 300 days until the year 2000, the DOT still has significant challenges ahead. He added that FAA faced a unique implementation challenge in fixing the air traffic control computer system. These systems, which had been operated in a test-center environment, were being installed at multiple sites throughout the system.

The subcommittees' seventh hearing focused on lessons learned from emergency management. Over a 2-day session, emergency planning experts convened in four workshops and one hearing to discuss, catalog, and introduce emergency management products that could prove useful to citizens as well as public- and private-sector leaders. Mike Walker, Deputy Director, Federal Emergency Management Agency testified that two areas, in particular, needed greater attention: 911 emergency systems and fire services. Mr. Walker stated that results of a National Emergency Number Association [NENA] survey showed that only 17 percent—or about 730—of more than 4,300 emergency centers were compliant, and an additional 69 percent—or 86 percent in all—were expected to be ready by January 1, 2000. He added that surveys of more than

2,300 students at the National Fire Academy [NFA], generally mid-to upper-level managers in fire departments, representing almost 1,300 departments in all 50 States, revealed that 98 percent of the departments were aware of potential Y2K problems. Mr. Walker testified that 77 percent of these departments were actively working on solutions, and 35 percent were already fully Y2K compliant.

The subcommittees' eighth hearing focused on the status of the executive branch's year 2000 efforts. In addition, this hearing provided the groundwork for the executive branch to demonstrate the overall readiness of its critical business functions—the systems upon which the public relies. Witnesses included representatives from the Office of Management and Budget [OMB], Department of Agriculture, Department of State, Department of the Treasury, Agency for International Development, and the GAO. On March 26, 1999, the OMB issued a memorandum that listed the top 42 “high impact Federal programs.” (OMB later added a 43rd program.) For example, OMB noted that the Department of Agriculture had four “high impact programs”: child nutrition, food safety inspection, food stamps, and special supplemental nutrition program for women, infants, and children.

Deidre Lee, the OMB's Acting Deputy Director for Management, testified that the Federal Government fell short of meeting the President's March 31, 1999, deadline to complete remediation and testing of all mission-critical systems and have them back in operation. Ms. Lee reported that 92 percent of the Federal Government's mission-critical systems met the March 31 goal. Regarding the “high impact Federal programs,” she said that Federal agencies had been asked to help partners develop year 2000 plans to ensure that the program will operate effectively. According to Ms. Lee, such plans should include end-to-end testing, developing complementary business continuity and contingency plans, and sharing key information on readiness with partner organizations and with the public. The OMB asked agencies to report their year 2000 progress to OMB. Ms. Lee added that OMB's goal was to demonstrate to the public that these programs would work.

Joel Willemssen, GAO, testified that, in some cases, serious problems had been discovered in compliant systems during the independent verification and validation process. For example, Mr. Willemssen noted previous subcommittee testimony in which the GAO found that none of HCFA's 54 external mission-critical systems, which had reported compliant on December 31, 1998, was, in fact, year 2000 ready. The non-compliance was identified by the validation contractor during the independent verification process.

The purpose of the subcommittees' ninth hearing was to receive a status report on the efforts of the Federal Government to ensure that satellites, particularly the Global Positioning System [GPS], was ready for the new millennium. Dr. Marvin Langston, Deputy Assistant Secretary of Defense and Deputy Chief Information Officer and year 2000 for the Department of Defense, testified that the Global Positioning System [GPS] is a satellite-based radio-navigation system developed and operated by the Defense Department. GPS consists of a space segment (satellites), a ground-control segment, and a user-equipment (receiver) segment. Dr. Langston stated that GPS uses 24 satellites (28 are in orbit) to continuously

broadcast coded signals that can be processed in a GPS receiver. These signals enable the receiver to computer position, velocity, and time 24 hours a day in all weather anywhere in the world. Receivers must process signals from at least four satellites in order to compute a position in three dimensions and time.

Dr. Langston stated that there are two major issues concerning GPS: the end-of-week [EOW] roll over (from August 21 to August 22, 1999) and the year 2000 compliance. He stated that the Defense Department would certify that its GPS receivers were Y2K compliant. However, he cautioned that consumers who have purchased commercial GPS receivers should have them checked by the manufacturer. Dr. Langston closed by stating that the Department of Defense will be prepared to execute its national security responsibilities before, on, and after January 1, 2000. Keith Rhodes, Chief Scientist, GAO, testified that GPS also plays a critical role in communications networks and, hence, the Internet. He also cautioned recreational users to ensure that their commercial GPS receivers were Y2K ready. In late August 1999, just after the GPS end-of-week rollover, Japan reported that thousands of automobile navigation systems failed and went blank, or displayed incorrect locations just after the rollover date.

The purpose of the subcommittees' 10th hearing was to examine H.R. 1599, the "Year 2000 Compliance Assistance Act," introduced by Representative Tom Davis, R-VA, on April 28, 1999. The legislation would amend the Federal Property and Administrative Services Act of 1949 to authorize State and local governments to purchase information technology [IT] products and services related to the year 2000 computer problem through the Federal supply schedules. For further discussion of this hearing, please refer to section III.

The Subcommittee on Government Management, Information, and Technology's 11th, 12th, and 13th hearings were field hearings during the July recess. The subcommittee traveled to Topeka, KS; Naperville, IL; and Detroit, MI to learn about local Y2K challenges and preparations. In general, the subcommittee received testimony from three distinct segments: government, utilities, and business. These sectors reported that much progress had been made during the previous year, and remaining efforts focused on testing and installing fixed computer systems, and developing and testing business continuity and contingency plans.

Hearing witnesses in Topeka, KS, were: Joel Willemssen, GAO; Morey Sullivan, Kansas Department of Administration; Larry Kettlewell, Kansas Department of Administration; Jeff White, city of Topeka; Joy Mosier, State Adjutant General's Office; Bud Park, Western Resources; Shawn McKenzie, Southwestern Bell; Anne Rubeck, Kansas Hospital Association; Edwin Splichal, Kansas Bankers Association; and Al Lobeck, Kansas Broadcasters.

Witnesses in Naperville, IL were: Joel Willemssen, GAO; Mary Reynolds, Illinois Governor's Office; Don Carlsen, city of Naperville; Tom Mefferd, DuPage County Office of Emergency Management; Robert Martin, DuPage Water Commission; Alan Ho, Commonwealth Edison; Dale Jensen, Ameritech; Craig Whyte, Nicor Gas; Philip Pagano, Metra; Gary Mielak, Edward Hospital; Clint Swift, Bank Administration Institute; Delores Croft, Illinois Attorney

General's Office; Leonard Harris, Chatham Food Center; Ron Clark, Illinois Ayers Oil Co./National Association of Convenience Stores; Monty Johnson, Citgo Gas/American Petroleum Institute; and Ed Paulson, author.

Hearing witnesses in Detroit, MI included: Joel Willemssen, GAO; George Boersma, State of Michigan; Captain Ed Buikema, Michigan State Police; Arun Gulati, Wayne County; Kathleen Leavey, Detroit Water and Sewerage Department; George Surdu, Ford Motor Co.; Don Constantino, General Motors Corp.; Roger Buck, Daimler Chrysler Corp.; John Parker, Northwest Airlines, Inc.; Jim Rosen, Detroit Edison; Raymond Laesione, Michigan Consolidated Gas; James Johnson, Wayne State University; Don Potter, Southeast Michigan Health and Hospital Council; and Dan McDougall, United Way.

The subcommittees' 14th hearing focused on the potential for large financial and intellectual property losses due to year 2000 [Y2K] remediation-related fraud. Witnesses included the Gartner Group, Inc., Information Technology Association of America, WarRoom Research, and Bingham Dana LLP. Joe Pucciarelli, vice president and research director, Gartner Group, testified of Gartner's prediction that by 2004 there would be at least one publicly reported electronic theft exceeding \$1 billion. In addition, he stated that the Gartner Group forecasted that year 2000 remediation efforts would be identified as a root cause of the security lapses that allow this theft to occur. Harris Miller, president, Information Technology Association of America, testified that "information security" is the next Y2K issue for the IT community and its users.

Mr. Miller explained that aggressors attack at the point of maximum leverage. He stated that for modern society, that means critical infrastructure—transportation, telecommunications, oil and gas distribution, emergency services, water, electric power, finance and government operations. Mr. Miller stated that a critical "information infrastructure" supports all of these vital delivery systems and becomes itself a target of opportunity for terrorists, adversarial nations, and criminal organizations. He noted that disrupting the underlying information infrastructure of a transportation or finance system is often as effective or even more effective than disrupting the physical infrastructure. Wayne Bennett, partner, Commercial Technology Practice Area, Bingham Dana, agreed with Mr. Pucciarelli that a \$1 billion fraud will likely occur. However, he testified that its connection to the Y2K remediation effort would be more in the nature of serendipity than statistical inference. He also said that law enforcement would be in a better position to identify the perpetrator because of the changes brought about by the Y2K effort.

During the August recess, the Subcommittee on Government Management, Information, and Technology held its 15th, 16th, 17th hearings. The subcommittee traveled to Sacramento, CA, San Jose, CA, and Seattle, WA, to learn about local Y2K challenges and preparations. In general, the subcommittee received testimony at each of these hearings from government, utilities, and business. These sectors reported that much progress had been made in the last year, and remaining efforts focused on testing and installing

fixed computer systems and developing and testing business continuity and contingency plans.

Hearing witnesses in Sacramento, CA, included: Joel Willemssen, General Accounting Office; Elias Cortez, director, California Department of Information Technology; Doug Cordiner, principal auditor, Bureau of State Audits, State of California; Steve Ferguson, chief of information technology, county of Sacramento; Carol Hopwood, Emergency Management, county of Sacramento; the Honorable Joan Smith, supervisor, Siskiyou County, representing the Regional Council of Rural Counties; Cathy Capriola, administrative services director, city of Citrus Heights; Garth Hall, manager of the year 2000 project, Pacific Gas and Electric Corp.; Mike Petricca, product manager, Pacific Bell; Roy Le Nave, senior project manager, Y2K readiness program, Sacramento Municipal Utility District; Kathleen Tschogl, manager, governmental and regulatory affairs, Raley's Supermarkets; and Allen Rabkin, Sierra West Bank, representing the California Bankers Association.

Hearing witnesses in San Jose, CA, included: Joel Willemssen, General Accounting Office; Mark Burton, Y2K project manager, city of San Jose; Dana Drysdale, vice president, information systems, San Jose Water Co.; Ronald E. Garratt, assistant city manager, city of Santa Clara; Christian Hayashi, year 2000 communications manager, city of San Francisco; Brad Whitworth, Y2K program manager, customer service and support group, Hewlett Packard Co.; Richard Hall, director, California governmental affairs, year 2000 program manager, Intel Corp.; Mike Petricca, product manager, Pacific Bell; Ralph Tonseth, director of aviation, San Jose International Airport; Garth Hall, manager of project 2000, Pacific Gas & Electric Co.; Karen Lope, division manager, administrative services, Silicon Valley Power; Dr. Frances E. Winslow, director, Office of Emergency Services, city of San Jose; William Lansdowne, chief of police, city of San Jose; and John McMillan, deputy fire chief, city of San Jose.

Hearing witnesses in Seattle, WA, included: Joel Willemssen, GAO; Chris Bedrock, State of Washington; Cliff Burble, King County; Mr. Marty Chakoian, city of Seattle; Barb Graff, city of Bellevue; Joe O'Rourke, Bonneville Power Administration; Jerry Walls, Puget Sound Energy; James Ritch, Seattle City Light; Marilyn Hoggarth, GTE; Dave Hilmoie, Seattle Public Utilities; Brad Cummings, University of Washington Academic Medical Centers; Willie Aikens, the Boeing Co.; Don Jones, Microsoft; Joan Enticknap, Seafirst Bank (a Bank of America Co.); William Jordan, Public Instruction for the State of Washington; Rich Bergeon, NueVue International LLC/Audit 2000.

The purpose of the subcommittees' 18th hearing was to re-evaluate the Federal Aviation Administration's [FAA] progress in solving its Y2K challenges. FAA Administrator Jane Garvey testified that all FAA computer systems, mission-critical and non-mission-critical, were Y2K compliant. She added that an independent contractor had reviewed documentation on the repairs and verified FAA's work based on the contractor's engineering judgment. Ms. Garvey stated that Transportation's Office of the Inspector General had also validated FAA's compliance. She concluded by saying that she was confident that the FAA would make the transition to the year

2000 smoothly, without compromising aviation safety in the National Airspace System [NAS].

Ken Mead, Department of Transportation Inspector General, testified that the FAA had met the significant challenge of implementing 152 repaired systems at over 4,000 sites. He stated that his office sampled 14 systems, and verified that documentation supported system implementation, validation problems had been resolved, an independent verification and validation had been performed on all 152 repaired systems, data exchange issues were resolved, vendor-supported systems were compliant, acceptance testing was performed, and affected databases had been addressed. However, he said, now that implementation is complete, FAA needed to ensure that year 2000 compliant computer systems in the field were not adversely affected by local programs or upgrades to compliant systems.

Joel Willemssen, GAO, testified that, despite tremendous progress, the FAA continued to face challenges in ensuring that its internal systems will work as intended through the year 2000 date change. He reported that the FAA's challenges involved managing modifications to compliant systems, independent verification of systems compliance, and systems testing. Mr. Willemssen stressed the point that the FAA must also mitigate risks posed by external organizations, including airports, airlines, and foreign air traffic control systems. He warned that these factors could impede FAA's ability to provide reliable aviation services, which could seriously affect the flow of air traffic across the Nation and around the world. Mr. Willemssen also testified that in the event critical internal or external systems do not work as intended, the FAA must have a comprehensive and tested business continuity and contingency plan ready to implement, and a trained staff to execute the plan.

At this hearing, Chairman Horn requested that the FAA make public any information pertaining to the readiness of domestic airlines and airports, and, to the extent possible, any information on the readiness of international air traffic organizations. The FAA heeded Chairman Horn's request, and in late September, posted information on a new Internet website: "www.dot.gov/fly2k."

The subcommittees' 19th hearing focused on the Department of State's efforts to minimize the potential international impact of the year 2000 computer problem. John O'Keefe, Special Representative for Y2K, Department of State, testified that a day earlier the Department had issued updated Consular Information Sheets for every country in the world, about 196 in total. He reported that each revised "Consular Information Sheet" contains a section that assessed general Y2K risks and preparedness in a specific country. The information was gathered from a number of open and confidential sources. Mr. O'Keefe noted that the State Department's fundamental purpose in releasing this information was to apprise U.S. citizens of potential disruptions they may encounter due to the Y2K phenomenon, and to allow Americans to prepare and to make informed personal decisions about travel on or about January 1, 2000. He added that the statements in the Consular Information Sheets represent the Department's best judgment on potential problems for U.S. citizens living and traveling abroad. He advised



the subcommittee that these sheets were not a scorecard, and warned that no one can predict what will occur on and after January 1st.

The purpose of the subcommittees' 20th hearing was to assess the readiness of the Nation's Medicare program. Witnesses included Joel Willemssen, GAO; Dr. Gary Christoph, Health Care Financing Administration [HCFA]; Dr. Whitney Addington, American College of Physicians and American Society of Internal Medicine; Fred Brown, American Hospital Association; Elizabeth Wilkey, BlueCross BlueShield of Georgia; Joe Baker, Medicare Rights Center. Dr. Christoph testified that HCFA was still completing recertification testing to re-verify that its systems were working and that software changes made during the summer to fulfill legislative mandates and improve program operations had not affected previously achieved year 2000 compliance. In addition, he stated that HCFA believed that the greatest risk to the Medicare program involved the readiness of HCFA's partners, namely HCFA's Medicare providers, including managed care organizations.

Mr. Willemssen testified that HCFA must continue monitoring and continue testing with its health care contractors (e.g., insurance companies), which at the time of the hearing, although limited, had uncovered Y2K problems. He added that HCFA needed to continue its efforts to ensure that managed care organizations were adequately addressing their Y2K challenges. Mr. Willemssen concluded that a considerable amount of work remained in the next few months. He noted that it was crucial that the development and testing of internal, contractor, and M.O. business continuity and contingency plans move forward rapidly to ensure that, no matter what happens, providers would be paid and beneficiaries would receive care.

The subcommittees' 21st hearing focused on the Y2K readiness of several essential "high risk Federal programs." In June, the subcommittee had graded the readiness of the 43 "high risk Federal programs," including 10 federally funded, State-run programs such as Medicaid and food stamps. At that time, the subcommittee found that the 10 State-run programs would not be ready until December 1999. John Spotila, Office of Management and Budget [OMB], testified that OMB's goal was simple: to ensure the delivery of uninterrupted services to individuals who depend upon those services and to reassure those individuals that they can depend on the services. Overall progress had been good, he said. Of the 43 programs, OMB reported that 12 had completed all end-to-end testing, 19 others would be completed by October; 4 others were expected to complete in November; and the remaining 8 in December. Mr. Spotila noted that the remaining seven programs, which are State-run Federal programs, would not be completely ready until December. He noted that the Departments of Health and Human Services, Agriculture and Labor must work with all 50 States and several territories to ensure the year 2000 readiness of these programs. Mr. Spotila concluded that since the primary concern is the recipients in each State, OMB would not consider the task completed until all of the States and territories were year 2000 ready.

John Callahan, Chief Information Officer, Department of Health and Human Services testified that HHS was very concerned about

the compliance status of some territories, because their remediation effort may not be completed by January 1, 2000. He stated that a small number of programs in Alabama, Delaware, the District of Columbia, Georgia, Mississippi, New Hampshire, and South Carolina had been assessed as being at a high risk of Y2K failure. He attributed the high risk to these States because the remediation and testing of systems was either not complete or behind schedule, and contingency plans were either underdeveloped or nonexistent. Also a number of States, regardless of the status of their automated systems, lacked complete business continuity and contingency plans [BCCP]. Mr. Callahan pointed out that these plans are necessary in the event that unanticipated failures occur. BCCPs provide for the implementation of alternate procedures and processes to continue program operations while the system failure is corrected.

The subcommittees' 22nd hearing focused on the Y2K readiness of domestic and international nuclear power plants. Witnesses were representatives from the General Accounting Office, Nuclear Regulatory Commission [NRC], and the Nuclear Energy Institute. Frank Miraglia, of NRC, testified that NRC had concluded that the Y2K problem would not adversely affect the continued safe operation of U.S. nuclear power plants. He noted that this assessment was based on NRC's review of responses from the nuclear power industry concerning Y2K readiness, independent inspection efforts at all 103 units, and ongoing regulatory oversight activities. Regarding international nuclear reactors, Mr. Miraglia stated that the NRC had been working with its foreign bilateral nuclear safety cooperation partners to raise awareness of the Y2K problem and offer assistance within means. He said that the most notable development in this area was the creation of the Y2K early warning system, which would allow all participating countries to rapidly share Y2K-related information on nuclear facility and grid performance.

Keith Rhodes, of GAO, testified that, in general, the NRC had taken the lead in overseeing the Y2K nuclear problem. However, he noted that NRC had not required that its licensees perform independent verification and validation [IV&V] of their Y2K programs. Mr. Rhodes suggested that use of IV&Vs would provide NRC—and nuclear power plants and nuclear fuel facilities managers—with additional assurances that all critical applications and systems were Y2K ready.

The purpose of the subcommittees' 23rd hearing was to assess the Federal agencies' year 2000 business continuity and contingency plans [BCCP] and day one plans. Chairman Horn stated that although agencies were making significant progress in renovating and testing their mission-critical systems, crossing the century boundary, nevertheless, presented many challenges. He stressed that each agency must have a BCCP and day one strategy for reducing the risk of failures occurring in agency facilities, systems, programs, and services during the weekend of the critical millennium rollover. Witnesses included Joel Willemsen, GAO; John Spotila, Office of Management and Budget; John Dyer, Social Security Administration; Dr. Marvin Langston, Department of Defense; John Gilligan, Department of Energy; Paul Cosgrave, Internal Revenue Service; and Norman E. Lorentz, U.S. Postal Service.

Mr. Spotila, OMB, testified that based on the OMB's initial review of agency plans, the majority were on-track in preparing their plans. He added that although most agencies need to develop more detail to fill-out the plans, their submissions showed that they were or soon would be addressing all of the critical elements of effective day-one planning. Mr. Spotila concluded that although a few of the small independent agencies had provided excellent plans, a number of them had either not provided a plan or had provided incomplete plans. He concluded by saying that the OMB staff would continue working with each agency individually, providing them feedback during the coming weeks to help them complete their efforts.

Mr. Cosgrave, IRS, stated that the IRS was still completing an inventory of its computer systems. Although this was very troubling, he stated that the IRS would soon finish the inventory process. In addition, Mr. Cosgrave said that the IRS had developed contingency plans that outline the necessary procedures to follow in the event that any of IRS' mission-critical tax processing systems suffered a major failure. He stated that the IRS had completed testing on all but two of these plans, and had addressed GAO's suggestions in a recent report on IRS' contingency plans.

Mr. Lorentz, U.S. Postal Service, testified that the Postal Service had identified its critical business processes—such as postage payment, and the acceptance, processing, transportation, and delivery of mail—and weighed them against a catalog of “failure scenarios,” essentially, external events that could interrupt the Postal Service's business processes. He stated that this exercise resulted in the creation of business continuity plans—a series of strategies to help the Postal Service work through disruptions to elements of its external support infrastructure, such as ground and air transportation, telecommunications, and utilities. Mr. Lorentz added that the basic continuity plans were then shared with the Postal Service's field units for customization to reflect specific local conditions. He mentioned that, for example, in the event of an airport closure, field operations officials would identify the best alternative transportation and routing for mail to and from that area.

The purpose of the subcommittee's 24th and final hearing this year was to discuss and respond to Y2K questions that have been raised by the American public related to issues such as the Nation's overall preparedness, investor confidence, health care concerns, and Y2K marketing and myths. Witnesses included John Koskinen, chairman of the President's Council on Year 2000 Conversion; Joel Willemssen, General Accounting Office; J. Patrick Campbell, Nasdaq-Amex Market Group, Inc.; Barry S. Scher, Giant Food, Inc.; and Ronald Margolis, University of New Mexico Hospital, Health Sciences Center, representing the American Hospitals Association.

Mr. Koskinen testified that one of the more troubling Y2K myths is the notion that January 1 is a seminal date upon which everything—or nothing—Y2K-related will occur. He added that a corollary of this myth is that everyone will be able to “close the books” on the Y2K issue and declare victory or defeat by the end of New Year's Day. Mr. Koskinen stated that year 2000 problems could occur any time that a non-compliant computer comes into contact with a year 2000 date—before or after January 1. He stated that

a number of businesses and governments had already used year 2000 dates in their automated operations. In addition, information technology professionals are well aware that the Y2K challenge is not limited to January 1, and will be monitoring systems well into the New Year for flaws in billing and financial cycles and possible slow degradations in service.

Mr. Koskinen addressed myths in the form of Y2K “doomsday” scenarios such as the claims that the Y2K issue could cause nuclear weapons to self-launch, or foreign trade to grind to a halt. He stated that none of the available information suggests that these stories are true. For example, nuclear weapons require human intervention to launch. A malfunctioning computer—Y2K or otherwise—could not cause weapons to misfire without human intervention. However, Mr. Koskinen was concerned about the ability of the Russian early warning systems to function effectively during the rollover period. He was pleased that Russia had agreed to participate with the United States in a joint stability center in Colorado, where information from United States and Russian early warning systems would be shared to ensure there would be no misunderstandings.

Mr. Koskinen testified that there are several important Y2K realities. First, he said, it is important for the public to know that the U.S. infrastructure is ready for the date change. The information provided to the President’s Council and the public indicates that the electric power grids, telecommunications networks, financial transaction systems, and key national transportation systems would make a successful transition into the year 2000. Mr. Koskinen added that the second Y2K reality is that, despite our best efforts to fix and test systems, there will be problems. Not every system will be fixed by January 1, and no amount of testing can ensure perfection. He stated that he had already seen Y2K problems surface in instances where systems had been fixed and tested, as was the case for a few Federal agencies that have already experienced minor problems with the transition to fiscal year 2000. Mr. Koskinen said that he also expects failures in sectors where large numbers of organizations were late in starting or, even more troubling, are taking a “wait-and-see approach” to the date change. He concluded by stressing the importance of all organizations monitoring their systems for Y2K problems during the rollover period and having updated contingency plans to minimize potential disruptions.

On January 1, 2000, the world awoke to find that little had changed. Lights still worked, telephones still rang, and planes kept flying. Y2K-related computer glitches did occur, but none was life threatening. The media and many citizens responded to this apparent non-event by pondering the wisdom of spending \$100 billion on Y2K solutions.

On January 27, 2000, the Subcommittee on Government Management, Information, and Technology, and the House Subcommittee on Technology jointly held the final Y2K hearing of the House Year 2000 Task Force. This hearing, entitled, “Year 2000 Computer Problem: Did the World Overreact and What Did We Learn?,” presented the results of the Y2K computer problem, highlighting the Y2K-glitches that occurred and discussing the lessons learned from

the experience. Concerns about possible disruptions on the forthcoming Leap Year date of February 29, 2000, were also discussed.

Calling Y2K “the greatest management challenge the world has faced in the last 50 years,” John Koskinen, chairman of the President’s Council on Year 2000 Conversion, credited the successful Y2K transition to the tremendous mobilization of people and resources in both the public and private sectors. Joel Willemssen of the General Accounting Office confirmed the relatively smooth transition noting that those Y2K-related errors that did occur did not affect the delivery of key services because they were either corrected quickly or contingency plans were implemented.

Citing the potential consequences had the Government not adequately prepared for Y2K, witnesses also highlighted benefits and lessons learned that can continue to be applied to improve overall information technology management. In addition to the value of strong congressional oversight and leadership from the highest levels of Government, witnesses stressed the value of partnerships between private industry and the Government in solving major national issues. Other lessons included the need for ongoing top management involvement in information technology and the value of developing and testing contingency plans.

*b. Benefits.*—The benefit of inspiring organizations to learn about the year 2000 problem and to take it seriously has been self-evident; the greater the progress in year 2000 readiness, the fewer the failures on and after January 1, 2000. In addition, agencies generally reported they had developed practical, detailed contingency plans that were tested and ready for implementation in the event of unforeseen computer failures. Furthermore, serious action this year, promulgated by the actions of key Federal officials, served to reduce the panic this problem could have encouraged.

Congressman Horn stated many times that the key to fixing the year 2000 problem is leadership. The subcommittees’ oversight hearings, coupled with its year 2000 report cards, stressed the urgency to get the job done on time. Agency management needed to establish firm priorities and allocate the necessary resources to the project. This process was borne out this year.

Furthermore, the year 2000 problem has been, and may continue to be, extremely costly to the taxpayers. Current executive branch cost estimates have grown from about \$2.8 billion in May 1997 to \$8.9 billion in November 1999.

*c. Hearings.*—The Subcommittee on Government Management, Information, and Technology held 25 hearings on this issue in the 106th Congress:

(1) “The Year 2000 Problem: Status Report on the Federal, State, Local, and Foreign Governments,” January 20, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(2) “Y2K Technology Challenge: Will the Postal Service Deliver?,” February 23, 1999, held jointly with the Subcommittee on the Postal Service and the Subcommittee on Technology of the Science Committee.

(3) “Oversight of the Year 2000 Problem: The Y2K Status of the Department of Health and Human Services,” February 26, 1999.

(4) “Oversight of the Year 2000 Problem at the Department of Defense: How Prepared is Our Nation’s Defense?,” March 2, 1999,

held jointly with the Subcommittee on Technology of the Science Committee.

(5) "The Impact of Litigation on Fixing Y2K," March 9, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(6) "Will Transportation and the FAA Be Ready for the Year 2000?," March 15, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(7) "Year 2000 Emergency Management," March 22, 1999.

(8) "Are the Federal Government's Critical Programs Ready for January 1, 2000?," April 13, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(9) "Y2K in Orbit: The Impact on Satellites and the Global Positioning System," May 12, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(10) "H.R. 1599, The Year 2000 Compliance Assistance Act," June 23, 1999.

(11) "Oversight of the Year 2000 Technology Problem: Lessons to be Learned from State and Local Experiences," Topeka, KS, July 7, 1999.

(12) "Oversight of the Year 2000 Technology Problem: Lessons to be Learned from State and Local Experiences," Naperville, IL, July 8, 1999.

(13) "Oversight of the Year 2000 Technology Problem: Lessons to be Learned from State and Local Experiences," Detroit, MI, July 9, 1999.

(14) "Impact of Y2K: Expanded Risks or Fraud?," August 4, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(15) "The Year 2000 Computer Problem: Lessons to Be Learned from State and Local Experiences," Sacramento, CA, August 13, 1999.

(16) "The Year 2000 Computer Problem: Lessons to Be Learned from State and Local Experiences," San Jose, CA, August 14, 1999.

(17) "The Year 2000 Computer Problem: Lessons to be Learned from State and Local Experiences," Seattle, WA, August 17, 1999.

(18) "FAA and Y2K: Will Air Travel Be Stopped or Significantly Delayed on January 1st and Beyond?," September 9, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(19) "The Year 2000 Computer Problem Implications for International Travel," September 15, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(20) "Year 2000 and Medicare: Is Health Service Delivery at Risk?," September 27, 1999.

(21) "State of the States: Will Y2K Disrupt Essential Services?" October 6, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(22) "Y2K and Nuclear Power: Will the Reactors React Responsibly?," October 22, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(23) "Y2K and Contingency and Day 1 Plans: If Computers Fail, What Will You Do?," October 29, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(24) “Y2K Myths and Realities,” November 4, 1999, held jointly with the Subcommittee on Technology of the Science Committee.

(25) “Year 2000 Computer Problem: Did the World Overreact and What Did We Learn?,” January 27, 2000.

## *2. Oversight of Federal Real Property Management.*

*a. Summary.*—Public buildings and lands are an integral part of Federal operations. They are used to house Federal workers, house historic, cultural and educational artifacts, and provide services to the public. As such, they should be viewed as capital resource tools that support agencies’ goals and missions. Management of these facilities is especially challenging considering that roughly half of all Federal office buildings are 40 to 50 years old. More than half of the 8,000 office buildings managed by the General Services Administration are over 50 years old. Faced with increasing budgetary constraints and the demand to improve public services, Federal agencies and departments must make the most cost-effective and efficient use of their capital assets.

*b. Benefits.*—With a portfolio of more than 500,000 buildings located on more than 560 million acres of land, the Federal Government is one of the world’s largest land owners. These holdings are under the custody and control of more than 30 Federal departments and agencies. They represent a taxpayer investment of more than \$300 billion. The Federal Government, however, has not been a good steward of its real property assets. Enhanced congressional attention to the status of Federal real property assets is an essential step toward ensuring the maintenance of this substantial taxpayer investment.

*c. Hearings.*—The subcommittee held 2 hearings on the Federal Government’s real property holdings in the 106th Congress.

(1) “Federal Real Property Management: Obstacles and Innovative Approaches to Effective Property Management,” April 29, 1999.

On April 29, 1999, the Subcommittee on Government Management, Information, and Technology held a joint hearing with the Transportation Committee’s Public Buildings Subcommittee to review Federal real property management. The subcommittees reviewed the status of the Federal Government’s management of its real property assets and heard from witnesses who discussed obstacles and innovative approaches to effective and efficient real property management.

The subcommittees heard from a variety of witnesses representing some of the larger land-holding Federal departments and agencies. A number of these witnesses agreed that many Federal buildings are crumbling and require substantial repairs in order to bring them up to acceptable standards of health, safety and quality. As the wear and tear on buildings increase, the need for maintenance and repair to sustain their functionality also increases. A witness from the General Accounting Office discussed the results of a study the agency released on public-private partnerships and how the use of such property management relationships have aided in the maintenance of certain Federal properties. A witness from the National Research Council discussed the findings of a 1998 report the agency issued entitled, “Stewardship of Federal Facilities.”

In the report the National Research Council focused on the deteriorating condition of the vast portfolio of Federal buildings, and offered recommendations on ways to improve the condition of these structures through improved facility management. According to the National Research Council, Federal facilities program managers are being encouraged to be more businesslike and innovative. However, the council found that current management and financial processes create disincentives and, in some cases, barriers to cost-effective property management and maintenance. Millions of dollars are being spent on buildings that no longer serve their intended purposes. Downsizing of the Federal workforce and changing agency missions have resulted in an excess of Federal buildings and work space that is a costly and inefficient use of taxpayers' money.

A witness from the General Services Administration testified that certain elements of the Federal Property and Administrative Services Act of 1949 restrict the Government's ability to adopt some "best practices" that have become commercial standards in the management and disposal of real property. According to this witness, certain statutory barriers must be removed and certain authorities must be modernized to meet the challenges facing Federal real property managers.

(2) Legislative Proposals to Reform the Government's Approach to Property Management, "S. 2805, the Federal Property Asset Management Reform Act and H.R. 3285, the Federal Asset Management Improvement Act," on July 12, 2000.

At a July 12, 2000, hearing, the subcommittee examined the merits of two legislative proposals to reform the Federal Government's approach to property management. One proposal contained provisions, developed by the General Services Administration, in collaboration with other agencies, that would provide Federal departments and agencies with incentives and flexibility to manage their real and personal property assets.

The second proposal, H.R. 3285, the "Asset Management Improvement Act of 1999," introduced by Representative Pete Sessions (TX), would have amended the Property Act to authorize the General Services Administration or other agencies under delegated authority to enlist private-sector capital and expertise in public-private partnerships to develop or improve Federal real property.

### *3. Oversight of the Minerals Management Service's Royalty Valuation Program.*

*a. Summary.*—The Federal Government has been collecting royalties associated with mineral production from Federal onshore lands since 1920 and from offshore lands since 1953. The Minerals Management Service [MMS], an agency within the Department of the Interior, was established in 1982 with the mission of ensuring that all royalties from Federal and Indian mineral leases are accurately collected, accounted for, and disbursed to the appropriate recipients in a timely manner. To carry out its mission, the MMS manages the Offshore Minerals Management Program and the Royalty Management Program.

Federal law requires that a portion of the royalties collected by the Federal Government be shared with the affected States. In the



case of Indian lands, all royalties collected from mineral production go back to the Indian Tribes or individual landowners. Since 1982, nearly \$100 billion has been disbursed from Federal onshore and offshore oil and gas leases. In fiscal year 1998, the Royalty Management Program generated nearly \$6 billion from more than 26,000 leases—\$4.6 billion from offshore leases and \$1.4 billion from Federal onshore and Indian leases. Of that amount, \$550 million was distributed to the States and used for schools, roads, public buildings, or general operations.

Despite these accomplishments, there is concern that the Federal Government has not received its fair share of royalties from oil extracted from Federal lands. In the past two decades, a number of lawsuits have been filed alleging that oil companies have undervalued the price of oil extracted from Federal lands. Witnesses at a June 17, 1996, subcommittee hearing testified that oil royalties paid to the Federal Government were based on royalty valuations that were below market value. At this hearing, it was charged that the MMS delayed collecting the appropriate royalties and that the MMS' global settlements with major oil companies failed to protect taxpayers' financial interests.

Current royalty regulations specify three types of contract prices: posted prices, which are offers made by purchasers to buy oil and often include a premium; spot prices, which are the prices reported in oil market survey publications based on contracts of oil sold and purchased at market centers; and prices of crude oil futures contracts that are sold on the New York Mercantile Exchange [NYMEX].

Traditionally, posted prices were relied on for royalty valuation purposes because they were thought to represent market value. This assumption has been challenged, particularly in situations where crude oil moves internally within integrated companies. Recent evidence suggests that oil is sold for more than the posted prices, leading to the conclusion that the value of the oil from Federal leases and the amount of Federal royalties should both be higher.

Allegations that posted prices do not reflect market value arose from a number of sources. In 1975, the State of California and the city of Long Beach initiated litigation against seven major oil companies operating in California. They alleged that the companies conspired to undervalue the price of crude oil produced on State leases, reducing the amount of royalties paid. In 1991, six of the oil companies involved in the suit settled with the city of Long Beach and the State of California for \$345 million. As a result of this settlement, in 1994 the MMS created an interagency task force to investigate whether posted prices were reflective of market value. The task force issued a report in 1996, charging that from 1978 to 1993 oil companies underpaid by as much as \$853 million. The task force also found that oil valuation regulations were confusing and difficult to administer. The task force recommended that the MMS recalculate the royalties owed and issue a new regulation to clarify royalty valuation.

In response to the litigation and the recommendations of both the Subcommittee on Government Management, Information, and Technology and the interagency task force, the MMS issued bills to

oil companies for several hundred million dollars. Not one company has thus far paid. Recently, charges of fraudulent undervaluation by seven oil companies were filed under the False Claims Act. One company has chosen to settle, but the remaining defendants deny the allegations, insisting they reported valuations of crude oil that accurately reflected market prices in the field.

In an effort to simplify the valuation rules, in 1995, the MMS began revising its oil valuation regulations. To date, no new rule has been implemented. The Department of the Interior has reopened the comment period an unprecedented seven times. Also, twice in 1998, Congress passed specific language prohibiting the Department of the Interior from implementing a rule, unless a consensus could be reached with the oil companies. A third “moratorium” was attached to the 1999 Senate supplemental appropriations bill.

Under the MMS’ current proposal, for transactions in which the parties have competing interests, called arms-length transactions, the rules would continue to require that gross proceeds be used to determine the royalties owed. For transactions that are not at arms-length, however, the proposed regulations amend the method for determining the price of the oil, no longer relying on the use of posted prices but instead relying on spot prices adjusted for the location and quality of the oil. The MMS’ proposal would define the price of oil not sold in arms-length transactions differently in each of the three domestic oil markets. The oil industry opposes this approach. As an alternative, it suggests that the Federal Government take its royalties in-kind.

*b. Benefits.*—At the May 19, 1999, hearing, the subcommittee reviewed the Department of the Interior’s management of the collection, valuation and distribution of revenues—or royalties—from oil produced on Federal lands. Royalties from oil and gas leases on Federal lands are one of the largest sources of non-tax revenues for the Federal Government. According to the Minerals Management Service, since 1982, nearly \$100 billion has been disbursed from Federal onshore and offshore leases. In fiscal year 1998, for example, the Royalty Management Program generated nearly \$6 billion from more than 26,000 mineral leases. Of that amount, \$550 million was distributed to the States and used for schools, roads, and public buildings. Congressional oversight into the management of this program along with the current efforts to produce a new royalty valuation rule are both essential to ensure a fair return to the American taxpayer. Oversight of the Department of the Interior’s management of the valuation, collection and distribution of royalties from leases on tribal lands is also essential to ensure that the Federal Government is meeting its fiduciary responsibility as trust manager for the beneficiaries of these royalties.

*c. Hearings.*—“Oversight of the Minerals Management Service’s Royalty Valuation Program,” May 19, 1999.

On May 19, 1999, the Subcommittee on Government Management, Information, and Technology held a hearing to review the management of the Royalty Valuation Program by the Department of the Interior’s Minerals Management Service. The subcommittee focused on the MMS’ efforts to collect past-due mineral royalties as well as its progress in issuing a new regulation that clarifies the

royalty valuation process and protects the financial interests of the Federal Government. Witnesses at the hearing included representatives from the Department of the Interior, the General Accounting Office, Indian tribes, the oil industry, and the State of California.

James McCabe, deputy attorney for the city of Long Beach, CA, testified that oil produced on State lands should be sold at publicly quoted market prices rather than using posted prices. Alan Taradash, a private attorney representing the Jicarilla Apache Tribe discussed the undistinguished history of the Department of Interior and its attempts to account properly for tribal mineral development. According to Mr. Taradash, a conflict of interest exists between the United States as a mineral resource owner on its own account and as a trustee of tribal mineral resources. Actions taken by the United States regarding the Federal mineral estate on public lands affects both directly and indirectly the value of tribal mineral assets. As such, Mr. Taradash recommended that separate regulations govern tribal oil and gas leasing activities.

David Deal, assistant general counsel for the American Petroleum Institute, and Ben Dillon, vice president of the Independent Petroleum Association of America testified on behalf of the American Petroleum Institute [API], the Independent Petroleum Association of America [IPAA], the Domestic Petroleum Council [DPC] and the U.S. Oil and Gas Association [USOGA]. Together, the members of these trade associations are responsible for the production of virtually all Federal oil and gas production from Federal lands and virtually all of the Federal royalties paid every month. Both of these witnesses testified in opposition to the MMS proposal that oil should be valued for royalty purposes using market prices or spot prices. According to these witnesses, the MMS rulemaking proposal falls short of reflecting all additions to the value of the oil and would lead, therefore, to inflated values and inflated royalty obligations. Moreover, these witnesses testified that the MMS proposal leads to an outcome at odds with the plain language of the mineral leasing statutes and the terms of the specific contracts or leases under which lessees operate. Notwithstanding their reservations about the proposed valuation rule, these witnesses testified that the valuation rule could be fixed if certain key changes are made.

Susan Kladiva, associate director, Resources, Community, and Economic Development Division, General Accounting Office, discussed the results of a report issued by the GAO in August 1998 on the Department of Interior's attempts to revise the Federal oil valuation regulations and the feasibility of the Government's taking its oil and gas royalties in kind. Ms. Kladiva testified that in deciding to revise its oil valuation regulations, the MMS relied heavily on the findings of its interagency task force. This task force concluded that the major oil companies' use of posted prices in California to calculate Federal royalties was inappropriate and recommended that the Federal oil valuation regulations be revised. Ms. Kladiva also provided an overview of the process the MMS had undergone to develop a new rule. At the time of the hearing, the MMS had solicited public comments on the proposed regulations in seven Federal Register notices, held 17 public meetings, and revised its regulations five times, she said.

Sylvia Baca, the acting Assistant Secretary for Land and Minerals Management at the Department of Interior, gave an overview of the MMS Royalty Management Program and a status report on the Department's efforts to revise its regulations for valuing crude oil. Robert Williams, acting Inspector General of Department of Interior, discussed some audits and investigations performed by his office into the operations of the MMS and its oil royalty collection and valuation process. One Inspector General report discussed by Mr. Williams involved the MMS' failure to accurately identify additional royalties owed to the Federal Government for undervalued California crude oil. According to this report, the MMS did not adequately plan its work, accurately prepare supporting evidence, exercise due professional care in performing analyses, or have adequate quality control procedures to ensure the accuracy of its conclusions. As a result, 19 bills sent to oil companies were overstated by at least \$185.6 million.

#### *4. Oversight of Government Debt Collection Practices.*

*a. Summary.*—During the 106th Congress, the subcommittee held five hearings in addition to its ongoing oversight of the enormous tax and non-tax debt that is owed to the Federal Government. As of fiscal year 1999, the Government was owed \$60 billion in delinquent non-tax debts. The Debt Collection Improvement Act [DCIA], Public Law 104-134, which was moved by the subcommittee during the 104th Congress, established several programs to assist Federal agencies and State governments in collecting overdue non-tax debts. The Treasury Offset Program authorizes the Treasury Department to offset Federal payments, such as retirement and vendor payments and tax refunds, to satisfy delinquent non-tax debts owed to the Federal Government or delinquent child support and income tax debts owed to the States. The cross-servicing program requires Federal agencies to transfer debts that are more than 180 days delinquent to a designated debt collection center for processing. Currently, the Department of the Treasury's Financial Management Service is the only agency that has been designated as a governmentwide debt collection center. The Financial Management Service has a variety of tools available to collect these delinquent debts, including referring the debts to private collection agencies.

*b. Benefits.*—In fiscal year 1999, the Government's offset and cross-servicing programs collected \$2.6 billion, an increase of more than \$570 million over that collected in 1998. To date, the program has collected nearly \$2.4 billion in fiscal year 2000, including \$1.3 billion in delinquent child support payments owed to States and \$1.1 billion in non-tax debt owed to the Federal Government. Continued congressional oversight will encourage more Federal agencies to take advantage of these money-saving programs, which provide direct financial benefits for American taxpayers.

The role of the Federal Government in the credit market is enormous. The Federal Government dominates the market for student loans and housing loans, and has a strong impact on other sectors as well. Effective Federal debt collection practices are essential to protect the interests of the taxpayers, but strong congressional oversight is essential to increase the effectiveness of the Federal

Government's debt-collection practices. At this point, the Government is still in the process of implementing the DCIA. There are a variety of steps in the implementation process that continue to warrant heightened congressional attention.

*c. Hearings.*—During the 106th Congress, the subcommittee held three hearings examining Federal debt collection practices.

(1) "What is the Federal Government Doing to Collect the Billions of Dollars in Delinquent Debts it is Owed?," June 15, 1999.

On Tuesday, June 15, 1999, the subcommittee continued its oversight of the Government's implementation and compliance with the Debt Collection Improvement Act of 1996 [DCIA]. At the hearing the subcommittee evaluated the Department of the Treasury's progress in implementing the DCIA. The subcommittee also focused on compliance with the DCIA by three Federal departments holding some of the largest amounts of overdue debts: the Department of Agriculture, the Department of Education and the Department of Housing and Urban Development.

As of fiscal year 1998, the Federal Government was owed \$60 billion in delinquent non-tax debt, reported the Department of the Treasury. Of that amount, more than \$46 billion had been delinquent for more than 180 days. Of the \$46 billion, \$31.2 billion was available for referral to the Financial Management Service [FMS] for collection action (including \$8.1 billion that was eligible for referral to the cross-servicing program). Delinquent debt that is in bankruptcy, foreclosure, forbearance, disputed debt and foreign debt are excluded from offset and cross servicing. In April 1996, the Debt Collection Improvement Act [DCIA] was signed into law. The DCIA was enacted to improve the Federal Government's record in collecting delinquent debt. Since its enactment, however, the amount of delinquent non-tax debt owed to the Federal Government has increased. Total delinquencies rose from \$51.9 billion in fiscal year 1997 to its present level of \$60 billion. The DCIA centralizes non-tax debt collection responsibilities at the Department of the Treasury. The law requires Federal departments and agencies to refer debts more than 180 days delinquent to the Department of the Treasury for collection. The Department of the Treasury's Financial Management Service is responsible for administering the provisions of the DCIA.

In addition to requiring agencies to transfer delinquent debts to the FMS for collection action, the DCIA expanded offset programs in which Federal payments are intercepted to satisfy delinquent debts owed to the Federal Government. The DCIA also authorized the offset of tax refunds to collect past-due child support owed to the States. In addition, the DCIA established cross-servicing as a new debt-collection program. Cross-servicing is the process whereby the Department of the Treasury can collect delinquent debts by contacting a debtor to arrange repayment or refer the debt to private collection agencies for collection.

The DCIA also contains a variety of other provisions designed to improve Federal debt collection. Under the DCIA, Federal departments and agencies are required to report both current and delinquent loans to consumer reporting agencies. The DCIA also bars delinquent debtors from obtaining new Federal loans or loan guarantees until the debt is repaid. The DCIA provides authority for

Federal departments and agencies to sell their delinquent debts and authorizes them to retain a portion of the amount collected to be used for improving debt-collection activities. The Secretary of the Treasury was required to report to the Congress, by April 1999, on collection services provided by the FMS and other entities that collect debts on behalf of Federal agencies.

As of March 1999, Federal departments and agencies had referred \$22.2 billion to the Department of the Treasury for collection (\$2.3 billion of this total was referred specifically for cross-servicing). Of this amount, Treasury, using cross-servicing and administrative and tax refund offset, collected \$863.1 million or about 3 percent of the total amount referred. The bulk of that amount was collected using the tax refund offset. Of the remaining amount collected, \$20.9 million was collected using cross-servicing and private collection agencies and \$5.6 million was collected using the Treasury Department's administrative offset program.

The Tax Refund Offset Program was merged with the Treasury Offset Program on January 18, 1999. Prior to the merger, the Internal Revenue Service operated the Tax Refund Offset Program. This merger has increased the types of Federal payments that can be offset or intercepted to satisfy Federal debt. Other Federal payments that can be offset to satisfy delinquent debt include vendor payments and Office of Personnel Management retirement payments.

The Federal Departments with the largest portfolios of debts delinquent for more than 180 days, include the Department of Education (\$18.2 billion), the Department of Agriculture (\$6.09 billion), the Department of Health and Human Services (\$4.26 billion), the Department of Energy (\$2.29 billion), and the Department of Housing and Urban Development (\$2.22 billion). Together, the debts owed to these five Federal departments that are more than 180 days delinquent account for more than \$33 billion of the \$46 billion owed to the Federal Government.

The Department of Education administers the Federal Family Education Loan Program and the Federal Direct Loan Program. There are currently 59.6 million outstanding student loans totaling \$152.7 billion. Of these, 13.3 million loans worth \$26.7 billion are in default. In fiscal year 1998, the Department of Education's total student-loan portfolio increased by \$13.8 billion. During the same period, delinquencies increased by \$6.2 billion.

The Department of Agriculture operates a variety of credit programs that finance utilities, housing, farms and businesses. As of fiscal year 1998, the Department of Agriculture had a total credit portfolio of \$104 billion or 38 percent of the total non-tax debt owed to the Federal Government. Of the Department of Agriculture's delinquent-debt portfolio, \$6.09 billion had been delinquent for more than 180 days. Of that amount, \$1.3 billion was eligible for referral to the Department of the Treasury for cross-servicing. However, as of April 30, 1999, only \$5 million, or less than 1 percent, had been referred.

The Department of Housing and Urban Development operates a number of credit programs that provide financial assistance for a variety of housing and community development programs. As of fiscal year 1998, the Department of Housing and Urban Development

had debt more than 180 days delinquent that totaled \$2.2 billion. Of that amount, \$1 billion was eligible for referral to the Department of the Treasury for cross-servicing and \$1.4 billion was eligible for referral for offset. Of these amounts, however, only \$222 million and \$400 million, respectively, had been referred.

(2) Unpaid Payroll Taxes: Billions in Delinquent Taxes and Penalty Assessments are Owed to the Federal Government.

On August 2, 1999, the Subcommittee on Government Management, Information, and Technology held a hearing to review the problem of employers withholding payroll taxes from employee paychecks, but failing to forward those amounts to the Federal Government, as required by law. At the hearing, the General Accounting Office released its report prepared on behalf of the subcommittee, entitled, "Unpaid Payroll Taxes: Billions in Delinquent Taxes and Penalty Assessments Are Owed." This report outlines many of the problems associated with unpaid payroll taxes, the factors affecting the Internal Revenue Service's ability to force businesses to pay this debt, and its ability to collect this money. The Commissioner of the Internal Revenue Service also testified about the agency's efforts to combat this ongoing problem.

As of September 30, 1998, nearly 2 million businesses owed the Federal Government approximately \$49 billion in overdue payroll taxes, according to Internal Revenue Service [IRS] records. This amount represents about 22 percent of IRS' total \$222 billion in outstanding, unpaid tax assessments. IRS records also revealed that on that same date, the assessed penalties, called trust fund recovery penalties, totaled about \$15 billion. About 185,000 individuals were responsible for not paying the Federal taxes they had withheld from their employees' paychecks. The amounts withheld from the employees' salaries for Federal income tax, Federal Insurance Contribution Act [FICA] taxes, and the employer's matching portion of FICA taxes, comprise a businesses payroll taxes. FICA taxes finance the Social Security and Medicare trust funds.

Each year, the Federal Government, through the IRS, collects tax revenue to finance various Government programs and activities. In fiscal year 1998, the IRS collected more than \$1.7 trillion from individuals, businesses, corporations, and estates for taxes on wages, income, employment, sales, and consumption. While most individuals and businesses pay their taxes accurately and on time a substantial number do not. According to IRS records, on September 30, 1998, the Government was owed \$222 billion in unpaid taxes, penalties, and interest. These amounts are referred to as unpaid tax assessments. Unpaid tax assessments include write-offs, compliance assessments, and tax receivables. The types of taxes that comprise the IRS' unpaid tax assessment balance are individual income taxes, self-employment taxes, payroll taxes, and corporate income taxes.

When employers withhold money from an employee's salary for Federal income taxes and FICA obligations, they are holding these amounts "in trust" for the Federal Government. To the extent these withholdings are not forwarded to the Federal Government, the business is liable for these amounts as well as its matching FICA contribution. Individuals can also be held personally liable for the

amounts withheld for Federal income taxes and the FICA obligations.

The majority of businesses pay the taxes they withhold from employees' salaries, as well as the required matching amounts. However, a significant number of businesses do not, creating a situation in which the general revenue fund subsidizes the Social Security and Medicare trust funds to the extent that those taxes are not collected. Over time, the amount of this shortfall, or subsidy, rose to \$49 billion last year.

The Chief Financial Officers Act of 1990, as expanded by the Government Management Reform Act of 1994, required the preparation and audit of consolidated financial statements of the Federal Government for fiscal year 1997 and each year thereafter. The Government Management Reform Act also required that, beginning March 1, 1997, and each year thereafter, all 24 Federal agencies that are subject to the requirements of the CFO Act must prepare audited financial statements.

The subcommittee's hearing highlighted the need for increased attention to the problem of unpaid payroll taxes. According to the General Accounting Office report released at the hearing, an estimated 1.9 million, have collected money from their employee's paychecks, for programs such as Social Security and Medicare, then failed to forward it to the Federal Government. The General Accounting Office, Congress' accounting arm, estimates this problem has cost taxpayers about \$49 billion. Continued oversight of this issue is essential, as audits of the Internal Revenue Service's financial statements have revealed significant weaknesses in the agency's financial procedures.

(3) "H.R. 4181, the Debt Pay Incentive Act of 2000," May 9, 2000.

On May 9, 2000, the subcommittee held a hearing to consider H.R. 4181, the "Debt Pay Incentive Act of 2000," introduced by the subcommittee's ranking member Jim Turner, D-TX. H.R. 4181 would prohibit delinquent Federal tax and non-tax debtors from receiving Federal loans, loan guarantees or receiving Federal contracts, until the delinquency is resolved. The bill would amend the Debt Collection Improvement Act of 1996 to broaden a current provision in the law that bars delinquent non-tax debtors from obtaining loans or loan guarantees.

As of fiscal year 1998, the Federal Government was owed \$60 billion in delinquent non-tax debt, according to the Department of the Treasury. Of this amount, more than \$46 billion had been delinquent for more than 180 days. Moreover, according to Internal Revenue Service records, on September 30, 1999, the Government was owed \$231 billion in unpaid taxes, penalties, and interest, called unpaid assessments. Of the \$231 billion, an estimated \$21 billion is considered to be collectible.

At the May hearing, the subcommittee learned that Federal departments and agencies were doing a poor job of screening prospective loan applicants to determine if they owe an outstanding debt to the Federal Government that is in delinquent status. Office of Management and Budget Circular A-129 requires Federal departments and agencies to determine whether loan applicants have delinquent Federal debt including tax debts. OMB Circular A-129 also requires agencies to question loan applicants if they have de-



linquencies. At the hearing, the General Accounting Office testified that Federal departments and agencies are not complying with this directive. Other witnesses testified that while information about delinquencies is requested by agencies in some instances to determine credit worthiness, the information is rarely verified or audited. Moreover, witnesses from Federal departments and agencies testified that few agencies are contacting the Internal Revenue Service to ascertain the credit worthiness of Federal loan applicants.

Subcommittee investigations have found that implementation of these programs varies among Federal agencies. At a June 8, 2000, hearing, the subcommittee learned that the Department of Veterans Affairs is currently owed \$463 million in delinquent debts that by law should have been transferred to the Department of the Treasury for collection. However, the department has referred only \$5 million, or about 1 percent of those debts to the Treasury Department's collection programs. The Social Security Administration is owed \$390 million in qualifying delinquent debts. The agency has referred none of these debts to the Treasury Department.

5. *Oversight of the Department of the Army's Chemical Stockpile Disposal Project at the Umatilla Depot, Hermiston, OR.*

a. *Summary.*—The U.S. chemical weapons stockpile consists of 31,495 tons of chemical agents. These chemical agents are stored at eight sites in the continental United States and at the Johnson Atoll in the Pacific Ocean. On Monday, August 16, 1999, the Subcommittee on Government Management, Information, and Technology conducted a field hearing in Hermiston, OR, to examine the management of the Chemical Stockpile Disposal Program at the Umatilla, OR, Chemical Depot. The Umatilla Chemical Depot houses more than 3,717 tons of chemical agents. Construction of an incineration facility has begun and disposal operations are scheduled to begin in 2002. The local communities surrounding the Umatilla Chemical Depot are concerned about emergency management and the economic impact of the development, operation, and closure of the incineration facility.

On April 25, 1997, the Senate ratified the Chemical Weapons Convention, an international treaty banning the development, production, stockpiling, and use of chemical weapons. The Convention commits member nations to dispose of chemical weapons and related production facilities by April 29, 2007. To date, the United States is the farthest along, among member nations, in the destruction of their chemical weapons stockpile.

To comply with congressional direction and meet the mandate of the Chemical Weapons Convention, the Army established the Chemical Stockpile Disposal Program and developed a plan to incinerate the agents and munitions on site in specially designed facilities. The Army currently projects the program will cost \$12.4 billion to implement through 2007. Through fiscal year 1999, approximately \$8 billion has been appropriated for the program.

As of March 17, 1999, more than 13.5 percent, or 4,259 tons, of the stockpile had been destroyed. The Department of Defense estimates that by the end of 1999, 6,865 tons of chemical agents (or 22 percent of the total amount) will be destroyed. The longer the

weapons sit in storage the more unstable and dangerous they become. Currently, there are two sites that are actively incinerating chemical agents and five sites in the construction phase.

The Umatilla Chemical Depot is located in eastern Oregon in Umatilla and Morrow counties. The facility, encompassing an area of about 19,728 acres, was established in 1941 as an ordinance facility for storing conventional munitions in support of the United States' entry into World War II. In 1962, the Army began storing chemical munitions at the facility. Conventional ordinance is no longer stored at the facility, however, the site houses 12 percent (3,717 tons) of the Nation's chemical weapons stockpile.

Construction of a facility to incinerate the stockpile at the Umatilla Depot began in June 1997. Chemical agent disposal operations are scheduled to begin during the second quarter of 2002.

In 1988, the Army established the Chemical Stockpile Emergency Preparedness Program [CSEPP]. The program is intended to assist communities located near chemical stockpile storage sites to address emergencies from the storage and destruction of stockpiled chemical weapons. CSEPP provides community safety awareness, public education programs, coordinated response plans, and protective and decontamination equipment.

The Army is responsible for determining the overall direction for CSEPP. Under a memorandum of understanding with the Army, the Federal Emergency Management Agency [FEMA] provides technical assistance and distributes Army funds to States through cooperative agreements. States and counties, in accordance with State and local laws, have primary responsibility for developing and implementing programs to enable communities to respond to a chemical stockpile emergency. FEMA provides both funds and technical assistance to Oregon Emergency Management for preparedness activities related to the chemical weapons storage site at the Umatilla Chemical Depot.

In June 1997, the General Accounting Office [GAO] reported that State and local communities surrounding the chemical stockpile storage sites lacked some items critical to responding to a chemical stockpile emergency. The GAO attributed the slow progress of the CSEPP program to long-standing management weaknesses, including disagreement between the Army and FEMA over their respective roles and responsibilities. Local communities have expressed concern that money allocated for emergency services has not been received.

The August 16, 1999, subcommittee field hearing in Hermiston, OR, focused on the management of the disposal project at the Umatilla Depot and the impact of the project on the local communities. Witnesses at the hearing included officials from the Department of the Army and the Federal Emergency Management Agency responsible for the management and safety aspects of this disposal project. The subcommittee also heard from officials from the State of Oregon, local counties and tribal groups. At the hearing, representatives from the local communities expressed concern over the state of emergency preparedness planning associated with the disposal project. These witnesses also testified about the effect of this temporary Government project on the local economy and local infrastructure. Local community leaders are seeking impact aid from

the Federal Government to offset the various impacts of the project. The construction of the incineration facility at the Chemical Depot had begun and the incineration operation is scheduled for completion by 2005. The facility is scheduled to shut down permanently in 2006.

*b. Benefits.*—The U.S. chemical weapons stockpile consists of 31,495 tons of chemical agents. These chemical agents are stored at eight sites in the continental United States and at the Johnson Atoll in the Pacific Ocean. The Department of Defense Authorization Act for Fiscal Year 1986 directs the Department of Defense to safely destroy all U.S. chemical warfare munitions and related materiel while ensuring maximum protection of the public, personnel involved in the destruction effort, and the environment. Because of the lethal nature of chemical weapons and environmental concerns associated with the proposed disposal methods, the program has been controversial from the beginning and has experienced delays, cost increases, and management weaknesses. Continued congressional oversight of the management of this enormous chemical weapons disposal project and at all disposal facilities is essential if the Department of the Army is to meet its mandate of safely destroying chemical weapons while ensuring maximum protection of the public, the personnel involved in the destruction effort, and the environment.

*c. Hearings.*—“Emergency Management and Preparedness,” field hearing in Hermiston, OR, on August 16, 1999.

#### *6. Oversight of Government Procurement.*

*a. Summary.*—During the 106th Congress, the subcommittee continued its oversight of Federal acquisitions by conducting oversight hearings, initiating studies, and reporting legislation. As the Nation’s largest purchaser, the Federal Government buys nearly \$200 billion worth of goods and services, including everything from defense weapons and space exploration equipment to paper clips and pencils. The Department of Defense is responsible for more than half of the Federal Government’s acquisition expenditures. In recent years, Congress has passed a number of laws, including the Information Technology Management Reform Act (Clinger-Cohen Act) and the Federal Acquisition Streamlining Act, which were designed to improve the efficiency of the Federal acquisition system.

On September 30, 1999, the Office of Management and Budget published a notice in the Federal Register announcing that inventories of commercial activities performed by 52 Federal departments and agencies were publicly available for review. The release of these inventories, which included five Cabinet-level departments, is the first time this information has been available to the public under the Federal Activities Inventory Reform Act of 1998 [FAIR Act]. According to the Office of Management and Budget, the remaining agency inventories will be available in upcoming months.

The FAIR Act directs the head of each executive branch agency to submit inventories of the agency’s commercial activities to the Director of the Office of Management and Budget by the end of the third quarter of each fiscal year (June 30). The inventories must include three elements: the fiscal year the activity first appeared on the inventory; the number of full-time equivalents [FTEs] nec-

essary to perform the activity; and the name of a contact person who can provide additional information about the activity.

The FAIR Act requires the Director of the Office of Management and Budget to review the inventories and consult with the head of the agency regarding its content. The agency head is required to transmit a copy of the inventory to Congress and make it publicly available. The Director is also required to publish a notice in the Federal Register that the inventories are publicly available. Under the law, each time the head of an executive agency considers contracting with a private-sector source for the performance of such an activity, the head of the agency is required to use a competitive bidding process. Currently, the Office of Management and Budget's Circular A-76 defines the process for agencies to follow when outsourcing an activity on their inventories. The A-76 process requires a public-private competition for the work in which the Federal employees who currently perform the work compete against private-sector bidders. The FAIR Act mandates that when conducting cost comparisons, agencies must ensure that all costs are considered.

Interested parties have 30 days from the date of publication in the Federal Register to challenge either the inclusion or exclusion of an activity on the inventory list. The law limits those who can file a challenge to the inventory to Federal employees, private sector contractors, representatives of business or professional associations, and Federal labor organizations. Interested parties have 30 days from the date of publication in the Federal Register to challenge either the inclusion or exclusion of an activity on the inventory list. The law limits those who can file a challenge to the inventory to Federal employees, private sector contractors, representatives of business or professional associations, and Federal labor organizations.

*b. Benefits.*—As the Nation's largest purchaser of goods and services, the Federal Government stands poised to save taxpayers billions of dollars a year through efficient and cost-effective purchasing procedures. A number of laws are in place to ensure that Government agencies utilize these procedures, yet the General Accounting Office has found that many Federal procurement operations remain at high-risk of waste, fraud, and mismanagement. Ongoing congressional oversight is needed to bring these programs into compliance with Federal laws, which will ultimately conserve millions of taxpayer dollars.

*c. Hearings.*—On October 28, 1999, the Subcommittee on Government Management, Information, and Technology conducted an oversight hearing on the implementation of the FAIR Act. The FAIR Act, signed into law on October 19, 1998, requires Federal departments and agencies to assemble inventories or lists of the non-inherently governmental (i.e., commercial) activities they perform. The law requires these inventories to be made available to the public, and it authorizes certain interested parties, including private-sector entities and agency employees, to challenge the inclusion or exclusion of activities on the inventories. At the hearing, the subcommittee heard from a variety of witnesses who discussed the implementation of the law. The subcommittee focused on a variety of issues involving implementation of the FAIR Act, including

the processes used to develop the inventories and the usefulness of the inventories.

The sponsors of the law, Senator Craig Thomas, R-WY, and Representative John Duncan, R-TN, raised concerns about the efforts being made to implement the law. Specific concerns included the format and method of publishing the FAIR Act inventories and the uncertainty over the procedures to follow in order to challenge the inclusion or omission of an agency activity on the lists.

The FAIR Act provides an essential tool for Federal departments and agencies to identify activities they perform that are not inherently governmental and could potentially be put up for competition with the private sector. The first release of FAIR Act inventories revealed that there remains much work to be done to fully implement this law. Continued congressional oversight of this law is necessary to ensure its successful implementation.

(1) "Federal Acquisition: Why Are Billions of Dollars Being Wasted?" March 16, 2000.

On March 16, 2000, the subcommittee convened a hearing to assess current issues related to Federal acquisition. The subcommittee learned that despite the impact of recent procurement reforms, significant challenges remain. The General Accounting Office testified that a number of Federal procurement operations are at high-risk of waste, fraud, and mismanagement. According to the GAO, acquisitions by the Department of Defense too often contain significant risks of cost overruns, schedule delays, and degraded performance. The Office of Inspector General at the Department of Defense discussed the results of a recent audit of 105 defense-contracting actions. These contract activities, valued at \$6.7 billion, involved a wide range of professional, administrative and management support services. The Inspector General said he was startled to find problems in each of the 105 contract actions.

In addition, major problems persist with weapon systems acquisitions. The GAO testified that the Department of Defense is still buying systems that cost too much, that are delivered late, or that fail to perform as expected.

As well, the GAO has documented that billions of dollars have been wasted in the Government's purchases of information technology products and services that failed to deliver expected results. This problem has involved important Government programs, including air traffic control, tax collection, Medicare transactions, weather forecasting, and national defense. The acquisition problems persist largely due to agencies' inability to properly select, control, and evaluate these major investments. Agencies also face challenges in successfully implementing electronic commerce and the use of a paperless procurement system.

In addition, agencies are having difficulty recruiting, training and retaining top-flight acquisition personnel. Witnesses at numerous subcommittee hearings have testified that the Federal Government needs to address an impending crisis in human capital as aging baby boomers begin to retire. According to the GAO, within the next several years, there will be a huge knowledge drain as many of the Government's more experienced and valued people leave the Federal workforce. Both the Department of Defense Inspector General and the General Accounting Office have found defi-

ciencies in training requirements and continuing education for Federal acquisition personnel. This workforce issue will require increased congressional oversight and, perhaps, legislation in the upcoming Congress.

Representative Sue Kelly, D-NY, added as a member of the subcommittee for this hearing by unanimous consent, questioned the panel of witnesses about the lack of progress by Federal departments and agencies to meet the 5 percent procurement goal for women-owned businesses. A number of agencies, including the Department of Defense, have failed to meet this goal. Office of Federal Procurement Policy Administrator Deidre Lee acknowledged that the Government does not have provide training to its acquisition workforce to identify women-owned businesses for Federal procurement opportunities.

To address the shortage of skilled information-technology professionals in the Government, the subcommittee passed H.R. 3582, the "Federal Contractor Flexibility Act," sponsored by Representative Tom Davis, R-VA. This legislation restricts the use of minimum experience and education requirements in Federal information technology contracts, unless those requirements are justified by the contracting agency. Minimum education and experience standards that are written into Federal contracts can prevent otherwise qualified individuals from providing information technology goods and services to the Federal Government. The standards often fail to account for the various ways individuals acquire technical expertise, such as military service, technical schools, and on the job training, as well as traditional colleges and universities. The legislation is consistent with the Government's approach to performance-based contracting. Performance-based contracting is a method of acquiring services that focuses on successful results, or outcomes, rather than dictating how the work is to be performed. H.R. 3582 was enacted into law as part of the "Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001."

(2) "Implementation of the Federal Activities Inventory Act," October 28, 1999.

On October 28, 1999, the subcommittee examined the implementation of the Federal Activities Inventory Reform Act, which was reported to the full House by the Committee on Government Reform in the 105th Congress. The FAIR Act (Public Law 105-270) requires Federal departments and agencies to compile and publish lists of commercial activities they perform. The subcommittee's hearing assessed agency implementation of the FAIR Act. Federal departments and agencies had identified 904,000 full-time-equivalent employees performing commercial activities. A number of concerns about the lists were raised, however, including the varied quality, content and format of agency inventory lists. Concerns were also raised about the FAIR Act's challenge and appeals process. As a result, the subcommittee requested that the GAO conduct a study on implementation of the FAIR Act by executive branch departments and agencies and examine the guidance provided by the Office of Management and Budget. The GAO reported that, in many cases, agency inventory lists were neither clear nor understandable. The GAO recommended that the Director of the Office

of Management and Budget re-examine the agency's FAIR Act guidance to agencies in this area.

The subcommittee hearing also examined the Government's initiatives in the area of electronic commerce. The advent of the Internet as a procurement tool has the potential to revolutionize the manner in which the Government purchases goods and services. A number of concerns were raised about the General Services Administration's online ordering system, GSA Advantage! The GSA Advantage! program, the Government's first catalog on the Internet, allows agencies to search for products and services and place orders with the GSA's Federal supply schedule vendors. A GAO report requested by the subcommittee found that vendors had problems with excessive data requirements and incomplete orders. In response, the GSA agreed re-tool and update its Web site.

(3) Legislative hearing on "H.R. 4012, the Construction Quality Assurance Act," July 13, 2000.

During the 106th Congress, the subcommittee also conducted oversight hearings related to issues affecting Federal construction contracting. H.R. 1219, the "Construction Industry Payment Protection Act," which the subcommittee reported to the full committee in early 1999, was enacted into law on August 17, 1999 (Public Law 106-49). H.R. 1219 updates the 1935 Miller Act by increasing the amount of payment bond protections for companies furnishing labor or materials for Federal construction projects. Another Federal construction contracting bill, H.R. 4012, the "Construction Quality Assurance Act," sponsored by Representative Paul Kanjorski (D-PA), was the subject of a subcommittee hearing on July 13, 2000. H.R. 4012 would have required companies that bid on Federal construction projects in excess of \$1 million to list the subcontractors they intended to use on the project.

#### *7. Oversight of Federal Geographic Information Systems Policies and Programs.*

*a. Summary.*—Geographical Information Systems [GIS] are automated systems used to capture, store, retrieve, analyze, and display spatial data referenced to the Earth. GIS applications have assisted governments, businesses, and communities for critical decisionmaking. Enhancements in technology and plummeting hardware costs have placed GIS and associated technologies on desktops everywhere. However, data created for one application may not easily be translated into another application. Data sharing of geographical information could potentially save millions of dollars annually and enhance the efficiency and effectiveness of governments and businesses.

In the United States, geographic data collection is a multi-billion-dollar business. In many cases, however, these efforts are duplicated when organizations and individuals collect the same information for a given piece of geography, such as a State or a watershed. Networked telecommunications technologies, in theory, permit data to be shared, but data sharing is often difficult, because data created for one application may not be easily translated into another application.

The problems are not just technical. Institutions and governments are often not accustomed to working together. A local gov-

ernment may collect the best data, but they are unavailable to Federal and State government planners. Similarly, Federal agencies and State governments may not be willing to share data with one another or with local governments.

Public access to GIS data is also a concern. Once found, digital data may be incomplete or incompatible, but the user may not know this because many data sets are poorly documented. The lack of metadata—or data that describes the content, quality, condition, and characteristics of other data—inhibits one's ability to assess the reliability of the data.

*b. Benefits.*—The subcommittee focused on current challenges in sharing geospatial data maintained by Federal agencies. Data sharing of geographical information could potentially save millions of dollars annually and enhance the efficiency and effectiveness of governments and businesses, and better serve the public.

The subcommittee held an oversight hearing on the Federal Government's policies and programs for GIS. The subcommittee focused on current challenges in sharing geospatial data maintained by Federal agencies. The subcommittee will evaluate the benefits of forming partnerships between multiple levels of government and the private sector to implement GIS, and in particular, how Federal, State, regional, and municipal governments are using GIS and spatial data to manage programs and serve the public more effectively and efficiently. The subcommittee also examined how the private sector uses GIS and spatial data to increase productivity, reduce operational expenses, and create new products and services. In addition, the subcommittee explored how Federal laws, regulations, and policies might be streamlined to improve compatibility across GIS networks.

In addition, the subcommittee explored potential opportunities for the Federal Government to form partnerships with State, regional, and municipal governments, and the private sector to implement GIS in a cost-effective manner using the best data standards.

*c. Hearings.*—"Geographical Information Systems Policies and Programs," June 9, 1999.

#### *8. Implementation of the Government Performance and Results Act.*

*a. Summary.*—The American voters have made it clear that they think the Federal Government is too often ineffective, inefficient, and overly expensive. Real reform must involve fundamental changes in how the Government operates, beginning with the adoption of effective management techniques from the private sector. Outcome-oriented or results-driven performance management strategies adopted from the private sector are the driving force of the Government Performance and Results Act of 1993.

The Government Performance and Results Act is the centerpiece of Federal management reform in recent years. In essence, the act requires Federal agencies to ask and answer some very basic questions, such as: What is the agency's mission? What are its goals, and how will the agency achieve them? How can an agency's performance best be measured? How should that information be used to make improvements? These questions were to be answered in strategic plans, which were required by the Results Act to be com-



pleted by September 30, 1997. The plans provide the framework for an agency's management to examine activities throughout the organization, ensuring that the activities relate to the agency's basic mission.

The Results Act provides a unique opportunity to view the Federal Government on a comprehensive basis. In this context, the executive branch should seek to identify and set the priorities for the services that must be provided, the activities that must be carried out, and the measurement of the results that are achieved.

The GAO found that agencies are confronting five key challenges that were limiting effective implementation of the Results Act: (1) establishing clear agency missions and strategic goals when program efforts are overlapping or fragmented; (2) measuring performance, particularly when the Federal contribution to a result is difficult to determine; (3) generating the results-oriented performance information needed to set goals and assess progress; (4) instilling a results-oriented organizational culture within agencies; and (5) linking performance plans to the budget process.

*b. Benefits.*—The quality of agency strategic plans and their derivative performance plans and performance reports affect the efficiency and effectiveness of the entire Federal Government. Without strategic plans and actual performance measures, it is impossible for any large organization to assess its success. That is particularly true of Federal departments and agencies because of the diverse nature of the programs they administer. For a large number of Federal programs it is very difficult to assess success. It is especially difficult to compare the relative success of duplicate or overlapping programs. Consequently, it is difficult for Congress to determine which programs are worth the taxpayers' investment; which programs should be expanded because they work efficiently and which programs should be canceled because they do not deliver the intended results.

The subcommittee has conducted hearings to oversee the Government's implementation of GPRA and has made recommendations on how strategic plans should be developed. The subcommittee has explicitly expressed the intentions and expectations of Congress regarding the content and quality of GPRA strategic plans, and has worked with specific agencies such as the General Services Administration and the OMB to review their draft strategic plans. Further, because of the special function of the OMB in providing guidance to other Federal agencies, the subcommittee has insisted that the OMB set serious standards for all Federal agencies to deliver realistic strategic plans and meaningful performance measures.

*c. Hearings.*—(1) "The Results Act: the Status of Performance Budget Pilot Programs," July 1, 1999. A key expectation of the Results Act is that Congress will gain a clearer understanding of what is being achieved in relation to what is being spent. To accomplish this, the act required that, beginning in fiscal year 1999, agencies prepare annual performance plans. These plans are to contain annual performance goals covering the program activities in agencies' budget requests. In addition, the OMB guidance states that agency performance plans should display the funding level being applied to achieve performance goals. Plans that meet these

expectations would provide Congress with useful information on the performance consequences of budget decisions.

Paul Posner, Director of Budget Issues at the U.S. General Accounting Office [GAO], testified regarding their assessment of fiscal year 1999 performance plans and where Federal agencies stand in their efforts toward implementing performance budgeting. The GAO found that most of the agencies it reviewed were able to define some type of relationship between the program activities in their proposed budgets and the performance goals of their plans. However, far fewer translated these relationships into budgetary terms—that is, most plans did not explain how funding would be allocated to achieve performance goals. Agencies' first-year experiences show some progress in linking planning with budgeting structures and presentations, but much remains to be done if performance information is to be more useful for budgetary decisions.

The Honorable Deidre Lee, Acting Deputy Director for Management at the Office of Management and Budget, provided a status update on agencies' progress in linking the budget to their respective performance plans. She was also asked to describe the status of agency pilot programs required by the Results Act. The act required these pilot programs to test innovative approaches to performance budgeting.

The OMB, in consultation with the head of each agency, was required to designate for fiscal years 1998 and 1999 at least five agencies to prepare budgets "that present, for one or more of the major functions and operations of the agency, the varying levels of performance, including outcome-related performance, that would result from different budgeted amounts" (31 U.S.C. 1119 (b)). While the act requires agencies to define goals consistent with the level of funding requested in the President's budget, the pilot programs would also show how performance might change if the agency received more or less allocations than requested. The OMB was to include these pilot performance budgets as an alternative presentation in the President's budget for fiscal year 1999 and to transmit a report to the President and to Congress no later than March 31, 2001. This report would detail the feasibility and advisability of including a performance budget as part of the President's budget. This report would also recommend whether legislation requiring performance budgets should be proposed.

The performance budgeting pilot programs were to commence in fiscal year 1998 "so that they would begin only after agencies had sufficient experience in preparing strategic and performance plans, and several years of collecting performance data." Recognizing the importance of a governmentwide implementation, the OMB announced on May 20, 1997, that the pilot projects would be delayed for at least a year. The OMB stated that the performance budgeting pilots would require the ability to calculate the effects on performance of marginal changes in cost and funding. According to the OMB, very few agencies had this capability, and the delay would give them time to develop it. In September 1998, the OMB solicited agencies' comments on these pilot programs, but no agencies were designated as pilots. At the time of the hearing, the OMB had no definite plans for proceeding with the performance budgeting pilot programs.

(2) “Seven Years of GPRA: Has the Results Act Provided Results?” July 20, 2000.

In a 1997 hearing before the Government Management, Information, and Technology Subcommittee, John Koskinen, the former Deputy Director for Management at the Office of Management and Budget believed that the Results Act forced Government agencies to ask the simple question: What are we getting for the money that we are spending? Under the Results Act, Federal agencies are required to develop strategic plans, annual performance plans, and performance reports. The subcommittee’s hearing on July 20, 2000, coincided with the issuance of agency performance plans.

At this hearing, the subcommittee reviewed the status and quality of the information contained in the performance reports. Hearing witnesses included Republican Majority Leader Richard K. Armey and a former New Zealand Cabinet Minister and Member of Parliament, the Honorable Maurice P. McTigue.

Majority Leader Armey summarized the performance reports, saying that “. . . 8 years after the Results Act was enacted, our Government is still too big and spends too much.”

Witnesses testified that much work remains to be done before the Results Act works as it was envisioned.

#### *9. Oversight of the National Archives and Records Administration.*

*a. Summary.*—The National Archives is an independent Federal agency charged with preserving the Nation’s history by overseeing the management of all Federal records. The National Archives’ mission is to ensure ready access to the essential evidence that documents the rights of American citizens, the actions of Federal officials, and the national experience, enabling citizens to inspect the records of the Federal Government and hold officials and agencies accountable for their actions.

National Archives records document more than 200 years of American development. The agency has 33 facilities that hold about 21.5 million cubic feet of original text materials (more than 4 billion pieces of paper from the executive, legislative, and judicial branches of the Federal Government). The National Archives also contains nearly 300,000 reels of motion picture film, more than 5 million maps, charts, and architectural drawings, 200,000 sound and video recordings, 9 million aerial photographs, 14 million still pictures and posters, and about 7,600 sets of computer data.

Each year, the Federal Government creates an enormous quantity of official records. Generally, only about 3 percent of the documents that are created have sufficient historical or legal significance to become part of the National Archives. One of the agency’s essential responsibilities is to determine which records should be preserved because they are essential documentation of the Nation’s development and which documents are not.

*b. Benefits.*—Subcommittee hearings help to ensure that Federal agencies are running their affairs in an effective and efficient manner. The National Archives maintains the most important records that detail American history. As the Nation moves from a paper-based society into the digital age, it is vital that the institution keep pace with the times and that its systems and procedures coin-

cide with ongoing developments in the field of information technology.

*c. Hearings.*—"The National Archives and Records Administration," October 20, 1999. The hearing focused on the myriad issues that are critical to the National Archives, including the agency's strategic plan, declassification of Government records, the agency's revolving fund, and electronic records management, including a July 19, 1999, GAO report entitled, "National Archives: Preserving Electronic Records in an Era of Rapidly Changing Technology."

Governor John Carlin, Archivist of the United States, represented the National Archives at the hearing. His testimony focused on the National Archives' strategic plan. He described the agency's continuing efforts to provide state-of-the-art facilities and public access to archived records. Governor Carlin said that the National Archives is striving to maintain up-to-date records management standards. He stressed the importance of proper records management throughout the Government and described Archives' efforts to provide guidance to Federal agencies. Governor Carlin also addressed the issues of declassification, the agency's business process re-engineering plan, and its newly established reimbursable revolving fund.

The second panel consisted of a variety of witnesses who generally praised the National Archives, but also noted some shortcomings. L. Nye Stevens, Director of Federal Management and Workforce Issues at the U.S. General Accounting Office, testified that the National Archives' re-engineering plan and a recent survey of governmentwide electronic records management were put on hold. Mr. Stevens expressed GAO's concern that Archives was delaying the survey until finalizing its re-engineering plan, and described GAO's findings in a recent GAO report entitled, "National Archives: Preserving Electronic Records in an Era of Rapidly Changing Technology."

Page Putman Miller, representing the Organization of American Historians, discussed the general issues that are important to those who wish to have access to National Archives' records, however, she concentrated on records declassification and electronic management. In regard to the declassification process, Ms. Miller said that National Archives was doing as effective as a job as possible, but she was concerned with the pace. Ms. Miller said that additional resources were needed to speed up the process. She also said that National Archives needed to issue more guidance for electronic records management and more effectively describe its own record holdings through record locators.

Tom Hickerson, president of the Society of American Archivists focused on electronic records. He praised the recent work of the National Archives, but also stressed the need to provide Federal agencies with better guidance and better descriptions of record holdings.

Stanley Katz testified regarding the newly instituted reimbursable revolving fund, which was to begin a pay-as-you-go basis for the services the National Archives provides Federal agencies for storage and maintenance of temporary records. Mr. Katz was primarily concerned that the new procedures mandating that agencies pay for services as they are rendered. He also provided insight as to the type of information that National Archives should include in

the quarterly reports it is required to submit to the Subcommittee on Government Management, Information, and Technology and its appropriations committee.

*c. Hearings.*—(1) Legislative hearing on the “Reauthorization of the National Historical Publications and Records Commission Act,” April 4, 2000.

The subcommittee held a legislative hearing to reauthorize the National Historical Publications and Records Commission [NHPRC] from fiscal year 2002 through fiscal year 2005. The National Historical Publications and Records Commission works to identify and preserve documents of historical significance for public use. The program provides grants for non-Federal documentation to non-Federal organizations such as historical societies, institutions, non-profit organizations, universities, and local and State governments. The NHPRC is affiliated with the National Archives and Records Administration, [NARA]. The work of NHPRC with non-Federal records complements NARA’s work to preserve Federal documents.

In addition to preserving historical records, witnesses testified that the NHPRC is also working to preserve electronic records. The subcommittee heard testimony from Anne Gilliland-Swetland of the InterPARES Project, an international effort to develop technology policy and training requirements for preserving permanent records created by electronic systems. “Every organization in this country creates records, and very soon, some part of almost all those records will be electronic,” Ms. Gilliland-Swetland said. “Moreover, electronic commerce, as well as electronic government will need to rely heavily upon the trustworthiness of those records. There are many critical areas that still need to be addressed—translating research outcomes into practice through the development of basic and affordable software tools, the design and implementation of multifaceted education programs for archivists and records creators, and the building of models for widespread access to archival electronic records, to name but a few.”

The subcommittee also heard testimony from Charles Cullen, president of the Newberry Library and NHPRC grant recipient for his work with the Founding Father’s Project, a project to preserve the documents American historical figures. “Without the Federal funding (of NHPRC,) most of these projects would be at risk for losing their host institution’s support and would either not survive or be severely limited in what they could accomplish,” Mr. Cullen said.

(2) “Freedmen’s Bureau Preservation Act: Are These Reconstruction Era Records Being Protected?” October 18, 2000.

On October 18, 2000, the subcommittee held a hearing on H.R. 5157, the “Freedmen’s Bureau Records Preservation Act,” introduced by Representatives Juanita Millender-McDonald, D-CA, and J.C. Watts, R-OK. Witnesses discussed efforts to preserve and index the deteriorating Reconstruction Era records of the Freedmen’s Bureau, which represent a vital part of American history.

#### *10. Oversight of Issues Involving Individual Privacy.*

*a. Summary.*—Americans are increasingly concerned that their personal information is no longer confidential. Recent public opin-

ion polls have found that the threat of the loss of personal privacy is one of the leading issues concerning Americans today.

Although personal privacy has always been a significant concern to many Americans, recent developments in information technology and changes in State and Federal laws have heightened attention to privacy issues. Increased access to the Internet now allows millions of Americans to access computer networks each month. Internet financial transactions have grown at an astounding rate. In the year 2000, an estimated 17 million U.S. households will spend approximately \$30 billion shopping online. This number is expected to grow with predictions that 42 million households will purchase over \$64 billion worth of online goods and services by the end of 2001.<sup>63</sup> Commercial use of the Internet will continue to grow, with predictions that 56 percent of U.S. companies will sell their products on-line by the end of the year 2000.

In addition to the resultant flow of information on the Internet, changes in financial laws and medical records policies have eliminated a number of traditional privacy protections. Advances in genetic testing and the sharing of medical records among insurance entities, pharmaceutical companies, and other health-related entities alarm many American who are concerned that the privacy of their medical histories or financial records could be compromised.

Concerned by the increasing use and dependence on computer technology, the subcommittee conducted a series hearings on the issue of privacy during the 106th Congress. During these hearings, the subcommittee considered two legislative proposals aimed at enhancing the privacy of personal information, such as Social Security numbers, credit card account numbers, and medical and financial records. The subcommittee referred one proposal, H.R. 4049, a bill to "establish the Commission for the Comprehensive Study of Privacy Protection" to the Committee on Government Reform, which approved the legislation for consideration by the full House.

*b. Benefits.*—Along with consumers, local, State, and Federal lawmakers have increasingly become concerned about privacy issues, leading to a rapid increase in the number of privacy-related legislative proposals. Yet few of these bills have been enacted, largely because of the issue's complexity and a lack of consensus on the appropriate approach to resolve the problems. Of the laws that have been enacted, several have resulted in unintended consequences, and at least one has been repealed. The subcommittee's oversight of this issue seeks to find the proper balance between protecting individual privacy and appropriate access to public information.

*c. Hearings.*—The subcommittee held three hearings examining privacy legislation.

(1) "To Establish the Commission for the Comprehensive Study of Privacy Protection," April 12, 2000, and

(2) Legislative hearing on "H.R. 4049, to establish the Commission for the comprehensive study of Privacy Protection," May 15 and 16, 2000.

The subcommittee held 3 days of legislative hearings on H.R. 4049, "The Privacy Commission Act." Individuals discussed the

<sup>63</sup> "The Whole View" by Forrester Research, Inc., Cambridge, MA, Sept. 19, 2000.

need for establishing a Federal commission to spend 18 months to complete a comprehensive study on privacy protection in the United States.

During the course of these hearings, witnesses discussed the advantages and disadvantages of establishing the commission. Sandra Parker, counsel for the Maine Hospital Association, discussed some of the problems associated with the State of Maine's medical privacy laws. Ms. Parker told the subcommittee that State legislators worked on the legislation for 2½ years before approving it. Yet despite their efforts, there were numerous complaints about the law. Six months after its enactment, the State legislature revised the law to address those complaints, Ms. Parker said, but problems still remain with provisions of the law that limit information hospital employees are allowed to provide.

Sallie Twentyman, an identity theft victim and Robert Douglas, an investigator, discussed current privacy loopholes and the relative ease with which individuals and companies can obtain personal information. Mr. Douglas demonstrated the ease of obtaining personal information about an individual. Mr. Douglas supported H.R. 4049's creation of a Federal privacy commission, stating that "a comprehensive review of current privacy law and the formulation of a privacy plan for the 21st century is important and long overdue."

Minnesota's Attorney General Mike Hatch, however, disagreed with Mr. Douglas's view the bill, saying that a privacy commission would stall much-needed privacy legislation at the Federal, State and local levels of government.

(3) Legislative hearing on "H.R. 220, the Freedom and Privacy Restoration Act," May 18, 2000.

The subcommittee also held a legislative hearing on H.R. 220, the "Freedom and Privacy Restoration Act," sponsored by Representative Ron Paul, R-TX. During this hearing, witnesses from various governmental agencies testified about their need to use Social Security numbers as a single identifier.

Charlotte Twight, a professor at Boise State University, testified about the potential risk associated with Federal agencies' use of these numbers. Ms. Twight stated that Social Security numbers are be used to obtain employment information, and health and financial status. In fact, she said, Social Security number is the identification number of choice for a vast array of Government records.

#### *11. Creating an Office of Management.*

*a. Summary.*—Year after year, Congress has received reports that billions of tax dollars have been lost to waste, fraud and misuse. Last year, the Department of Agriculture's Food and Nutrition Service over-issued at least \$193 million in food stamp benefits, and the Health Care Financing Administration paid out \$13.5 billion in improper payments in its Medicare fee-for-service program. The agency cannot even estimate the amount of improper payments it may have made in its \$108 billion Medicaid program—nor can anyone else, including the General Accounting Office. The Department of Defense continues to overpay its contractors, and, similarly, the full extent of those overpayments is unknown.

Another costly example of this serious lapse was the Federal Government's belated effort to prepare its critical computer systems for the date change at the end of the century. The effort was successful, but far more expensive than it would have been if Federal departments and agencies had begun the process years earlier. That management failure cost taxpayers \$8.4 billion.

Management experts agree that the management capacity of the Office of Management and Budget has steadily declined to the point that it barely exists, largely because of the agency's preoccupation with budget pressures. As one witness noted, "Whether by intention or neglect, recent Presidents have, arguably, been ineffective managers, and the negative results have been cumulative."

*b. Benefits.*—Creating an independent Office of Management within the Executive Office of the President would greatly strengthen the management capacity of the President in carrying out his constitutional responsibility as Chief Executive. Such an office would plan and implement management reforms, help the President execute new legislation and policies, and provide the President and Congress with early warnings of emerging problems, potentially saving taxpayers billions of dollars.

*c. Hearings.*—The subcommittee held two hearings on this issue in the 106th Congress.

(1) "To Establish an Office of Management in the Executive Office of the President," February 4, 1999.

(2) "Oversight Hearing on the Office of Management and Budget: Is OMB Fulfilling Its Mission?" April 7, 2000.

## *12. Oversight of Information Technology in the Federal Government.*

*a. Summary.*—During the subcommittee's oversight of the year 2000 computer challenge, witnesses testified that the belated and rushed effort to prepare critical Government computer systems for the January 1st deadline may have inadvertently allowed these systems to become more vulnerable to unauthorized invasions. This governmentwide exercise to prepare computers for Y2K highlighted the computer security risks confronting Federal departments and agencies.

Federal agencies increasingly rely on computers and electronic data to perform functions that are essential to the national welfare and directly affect the lives of millions of individuals. However, the same factors that benefit Federal operations—speed and accessibility—also make it possible for individuals and organizations to interrupt or eavesdrop on those operations from remote locations for purposes of fraud, sabotage, and other malicious or mischievous intents. Threats of these cyber attacks are increasing because the number of individuals with computer skills is increasing, and intrusion or "hacking" techniques have become readily accessible through various media, including the Internet itself. Inadvertent errors by authorized computer users and even natural disasters can further lead to negative consequences when computer information is poorly protected. In addition, the subcommittee examined the government's use of information technology in providing online services, whether the Government needs a Federal CIO agency efforts to update technology, and emerging technologies and their po-



tential adaptation to improve the delivery of Government services and the Government's move toward offering more online services.

*b. Benefits.*—Because of the Federal Government's increasing reliance on computer technology, it is imperative that Government systems are protected from unauthorized invasions by those seeking privileged information or seeking to disrupt vital Government services. The subcommittee's oversight hearings and first governmentwide report card on computer security focused attention on the significant vulnerabilities that exist within agency computer networks. Several agencies, most notably the Department of Veterans Affairs, began instituting new agencywide computer security programs shortly after the report card was issued on September 11, 2000. As the Government increases its online services to the public, it must guarantee to citizens that the information they provide will be properly protected.

In the aftermath of the "denial of service" attacks which rendered Internet sites such as "Yahoo!," "Amazon.com," and "Ebay" inaccessible for several hours, the subcommittee began a series of hearings related to computer security.

*c. Hearings.*—(1) "Computer Security: Are We Prepared for Cyber-War?," March 9, 2000. The first hearing, on March 9, 2000, focused on raising awareness of the issue and examining the Federal Government's efforts to protect against and detect cyberspace attacks on Federal computer systems and the Nation's critical infrastructure.

In addition to emphasizing the increasing threat posed by connecting to the Internet, several witnesses noted that as technology is becoming more widely distributed among Federal agencies, system administration and management functions often fall to people who do not have the training, skills, or resources to operate the system securely. As a result, John Gilligan, Chief Information Officer for the Department of Energy, said there are "no brainer security weaknesses," such as system administrators using easily guessed passwords or not implementing the fixes provided for known software vulnerabilities.

Finally, James Adams, the Chief Executive Officer of iDEFENSE, described the Federal Government's lack of clear leadership or coherent strategy for responding to the cyber-attack threat. As a result, efforts are being duplicated, wasting billions of taxpayer dollars, he said.

(2) "Enhancing Computer Security: What Tools Work Best?," March 29, 2000.

Financial audits of executive branch departments and agencies continue to disclose serious security weaknesses in their information technology systems. These weaknesses make Federal computer systems vulnerable to computer attacks, increasing the risk of losing billions of dollars in Federal assets, inappropriate disclosure of vast amounts of sensitive data, and disruptions to critical computer-based operations.

The subcommittee held this second hearing to raise awareness of existing tools and techniques that organizations can use to arm themselves against computer attacks and, hopefully, mitigate hacker intrusions. For example, several no- or low-cost steps exist, such as rigorous "password" techniques (e.g., using alphanumeric, case-

sensitive passwords) or prohibiting mass electronic mail distributions, which can clog computers. In addition, tools such as encryption (a.k.a., “public key infrastructure”) and biometrics should be used to protect especially sensitive Government data.

In testimony, Jack Brock of the General Accounting Office described several procedures that could immediately improve agencies’ computer security, including increasing security awareness at all levels of the organization, testing existing controls, and implementing computer software patches that fix known vulnerabilities. Mr. Brock stressed that a good computer security program begins by assessing the risks then building controls and policies based on that assessment. David B. Nelson, NASA’s Deputy Chief Information Officer, emphasized the need for appropriate computer security spending and illustrated that this amount appears to be roughly 2 percent of an organization’s information technology budget. He also underscored the importance of effective security training and tools to meet the challenge of the evolving security universe.

Paul Collier of Identicator Solutions described positive user authentication as the greatest challenge in controlling access to computers and information. In particular, he noted the strength of biometrics in the authentication process, that is, the use of a quantitative measurement of a unique human attribute or behavioral characteristic, such as fingerprints, face, voice, or iris pattern. He demonstrated two of the products currently available—a computer workstation that uses both a smart card reader and a fingerprint scanner as part of a user log-in process, and a computer that has a built-in fingerprint scanner, which replaces a password.

(3) “H.R. 4246, the Cyber Security Information Act of 2000: An Examination of Issues Involving Public-Private Partnerships for Critical Infrastructures,” June 22, 2000.

At this hearing, the subcommittee examined H.R. 4246, the “Cyber Security Information Act of 2000” and the challenges of building public-private partnerships to address critical infrastructure security.

The critical infrastructure of the United States is largely owned and operated by the private sector. As described by the President’s National Plan for Information Systems Protection Version 1.0 issued in January 2000, the critical infrastructure denotes facilities or services so vital to the Nation or its economy that their disruption, incapacity, or destruction would have a debilitating impact on the defense, security, long-term economic prosperity, or health or safety of the United States. The critical infrastructure is composed of the financial services, telecommunications, information technology, transportation, water systems, emergency services, electric power, gas and oil sectors in private industry as well as the national defense, law enforcement and international security sectors within the Government. Traditionally, these sectors operated largely independently of one another and coordinated with Government to protect themselves against threats posed by traditional warfare. With the many advances in information technology, many of the Nation’s critical infrastructure sectors are linked to one another, which increases their vulnerability to cyber threats. Technology interconnectivity increases the risk that a problem affecting one system will also affect other connected systems.

Both Presidential Decision Directive 63 [PDD-63] issued in May 1998 and the President's National Plan call on the legislative branch to build the necessary framework to encourage information sharing to address cyber-security threats to the Nation's critical infrastructure. The President has called for the creation of Information Sharing and Analysis Centers [ISACs] for each critical infrastructure sector that will be headed by the appropriate Federal agency or entity, and a member from its private sector counterpart. For instance, the Department of the Treasury is running the first ISAC for the financial services industry in partnership with Citigroup. Many in the private sector have expressed strong support for this model but have also expressed concerns about voluntarily sharing information with the Government and the unintended consequences they could face for acting in good faith. Specifically, there has been concern that industry could potentially face antitrust violations for sharing information with other industry partners, have their shared information be subject to the Freedom of Information Act, or face potential liability concerns for information shared in good faith. H.R. 4246, introduced by Representative Tom Davis, R-VA, addressed those concerns.

In response to the findings of Presidential Decision Directive 63 and the President's National Plan, the Cyber Security Information Act aimed to encourage the sharing of cyber security information by the private sector with the public sector (i.e., the Federal Government) in order to protect the Nation's critical infrastructure. To facilitate this voluntary arrangement, the bill sought to promote the secure disclosure and protected exchange of information related to cyber security; to establish uniform legal principles in regard to those information disclosures and exchanges; to assist private industry and Government to effectively and rapidly respond to cyber security problems; to protect legitimate users of cyber networks and systems; and to protect the privacy and confidence of shared information.

The subcommittee examined the following issues at the hearing.

- Current efforts to address threats to critical infrastructure, including an analysis of the most vulnerable sectors;
- Public versus private efforts to implement critical infrastructure protections;
- Current regulatory and statutory limitations to the successful establishment of public-private partnerships to address critical infrastructure vulnerabilities;
- Existence of overlapping Government policies on critical infrastructure hindering the ability of the Government to work with the private sector;
- Recommendations for efforts by Government to improve information security concerns;
- Recommendations for improving information sharing and analysis within the private sector and with the Government.

(4) "Computer Security: Cyber Attacks—A War without Borders," July 26, 2000.

In addition to computer security risks within the Federal Government, the subcommittee examined international risks. On July 26, 2000, the subcommittee, with the assistance of the Federal Bureau of Investigation, convened a hearing that included—for the

first time anywhere—a panel of international law enforcement officials to examine how Federal agencies and law enforcement can work together in tracking and investigating cyber attacks. The panel included representatives from Germany, Israel, the Philippines, Sweden and Latvia. Each member of the panel testified about his country's cyber crime capabilities, investigations, and ability to cooperate in international investigations.

(5) "How Vulnerable Are Federal Computers?" September 11, 2000.

On September 11, 2000, the subcommittee held its final computer security hearing in the 106th Congress and issued its first report card on computer security efforts at executive branch agencies of the Federal Government. This report card graded agencies on the quality and implementation of their computer security policies and procedures. The grades were based on information provided by the agencies to the subcommittee, as well as on the results of computer security audit work performed by the GAO and agency Inspectors General.

The subcommittee found that significant security weaknesses exist in the vast majority of the 24 major executive branch agencies. Overall, the Government received an average grade of "D-minus," with seven agencies receiving failing grades of "F," and six agencies with a nearly failing grade of "D." Four agencies received a grade of "Incomplete" because there was insufficient audit work to validate the self-reported information provided to the subcommittee. Only two agencies received the highest grade given on the report card, a "B": the Social Security Administration and the National Science Foundation. Not surprisingly, these two agencies had also done well in their Y2K preparations.

Strong congressional oversight played a significant role in the Federal Government's successful response to the year 2000 problem by holding agencies accountable for fixing their computer systems and by increasing public awareness of the problem. In particular, hearings by the Subcommittee on Government Management, Information, and Technology and its periodic "Y2K report card," which graded agencies on their progress, helped focus management attention and motivated them to resolve the problem. This same intensive congressional oversight is needed to meet the computer security challenge.

OMB and agency witnesses acknowledged the need for improved computer security as indicated by the report card, and highlighted their accomplishments and initiatives currently underway. However, several, including John Spotilla from the OMB and John Gilligan from the Department of Energy, cited the need for adequate funding, and noted that individual agency budget requests for fiscal year 2001 include increases for computer security. These requests also include increases for crosscutting initiatives such as establishing an expert security review team at the National Institute of Standards and Technology and establishing scholarships so that Federal agencies can bolster their supply of personnel with computer security expertise. Chairman Horn noted that some security measures do not require additional funding, such as regularly changing passwords, safeguarding equipment, and turning off computers when they are not being used.

(6) "The Performance of Federal CIOs: How Do They Compare With The Private Sector?," March 24, 2000.

The efficient, effective, and innovative use of information technology [IT] requires a level of leadership and focus that goes beyond that of a typical technical support function. To provide this leadership, in 1996, the Congress enacted the Clinger-Cohen Act mandating the chief information officer [CIO] position in executive branch departments and agencies. Nearly all of the major executive branch agencies have appointed CIOs, and many have taken positive steps toward implementing important information management processes. However, to reap the full benefits of information management reform, Federal agencies must fully utilize the potential of CIOs as information management leaders and active participants in the development of their agency's strategic plans and policies.

To assess the effectiveness of Federal CIOs, the subcommittee held this hearing to compare and contrast them with other public- and private-sector counterparts. In particular, the subcommittee highlighted the General Accounting Office's new executive guide entitled, "Maximizing the Success of Chief Information Officers: Learning From Leading Organizations" (GAO/AIMD-00-83, March 2000) to provide a management comparison of leading private sector practices and the practices of Federal CIOs.

Testimony by David McClure of GAO emphasized that private sector practices show CIOs must have top executive support, as well as working partnerships with the business side of the organization and the assistance of skilled and motivated people. Jim Flyzik, the Treasury CIO and vice-chair of the Federal CIO Council, pointed out that most business decisions involve information technology. Thus, the CIO should be positioned at the table to work as a senior management team with the chief executive officer, the chief operating officer, and the chief financial officer.

Other witnesses representing State and private sector CIOs agreed with the importance of the practices discussed by Mr. McClure and Mr. Flyzik.

Computer issues such as the year 2000 computer problem and computer security, and improving public access to information led the subcommittee to consider a more fundamental issue—the effectiveness of the Government's management of information technology. The efficient, effective, and innovative use of information technology [IT] requires a level of leadership and focus that goes beyond that of a typical technical support function. Congress recognized the need for greater leadership in IT management when it enacted the Clinger-Cohen Act in 1996, which mandated the Chief Information Officer [CIO] position in executive branch departments and agencies. This act, as well as other laws, defines general CIO responsibilities.

Nearly all of the major executive branch agencies have appointed CIOs, and many have taken positive steps toward implementing important information management processes. To reap the full benefits of information management reform, Federal agencies must utilize the potential of CIOs as information management leaders and active participants in the development of the agency's strategic plans and policies.

(7) "Establishing a Federal CIO: Information Technology Management and Assurance within the Federal Government," September 12, 2000.

On September 12, 2000, the subcommittee held a hearing to consider a number of issues relating to the question of whether the Federal Government needs a governmentwide Chief Information Officer. Among the issues discussed at the hearing, the subcommittee examined whether a Federal CIO position should be created, and if so, how that position could assist the Government in managing information technology. In addition, witnesses discussed issues such as where a Federal CIO might be located within the Government, how the position should be empowered, and how its relationship with agency CIOs and the Federal CIO Council should be defined. The subcommittee also examined how the creation of such a position would affect the roles and responsibilities of the agency CIOs and the current management structure in Office of Management and Budget.

(8) "Emerging Technologies: Where is the Federal Government on the High-Tech Curve?" Moffett Field, CA, April 24, 2000.

From longer-lasting batteries to new software applications, the Federal Government can greatly benefit from today's technological advances. This hearing explored the emerging technologies being developed in the public- and private-sectors and how those technologies could benefit Government operations.

Innovation has always been a major force in the U.S. economy, but its character and pace have changed dramatically in recent years.

The Federal Government has been on the cutting edge of technology for nearly 50 years. Now. However, the private sector has taken the lead in developing new technologies such the laser, fiber optics, satellites, and ever-improving computer capabilities. These innovations and technological advancements have been the source of much of the Nation's economic growth and improved standard of living. Given the public's growing dependence on technology, it is important to consider the role of the Federal Government in this economic process.

The Government sets public policies in key areas, such as education, research and development, electronic-commerce, business regulation and law, and intellectual property rights that could have profound effects on the continuing development of emerging technologies. These developments are, in part, the result of firms pursuing profits within an increasingly competitive environment. The Federal Government is now re-doubling its efforts to stay on the cutting-edge of emerging technologies.

This hearing examined innovative Government-sponsored programs such as In-Q-Tel, a nonprofit corporation chartered by the U.S. Central Intelligence Agency to focus on leading-edge information technology advancements that will benefit American citizens, corporations, and the Federal Government. Other key public- and private-sector witnesses, including NASA, provided examples of the Federal Government's role in developing and using emerging technologies.

(9) "H.R. 4401, the Health Care Infrastructure Act of 2000," July 11, 2000.

The Federal Government currently provides insurance coverage to millions of workers and retirees under a wide array of complex programs. H.R. 4401, the "Health Care Infrastructure Act of 2000," sought to create a health care information architecture that could ultimately be used by all of the Federal Government's insurance plans. As proposed, the bill would set up a commission to oversee the design, creation, and implementation of a system to handle Part B of the Medicare program and the Federal Employees Health Benefits Program.

The overriding goal of this proposed legislation was to streamline and simplify these programs for both beneficiaries and their health care providers, while ensuring beneficiaries that the privacy of their medical records is protected.

At the same time, the measure intended to curb the Government's financial losses due to erroneous Medicare payments. Last year, the Inspector General at the Department of Health and Human Services estimated that the Medicare fee-for-service program lost \$13.5 billion due to erroneous payments. This legislation sought to enhance the internal controls that allowed these errors to occur at the Health Care Financing Administration, which administers the program. Hearing witnesses, which included the Health Care Financing Administration, the General Accounting Office, and representatives from Medicare health care providers and information technology providers, testified nearly unanimously that the legislation, as proposed, would likely exacerbate the agency's problem of erroneous payments, not resolve it. H.R. 4401, was ultimately rewritten and reintroduced by Chairman Steve Horn as H.R. 5622, "the Medicare Infrastructure Act of 2000."

(10) "FirstGov.Gov: Is it a Good Idea?," October 2, 2000.

On September 22, 2000, the Federal Government launched FirstGov.gov—a Government-managed Internet portal that serves as a front door to millions of Government Web pages, 24-hours-a-day, 7-days-a-week. FirstGov allows users to browse through a wealth of information—everything from conducting research at the Library of Congress to tracking a NASA space mission. The site also allows users to conduct business online, such as applying for student loans or Government grants, tracking Social Security benefits or comparing Medicare options. The subcommittee held this hearing to examine the FirstGov concept and strategy, as well as concerns that have been raised regarding long-term project funding, privacy protection, and the potential use of the site as one-stop access for computer hackers.

Without exception, witnesses applauded FirstGov as an important first step in bringing electronic Government to the public. GSA Administrator David Barram acknowledged that this was made possible largely by Dr. Brewer who founded the nonprofit Federal Search Foundation (Fed-Search) to develop the FirstGov search engine and database of Federal Web pages at no cost to the Government—a gift that Dr. Brewer estimated would cost from \$5 million to \$10 million over the next 2 years. Responding to concerns that Fed-Search may have a competitive advantage, Dr. Brewer said that after this 2 to 3 year period, Fed-Search will turn over its servers and knowledge base to the Government, and the foundation

will cease to exist. He also emphasized that the Government has no obligation to continue to use this search engine database.

Acknowledging the challenge of creating FirstGov in just 90 days, witnesses raised a number of concerns. In particular, they said, further clarification and public debate was needed on a plan to let public and private Web portals become FirstGov “partners” to give their customers access to FirstGov search results. David McClure of the GAO noted that good security measures are in place for the FirstGov site, but a comprehensive security plan is needed, and security measures provided by different contractors should be coordinated. In addition, risk assessments of the site need to be completed and independently validated and verified. Patrice McDermott of OMB Watch noted that while FirstGov’s privacy notice is very clear and useful, strong leadership is needed to ensure that privacy protections are uniformly applied by individual agencies. Other improvements were suggested, including increasing the relevance of search results to make it more useful, and refining the directory of topics provided on the FirstGov Web page.

(11) “Government Online: Strategies and Challenges,” May 22, 2000.

The subcommittee convened this field hearing in Herndon, VA, to consider strategies and challenges the Government must consider to make information and services accessible to the public via the Internet. Electronic Government is an exciting and dynamic issue as new and emerging forms of information technology are transforming how citizens and businesses interact with their Government. The transformation to an electronic Federal Government, or e-government, can improve services, enhance delivery schedules and reduce transaction costs. Projections are that by the end of the 2001 fiscal year, nearly 40 million Americans will transact business with the Government electronically. And as more Americans gain Internet access, they, too, will expect to conduct Government transactions online. However, citizens and businesses must be confident that their online communications with the Government are secure and their privacy is protected. At the May hearing, the subcommittee heard from witnesses representing both Federal and non-Federal entities who discussed the strategies and challenges of e-government.

The Government Paperwork Elimination Act [GPEA], Public Law 105–277, signed into law on October 21, 1998, gives Federal agencies until October 2003, to provide citizens the option of conducting business with the Government electronically. The law provides that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. The GPEA is an important tool to improve customer service and governmental efficiency through the use of information technology.

Many Federal agencies have developed “one-stop-shopping” access to information on their agency Internet sites. However, witnesses at the hearing testified that there has not been a sufficient effort to provide Government information by the category of information and services—rather than by agency—in a way that meets people’s needs. As public awareness and Internet use increases, the demand for online Government interaction and a simplified, stand-



ardized way to access Government information and services become increasingly important. At the same time, the public must have confidence that online communications with the Government are secure.

### *13. General Oversight Hearings.*

*a. Summary.*—As a subcommittee of the Committee on Government Reform, the Subcommittee on Government Management, Information, and Technology is responsible for overseeing the overall economy, efficiency and management of Government operations and activities. During the 106th Congress, the subcommittee examined management practices at the Customs Office, the General Accounting Office, and the Federal Communications Commission. In addition, the subcommittee examined innovative approaches to governing being used by several State and local agencies.

*b. Benefits.*—Congressional hearings examining management practices within Federal departments and agencies enlighten the public and highlight many challenges and solutions that could be applied by other governing agencies.

*c. Hearings.*—“Management Challenges at the U.S. Customs Office,” April 20, 2000; “Oversight Hearing on the U.S. General Accounting Office,” July 18, 2000; “Innovations in American Government: Are There Lessons To Be Learned?” September 6, 2000; and “Oversight of the Management Practices at the Federal Communications Commission: The Chairman Reports,” October 6, 2000.

#### SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

Hon. David M. McIntosh, *Chairman*

### *1. Investigation of Government-Wide Paperwork Reduction Initiatives and Accomplishments and Leadership in Paperwork Reduction by the Office of Management and Budget's Office of Information and Regulatory Affairs.*

*a. Summary.*—The subcommittee serves both as the authorizing and oversight subcommittee for the Office of Management and Budget's [OMB's] Office of Information and Regulatory Affairs [OIRA]. In 1999–2000, the subcommittee sent 16 oversight letters to OMB relating to OIRA's responsibilities. Twelve letters (six in 1999 and six in 2000) addressed OMB's role in identifying specific paperwork reduction initiatives and actual paperwork reduction accomplishments across the government and OIRA's activities under the Paperwork Reduction Act of 1995 [PRA]. Four letters (all in 1999) addressed OMB's statutorily-required guidance to the agencies to ensure full compliance with the Congressional Review Act [CRA]. (See the next section for a discussion of the CRA).

Additionally, the subcommittee sent two letters to the Vice President about government-wide paperwork reduction initiatives and accomplishments because of his role in the National Partnership for Reinventing Government [NPR] and as Chair of the President's Management Council and because regulatory Executive Order No. 12866 provides that the Vice President “shall coordinate the development and presentation of recommendations.”

Last, the subcommittee twice sent letters to 28 Federal agencies. On December 6, 1999, the subcommittee asked the agencies to identify any substantive changes (e.g., deleted questions, reduced frequency of reporting, introduced a threshold to exempt small entities from reporting, et cetera) made by OMB to the agency's paperwork submissions and any paperwork reduction candidates added by OMB for the 6-month period from July 1 to December 31, 1999. The agencies reported a mere 1,915 hours of paperwork reduced by OMB out of an inventory of 7.3 billion hours, and *no* paperwork candidates added by OMB from the 7,563 paperwork dockets in OMB's paperwork inventory.

On April 14, 2000, in response to witness claims at the subcommittee's April 12th hearing that some paperwork burden could be reduced by Congress' amending existing laws, Subcommittee Chairman McIntosh and Ranking Member Kucinich sent letters to 28 departments and agencies asking for recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and which are good candidates for elimination or reduction. Interestingly, agencies submitted very few specific recommendations.

In addition, the subcommittee held two hearings (on April 15, 1999 and April 12, 2000) about specific paperwork reduction initiatives and actual paperwork reduction accomplishments, as required by the Treasury and General Government Appropriations Act for 1999. The first hearing revealed few Clinton-Gore administration paperwork reduction initiatives for 1999 and 2000 and almost none to reduce tax paperwork, which accounts for nearly 80 percent of all government paperwork. The second hearing revealed basically the same abysmal record on paperwork reduction. The record shows a minimal number of actual paperwork reduction accomplishments and a minimal number of specific paperwork reduction initiatives in the administration's last 2 years. The two hearings also revealed basically no involvement by the Vice President in paperwork reduction, even though he heads the administration's Reinventing Government effort, and OMB's mis-management of the paperwork burden imposed on Americans.

The subcommittee's oversight revealed that OIRA failed to satisfactorily perform its statutory responsibilities for paperwork reduction and the CRA.

#### *Paperwork Reduction*

The PRA was principally intended to "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and persons resulting from the collection of information by or for the Federal Government" (44 U.S.C. § 3501). OIRA is required to review all new and revised paperwork requirements proposed by the agencies on the public before they can take effect. OIRA's reviews resulted in the government's paperwork burden on the public *not* meeting any of the statutory paperwork reduction goals in the last several years. The subcommittee believes that this noncompliance is very problematic. The 7 billion hours of paperwork burden experienced by the American people equates to \$185 billion annually in compliance costs, which is about equal to the

taxes paid to the Internal Revenue Service [IRS] by all businesses each year.

As a result of the subcommittee's investigation and analysis in 1998, the Treasury and General Government Appropriations Act for 1999 included a statutory requirement that OMB submit a report by March 31, 1999 that identifies specific paperwork reduction accomplishments expected, constituting annual 5 percent reductions in paperwork expected in fiscal year 1999 and fiscal year 2000. The accompanying report states, "The conferees have been assured that OMB will strictly adhere to the statutory requirements included in the bill on Paperwork Reduction and the Congressional Review Act. The conferees will monitor OMB's compliance with these requirements carefully."

On March 30, 1999, OMB asked for congressional comments by April 2nd on its draft report to Congress entitled, "Information Collection Budget of the United States Government—Fiscal Year 1999." The next day, the subcommittee commented that the:

draft report is not responsive to the statutory requirement in several ways. First, OMB estimates a 2.6 percent increase in paperwork in fiscal year (FY) 1999 and a 2.3 percent increase in paperwork in FY 2000 instead of five percent decreases in each FY. This expectation follows three successive years of increases in paperwork, instead of decreases in paperwork. Second, the draft report only identifies some specific expected reductions. . . . This aspect of the draft report is not acceptable or responsive to the Congressional requirement.

In fact, 5 of the 14 Cabinet departments—Energy, Health and Human Services [HHS], Housing and Urban Development, State, and Veterans Affairs—and the IRS were unable to identify any paperwork reduction initiatives in 1 of the 2 years. IRS accounts for nearly 80 percent of the government-wide paperwork burden on Americans. The IRS failed to initiate *any* specific actions to reduce paperwork burdens during 1999 and 2000 for any of its 671 tax forms and recordkeeping requirements, which impose 5.8 billion hours of burden on the American public.

Additionally, OMB has mis-managed the paperwork burden imposed on Americans. OMB is supposed to be the Federal Government's watchdog agency, guarding the public against waste, fraud, and abuse. Yet OMB has failed to push the IRS—and other Federal agencies—to cut existing paperwork burdens on taxpayers. Worse, the General Accounting Office [GAO] confirmed that OMB misled the American people, providing a falsely inflated picture of the Clinton administration's paperwork reduction accomplishments.

From 1998 to 2000, the subcommittee sent 17 oversight letters to OMB on the PRA (5 in 1998, 6 in 1999, and 6 in 2000). On March 3, 1999, in response to the subcommittee's oversight letters, OMB finally acknowledged that its recent annual reports to Congress had falsely claimed many paperwork reduction accomplishments. Instead of working to achieve actual paperwork reductions, OMB was claiming paperwork successes for paperwork still in use but without legal authorization, as if forms not legally authorized but still in use do not exist. OMB's position is like saying that, if

the Government continues to send you tax forms to complete after their authorization has expired, your tax burden has somehow gone down, even though you still fill out the forms and still pay your taxes. To justify this fraud, OMB illogically claimed that its computer “data base tracks agency actions,” not “what agencies may be doing that they do not report” to OMB.

In fact, OMB’s Information Collection Budget [ICB] report for fiscal year 1999 identified 872 violations of law in fiscal year 1998 where agencies levied unauthorized paperwork burdens on the American people—including over 100 violations each by the Departments of Agriculture, HHS, and Veterans Affairs. GAO says that there is a “troubling disregard” by the agencies for the requirements of the PRA. GAO says “[a]s disconcerting as these violations are, even more troubling is that [OMB] reflects the hours associated with unauthorized information collections ongoing at the end of the fiscal year as burden reductions.” The subcommittee believes that OMB has an obligation to Congress and the American people to accurately report paperwork burdens imposed on the public and that OMB must immediately take necessary steps to stop these violations of law. [OMB’s ICB report for fiscal year 2000 revealed at least 710 violations of law in fiscal year 1999.]

Besides OMB’s falsely-claimed success stories, in the subcommittee’s audit of OMB’s dockets for other claimed paperwork reduction accomplishments—which each claimed reductions of 500,000 or more hours of burden on the public—the subcommittee found that many paperwork dockets were missing or substantially incomplete. As a consequence, it was impossible to determine whether other claimed reductions were, in fact, realized. This failure by OMB to maintain complete and accurate files describing the nature of paperwork burden reductions, at best, conceals the true nature and extent of paperwork reductions. At worst, it misleads Congress and the American people into believing that the paperwork burden is being reduced when it is not. The subcommittee found other evidence of OMB mis-management of the paperwork imposed on the public. For example, many paperwork requirements found to be in use without current OMB approval 1 or 2 years ago are, incredibly, still in use without current OMB approval.

The PRA has a “Public Protection” section (44 U.S.C. § 3512), which provides that the public can ignore without penalty an unauthorized paperwork request. Both in 1998 and 1999, the subcommittee made several recommendations to OMB to help the public know when paperwork requests by the Federal Government are no longer valid, and when paperwork has actually been reduced. For example, the subcommittee asked OMB to publish a monthly Notice in the Federal Register that can be widely circulated by interest groups to the affected public. The Notice would indicate paperwork without current OMB approval and describe specific actions taken by the executive branch to achieve each major program paperwork burden reduction.

After the subcommittee’s April 15, 1999 PRA hearing, in a April 20th letter, Subcommittee Chairman McIntosh asked the Vice President to clarify his involvement in government-wide paperwork reduction since “it appears that, when it comes to Federal paperwork, what should be *down* is actually going *up* and *up*.”

To supplement OMB's May 7th response to questions asked during the April 15th hearing, on May 11th, the subcommittee asked OMB to provide a chart for the hearing record showing the number of substantive changes made by OMB to each department's and agency's paperwork budget submission and the number of additional paperwork reduction candidates independently identified by OMB for each department and agency. Surprisingly, OMB was unable to provide the requested information, stating on June 4th, "There is no ongoing record of the individual exchanges [between OMB and the agencies]." In response, the subcommittee questioned OMB on June 9th, stating that:

If there is no record of individual exchanges between OMB's desk officers and the agencies which OMB oversees, how does OMB management evaluate the performance of individual OMB desk officers and the agencies' responsiveness to OMB's specific recommendations? Moreover, if there is "no record," how can Congress know—and why should Congress assume—that OMB is doing any paperwork reduction oversight at all?

Further, in its June 9th letter, the subcommittee requested that, starting July 1, 1999, OMB keep detailed and complete record of all substantive changes to agency paperwork budget submissions made by OMB and all additional paperwork reduction candidates independently identified by OMB. On October 13th, the subcommittee asked OMB to provide a chart identifying any substantive changes to an agency paperwork submission made by OMB and each additional paperwork reduction candidate independently identified by OMB during the July 1st through September 30th quarter.

On November 16th, OMB provided a fraction of the information requested in the subcommittee's June 9th and October 13th letters. On November 22nd, the subcommittee sent a letter to OMB expressing its disagreement with OMB's assertions and its dissatisfaction with OMB's response. The subcommittee also requested OMB to provide missing information about OMB's changes to agencies' proposed and existing paperwork burden.

On January 7, 2000, i.e., nearly 7 months after the subcommittee's June 9, 1999 request for detailed recordkeeping, OMB officially refused to keep detailed records of its role in paperwork reduction. OMB stated, "Keeping track of substantive changes would divert OIRA staff from their substantive work." Also, OMB refused to provide other specifically requested information, such as its staffing changes, if any, to address the IRS paperwork problem uncovered in the April 15, 1999 hearing. On January 14, 2000, the subcommittee rejected OMB's logic and again requested detailed and complete information from OMB on its role in paperwork reduction.

The subcommittee also alerted OMB to its December 6, 1999 letters to 28 agencies for them to identify any substantive changes (e.g., deleted questions, reduced frequency of reporting, introduced a threshold to exempt small entities from reporting, et cetera) made by OMB to the agency's paperwork submissions and any pa-

paperwork reduction candidates added by OMB for the 6-month period from July 1 to December 31, 1999.

In its February 24, 2000 reply to the subcommittee's January 14th letter, OMB again refused to provide the requested information about its role in paperwork reduction. OMB made four arguments to attempt to justify its refusal. In its March 2nd reply, the subcommittee found none of OMB's arguments to be convincing.

First, OMB stated that keeping records "would be expensive." This is not true. Adding one data cell to an existing computer system ("yes" or "no" if OMB made any substantive changes to an agency submission) is easy and not at all costly. Additionally, requiring OMB staff to provide a one-sentence summary on OMB's paperwork docket worksheet describing substantive changes made by OMB to an agency submission (e.g., deleted questions, reduced frequency of reporting, or introduced sampling) would involve nearly no cost. Second, OMB stated that keeping records "would divert them from substantive reviews." This is not true. Asking OMB staff to indicate a "yes" or "no" and to provide a one-sentence summary would require seconds of staff time to provide.

Third, OMB stated that keeping records "would be of limited extra value." This is not true. The subcommittee has oversight responsibility for ensuring that OMB is indeed focusing on government-wide paperwork reduction accomplishments, as required by law. As a consequence, this information is essential to justify continued funding for OMB's OIRA and to inform Congress of necessary changes to the PRA. The subcommittee also expressed its hope that OMB management is interested in monitoring (and, thus, documenting) actual paperwork reduction results being accomplished by OMB staff.

Fourth, OMB stated that "information on changes . . . can already be obtained by examining the files." This is not true. The subcommittee tried to examine the 29 paperwork docket files referenced in OMB's November 16, 1999 reply; however, this effort was substantially thwarted because of missing files, incomplete files, and missing documentation in files. If information is already in OMB's files, then OMB has no excuse not to assemble it and provide it as the subcommittee requested.

As a consequence, Subcommittee Chairman McIntosh saw no choice but to state, "If we do not receive the requested items, we will invoke 2 U.S.C. § 192. Under that section, any person who 'willfully makes default' when asked in the course of a Congressional investigation to 'produce papers' or 'answer any question pertinent to the question under inquiry, *shall be deemed guilty of a misdemeanor*' (emphasis added)."

In its March 24th reply to the subcommittee's March 2nd letter, OMB again refused to provide the simple accountability measures requested by the subcommittee, leaving Congress and the public in the dark about OIRA's efforts to reduce paperwork burdens. OMB stated, "it is our view that a substantive change is 'made by OMB' only when OMB exercises its authority to disapprove a collection or when an agency withdraws a collection during our review." On March 27th, the subcommittee responded by disagreeing with OMB's view.

OMB also contended, “At no time during the PRA’s entire history have OIRA staff been required to form judgments about which agency—the collecting agency or OMB—should be given ‘credit’ for each paperwork reduction. Doing so would take away from the success of their efforts.” The subcommittee responded, “that [reasoning] may partly explain why paperwork burdens have continued to rise in each of the last few years, even though the PRA mandates that such burdens should fall. Giving credit where credit is due is a great motivator of human effort and initiative. The Clinton-Gore administration’s record of non-achievement in reducing paperwork burdens is strong evidence that OMB’s failure to assign “credit” has produced a system of non-accountability, which is failing taxpayers and the regulated public. Such case-by-case determinations are the only way for OMB (and Congress) to know who in the paperwork reduction process is doing what. It is the only way OMB (and Congress) can hold OIRA and the agencies accountable and, thus, to motivate real paperwork reduction accomplishments on behalf of America’s beleaguered taxpayers.

The subcommittee also responded that, only after it warned of legal consequences, did OMB finally provide some readily available information. OMB stated, “We regret not having supplied it to you earlier.”

On April 12, 2000, the subcommittee held a followup hearing to its April 15, 1999 hearing, entitled, “Reinventing Paperwork?: The Clinton-Gore Administration’s Record on Paperwork Reduction.” The PRA set government-wide paperwork reduction goals of 10 or 5 percent per year from 1996 to 2000. The hearing revealed that the Clinton-Gore administration has increased, not decreased, paperwork in each of these years. The hearing also revealed that the agencies, in response to the subcommittee’s December 6, 1999 letters to them, reported a mere 1,915 hours of paperwork reduced by OMB out of an inventory of 7.3 billion hours, and *no* paperwork candidates added by OMB from the 7,563 paperwork dockets in OMB’s paperwork inventory.

The subcommittee’s investigations of OMB for PRA, CRA, and global climate change revealed a disturbing pattern of contempt for congressional oversight. As a consequence, the subcommittee received testimony from an expert in the Congressional Research Service [CRS] on options available to Congress when faced with agency nonresponsiveness to congressional oversight, including subpoena requests for documents and letter requests for specific information.

On April 14, 2000, the subcommittee sent detailed post-hearing followup questions to OMB about: its passive role in paperwork reduction; transfer of some OMB staffing authority to IRS for paperwork reduction since OMB continues to have only one staff member devoted part-time to work with the IRS on burden reduction initiatives even though IRS accounts for nearly 80 percent of the total government-wide paperwork burden on the public; the most recent substantive changes made in the 60 most burdensome paperwork requirements (each totaling over 10 million hours of the public’s time, which is equal to 85 percent of the total government-wide burden on the public); OMB’s falsely-claimed paperwork reduction accomplishments, including at least 872 violations of the PRA in

1998 and at least 710 violations of the PRA in 1999; sanctions for violations of the PRA; OMB's absence of crosscutting impact analyses for small business and for State and local governments; and regulatory compliance paperwork.

On April 14th, in response to witness claims at the subcommittee's April 12th hearing that some paperwork burden could be reduced by Congress' amending existing laws, Subcommittee Chairman McIntosh and Ranking Member Kucinich sent letters to 28 departments and agencies asking for recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and which are good candidates for elimination or reduction.

On June 12th, OMB partially replied to the subcommittee's April 14th post-hearing followup questions. OMB continued to state its illogical and mistaken view that requiring OMB to reveal changes made by OMB during the course of its PRA reviews "would impair its administration of the PRA." As the subcommittee noted in four letters to OMB from November 1999 to March 2000, revealing changes made by OMB is the only way Congress can hold OMB accountable, especially given the Clinton-Gore administration's record of non-achievement in reducing paperwork burdens. Although OMB replied that it made no substantive changes in IRS's proposed ICB submission, OMB refused to increase its staffing of only one analyst working part-time on IRS paperwork. As a consequence, on June 20th, Subcommittee Chairman McIntosh requested that OMB immediately increase its staffing devoted to IRS paperwork to at least three full-time analysts.

In reply to the subcommittee's questions about the last substantive revisions of each of the top 60 paperwork burdens, OMB revealed that the last revision only reduced burden for 11 of the 60 and some of the reductions were not significant, e.g., the Defense Department's reduction of only 26,438 hours for a requirement imposing 23,986,320 burden hours.

OMB submitted nonresponsive answers to other questions. For example, instead of responding to the subcommittee's questions if OMB has prepared crosscutting analyses of paperwork burdens on small businesses and on State and local governments, OMB merely provided computerized listings of 316 paperwork dockets and 929 paperwork dockets, respectively. In its June 20th letter, the subcommittee asked if OMB had analyzed these dockets to identify duplications and ensure maximum burden reductions in them.

On July 19th, OMB replied to the subcommittee's June 20th letter. OMB continued to refuse the subcommittee's repeated requests for OMB to begin disclosing the results of its PRA reviews, as of July 1, 2000. On August 1st, Subcommittee Chairman McIntosh did not accept OMB's refusal for such disclosure and did not accept OMB's refusal to immediately increase its staffing devoted to IRS paperwork. Also, Subcommittee Chairman McIntosh asked OMB to rethink its refusal to indicate the next expected date for substantive revision of each of the 60 most burdensome paperwork requirements. Last, Subcommittee Chairman McIntosh urged OMB to conduct crosscutting analyses of paperwork burdens on small businesses and State and local governments, stating that



“Roundtables are not a substitute for governmentwide crosscutting analyses.”

In response to the McIntosh-Kucinich letters to 28 agencies asking for recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork, the subcommittee received 27 responsive replies (the Department of Agriculture failed to provide a responsive reply). Of these responses, only HHS (for the Food and Drug Administration [FDA]), the Department of Transportation [DOT], the Department of the Treasury, the Federal Communications Commission [FCC], and the Federal Trade Commission [FTC] were able to identify any statutory changes that affected only their jurisdiction and which would reduce the public’s paperwork burden.

On July 27th, Subcommittee Chairman McIntosh and Ranking Member Kucinich forwarded these proposals to the appropriate House committees asking for their input on the advisability of making these recommended changes.

*b. Benefits.*—OMB revealed a 2.7 percent increase in paperwork in fiscal year 1999 and estimated a 2.5 percent increase in paperwork in fiscal year 2000, instead of 5 percent decreases in each fiscal year. This expectation follows 3 successive years of increases in paperwork, instead of the required decreases in paperwork. The subcommittee’s investigation and oversight increased pressure on the administration to do more to identify specific paperwork reduction initiatives and actually reduce paperwork burdens imposed on the American public.

*c. Hearings.*—A “*Clinton-Gore v. The American Taxpayer*,” hearing was held jointly with the Government Reform Subcommittee on Government Management, Information, and Technology on April 15, 1999. Witnesses included the Commissioner of the IRS, GAO, OMB, the Department of Agriculture, and private citizens. A “*Reinventing Paperwork?: The Clinton-Gore Administration’s Record on Paperwork Reduction*,” hearing was held on April 12, 2000. Witnesses included the Commissioner of the IRS, OMB, GAO, a CRS specialist in American law, and private citizens.

## 2. *Investigation of the Office of Management and Budget’s Congressional Review Act Guidance and Agency Compliance With the Congressional Review Act.*

*a. Summary.*—The subcommittee serves both as the authorizing and oversight subcommittee for OMB’s OIRA. In 1999, the subcommittee sent OMB four oversight letters relating to OIRA’s responsibilities under the Congressional Review Act [CRA], including OMB’s statutorily-required guidance to the agencies to ensure full compliance with CRA.

The subcommittee continued to review OMB and agency compliance with the requirements of the CRA (5 U.S.C. ch. 8), finding that agencies continued to fail to report many interpretive rules, guidances, and policy statements that fall within the CRA’s definition of a covered “rule.” The subcommittee believes that this non-compliance is largely due to insufficient implementation guidance from OMB. Under section 801(a)(1)(A) of the CRA, the Federal agency issuing a rule must send a report to Congress, including the text of the rule, a summary description of the rule, and the pro-

posed effective date. The agency must file such report with Congress “[b]efore a rule can take effect . . .” (emphasis added) (5 U.S.C. § 801(a)(1)(A)). In other words, unless and until an agency properly reports a rule, the rule has no legal force or effect. Any action the agency takes to promulgate, implement, or enforce an unreported rule is legally null and void.

The CRA broadly defines a rule as any “agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy . . .” (5 U.S.C. §§ 804(3) and 551(4)). This definition is not limited to “legislative” rules subject to the notice and comment provisions of the Administrative Procedure Act’s [APA] section 553. On the contrary, the definition includes any interpretive rule or other agency statement used to apply existing law or implement policy. The legislative history confirms the plain text of the definition: “Interpretive rules, general statements of policy, and analogous agency policy guidelines are covered without qualification because they meet the definition of a ‘rule’ borrowed from section 551 of title 5, and are not excluded from the definition of a rule” (Statement of Representative McIntosh, March 28, 1996, Congressional Record at H3005).

OMB failed to perform its responsibilities with respect to the CRA. Despite OIRA’s obligation under President Clinton’s Executive order to provide the agencies with guidance on compliance with regulatory laws, OIRA has done virtually nothing to insure that the agencies are complying with the CRA.

To encourage OIRA to carry out its responsibilities under the CRA, the subcommittee proposed to increase OIRA’s fiscal year 1998 budget by \$200,000, specifically to help with CRA implementation and other responsibilities. Congress accepted this proposal. Regrettably, \$200,000 and 12 months later, OIRA showed no signs of improvement. As a result of the subcommittee’s oversight and analysis, the CRA provision within the appropriation for OMB in the Treasury and General Government Appropriations Act for 1999 directed OMB to issue guidance by March 31, 1999 on certain specific provisions of the CRA and a standard new rule reporting form for submissions for congressional review under the CRA. The accompanying report states, “The conferees have been assured that OMB will strictly adhere to the statutory requirements included in the bill on Paperwork Reduction and the Congressional Review Act. The conferees will monitor OMB’s compliance with these requirements carefully.”

Soon after enactment of the CRA provision, the subcommittee reached an understanding with OMB, which was memorialized in a September 23, 1998 letter from the subcommittee to OMB and a September 24th return letter from OMB to the subcommittee. OMB did not share its draft guidance with the subcommittee until Friday, March 25, 1999. On Monday, March 29th, the subcommittee met with OMB and expressed its view that the draft was not responsive to the subcommittee’s expectations, the previous agreements between the subcommittee and OMB, or congressional intent. In a nutshell, OMB was required to provide expanded and complete guidance; instead, OMB’s draft barely expanded on its previous guidance and did not address the key issues which needed clarification and expansion.

Nonetheless, OMB issued its revised guidance the next day (March 30th), making only four minor changes in its draft based on the subcommittee's comments. On April 1st, the subcommittee directed OMB to issue the previously agreed-upon expanded and complete guidance by April 30th, including an elaboration of the definition of "rule," a discussion of the "good cause" exemption for a change in the effective date of rules, and a discussion of the legal standing, effectiveness, and potential for judicial review of rules not submitted for congressional review under the CRA.

Throughout 1999, despite four letters from the subcommittee to OMB, OMB continued to resist issuing additional and complete CRA guidance to the agencies. After these repeated and unsuccessful requests to OMB, on October 8, 1999, the subcommittee began an investigation of the agencies' use of non-codified guidance documents (such as guidance, guidelines, manuals, and handbooks). The subcommittee sought to verify that each document with any general applicability and future effect was submitted to Congress under the CRA and that each document included an explanation to ensure the public's understanding of the document's legal effect.

The subcommittee requested the General Counsels of the Department of Labor [DOL], DOT, and the Environmental Protection Agency [EPA]—three of the agencies imposing the most regulatory requirements on the public—to complete a compendium of all their non-codified documents in tabular format and to provide a copy of each non-codified document, including a highlighted and tabbed reference to the specific explanation in the document itself regarding its legal effect. The compendium required the agencies to reveal which documents had been submitted for congressional review under the CRA and which documents were legally binding.

DOL and DOT asked the subcommittee to narrow the request. In response, the subcommittee narrowed the initial request to only those documents issued since the March 1996 enactment of CRA by DOL's Occupational Safety and Health Administration [OSHA] and DOT's National Highway Traffic Safety Administration [NHTSA], respectively. On December 31, 1999, DOT submitted its NHTSA compendium and 1,225 guidance documents. On January 3, 2000, DOL submitted its OSHA compendium and guidance documents. On February 7, 2000, EPA submitted its compendium and 2,653 guidance documents.

However, after OSHA Assistant Secretary Charles Jeffress, in testimony before the House Education and the Workforce Committee's Subcommittee on Oversight and Investigations on January 28, 2000, cited an even higher number of guidance documents than DOL claimed in its earlier response to the Government Reform subcommittee's request, the subcommittee determined that the number of OSHA documents was not 1,641, as DOL had claimed, but actually 3,374. On August 23rd, DOL submitted its revised compendium.

See Section II.A.1. of this report for a discussion of the subcommittee's findings relating to DOL's and DOT's guidance documents.

After being unable to reach agreement with the minority and the administration on legislative language requiring agencies to clarify the legal status of each guidance document, on May 19th, Sub-

committee Chairman McIntosh wrote eight additional regulatory agencies for a compendium of their non-codified documents issued since March 1996 and a copy of the first page of each such document and all other pages with any specific explanation in the document itself regarding its legal effect. These agencies included: the Department of Agriculture, the Department of Energy, the Food and Drug Administration in the Department of Health and Human Services, the Fish and Wildlife Service in the Department of the Interior, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Trade Commission, and the Securities and Exchange Commission.

In addition, DOL and DOT were asked to provide compendiums and the other information for the rest of their bureaus since they had previously only provided such information for OSHA and NHTSA, respectively. Since EPA had provided information on all of its guidance documents issued since March 1996 and since EPA had submitted March 1999 and October 1999 letters confirming that its guidance documents have no binding legal effect on the public, it was not additionally tasked.

Instead of producing the requested compendiums and other information, DOT proposed and then orchestrated a model letter for each of the agencies to send the subcommittee to clarify the non-binding legal effect of their agency guidance documents. The subcommittee agreed and then worked with DOT staff to develop a mutually acceptable model letter. From July to September 2000, these eight agencies, along with DOL and DOT, each submitted their individual clarification letters from their chief legal officials stating that their agency guidance documents are not legally binding on the public. See Section II.A.1. of this report for a fuller discussion of these letters. Additionally, the letters explain that the public can “rely” on agency guidance, especially in an enforcement action, i.e., the guidance provides a “safe harbor.” In fact, agency guidance is often legally binding on the agency itself.

During this major investigation, the subcommittee continued to examine agency compliance with the CRA for specific policy issuances. For example, on January 5, 2000, the subcommittee wrote DOL about its November 15, 1999 non-codified guidance letter on OSHA’s policies concerning employees working at home. The subcommittee posed several questions, such as why there had been no notice of its proposed development in the Federal Register during its over 2-year development period and if it had been submitted to Congress under the CRA. After the subcommittee’s letter, DOL withdrew the guidance letter.

#### *Oversight of EPA Compliance with CRA*

The subcommittee’s review of EPA’s compliance with the CRA revealed that, in February 1998, EPA issued “Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits” (its environmental justice guidance). This guidance established a framework for handling complaints that are filed with EPA’s Office of Civil Rights under Title VI of the Civil Rights Act of 1964, as amended, and allege disparate environmental impacts on minority populations resulting from the issuance of industrial site permits by State and local governments that receive EPA fund-

ing. In light of the legal and policy effects of this guidance, the subcommittee asked GAO to determine if this guidance is a rule within the meaning of the CRA. On September 1, 1998, GAO determined that this guidance is a rule under the CRA and indicated that EPA had not yet submitted this guidance for congressional review under the CRA.

On December 8, 1998, the subcommittee asked EPA whether it intended to submit its “Proposed Implementation Guidance for the Revised Ozone and Particulate Matter [PM] National Ambient Air Quality Standards [NAAQS] and Regional Haze Program,” and many other related guidance documents, to Congress under the CRA. In a letter dated March 2, 1999, EPA replied that “EPA does not intend its policy statements and guidance documents to be binding and *they have no binding legal effect on the public*” (emphasis added). EPA further stated that “if such documents do contain binding legal requirements, EPA considers them within the scope of the CRA and submits them to Congress.”

In a letter dated September 20, 1999, the subcommittee asked EPA why it had not submitted its “Final Guidance on Environmentally Preferable Purchasing for Federal Agencies” for congressional review under the CRA. On October 6th, EPA replied that its guidance has no legal effect and is not binding; instead, it “merely suggests” and “encourages agencies” to follow EPA’s guidance.

The legal effect of these various EPA guidance documents was unclear to the subcommittee and members of the public. Therefore, late in 1999, the subcommittee initiated an investigation of all of EPA’s non-codified documents (such as guidance, guidelines, manuals, and handbooks). This investigation sought to determine if each document with any general applicability and future effect was submitted to Congress under the CRA and what, if any, language within the document itself assisted the public in understanding each document’s legal effect.

*b. Benefits.*—Agencies continue to fail to comply with the rule reporting provisions of the CRA, including submitting each document with any general applicability or future effect to Congress for review. The subcommittee believes that this noncompliance is largely due to OMB’s failure to issue sufficient guidance on the CRA to the agencies as well as OMB’s failure to clarify the definition of a “rule.” Without full compliance, the public is robbed of the opportunity to have Congress review costly and burdensome requirements, some of which may exceed congressional authorization or intent.

*c. Hearings.*—The subcommittee held hearings on OMB’s implementation of the CRA on March 10, 1998 and June 17, 1998. On February 15, 2000, the subcommittee held a hearing entitled, “Is the Department of Labor Regulating the Public Through the Backdoor?” For more information on this hearing, see Section II.A.1. of this report.

### 3. *Investigation of the White House Initiative on Global Climate Change and the Kyoto Protocol.*

*a. Summary.*—In the 106th Congress, the subcommittee continued its oversight of the Clinton-Gore administration’s global climate change policies and agencies’ actions with respect to the

Kyoto protocol, the controversial, non-ratified, United Nations global warming treaty. The subcommittee conducted four hearings on Kyoto protocol-related issues, including a joint hearing with the Senate Energy Subcommittee on Energy Research, Development, Production and Regulation and a joint hearing with the House Science Subcommittee on Energy and Environment. The subcommittee also wrote 42 oversight letters on Kyoto protocol-related matters, investigating the actions, policies, or analyses of the Office of Management and Budget [OMB], the Environmental Protection Agency [EPA], the Department of Energy [DOE], and DOE's Energy Information Administration [EIA].

The subcommittee's oversight focused on eight major areas of concern: (1) the administration's compliance with recent statutory provisions (chiefly the Fiscal Years 1999 and 2000 Foreign Operations, Export Financing, and Related Programs Appropriations Acts provisions requiring the administration to develop program performance measures for its climate change program funding requests; and the Fiscal Years 1999 and 2000 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies [VA-HUD] Appropriations Act provision prohibiting Federal agencies from implementing the Kyoto Protocol through "back-door" regulatory means); (2) the cost, fairness, and feasibility of the administration's Climate Change Technology Initiative [CCTI]; (3) the economic and political implications of proposals to provide regulatory credits for "early action" to reduce greenhouse gas emissions; (4) EPA's interpretation of the VA-HUD ("Knollenberg") funding restriction; (5) EPA's interpretation of its authority under the Clean Air Act [CAA] with respect to carbon dioxide [CO<sub>2</sub>]; (6) the potential impacts on consumers and energy markets of proposals to establish mandatory caps on CO<sub>2</sub> and other emissions from electric power plants, also known as "multi-pollutant" or "integrated" air quality management; (7) the potential impacts on consumers and energy markets of EPA's New Source Review [NSR] litigation against seven major utility companies and the Tennessee Valley Authority [TVA]; and (8) the potential impacts of the Kyoto protocol on the burgeoning digital economy.

*b. Benefits.*—The subcommittee's letters of inquiry, analysis, and hearings revealed very few program performance measures on which Congress and the American public could assess what benefits taxpayers would receive for the funding requested in the President's FYs 2000 and 2001 Budgets for climate change programs and activities. Partly as a consequence of the subcommittee's investigation of this problem during 1999–2000, Congress: (1) re-enacted language requiring program performance measures for climate change-related activities in the President's FY 2000 and FY 2001 Budgets, and (2) declined to fund the administration's \$200 million fiscal year 2000 request and \$85 million fiscal year 2001 request for a Clean Air Partnership Fund, a program ostensibly designed to help local communities reduce air pollution but potentially to fuel grassroots support for a global climate treaty.

The subcommittee also analyzed other possible regulatory and statutory strategies for implementing the Kyoto protocol prior to ratification of the treaty by the United States Senate. Partly as a consequence, Congress included the Knollenberg funding restriction

in seven fiscal year 2000 appropriation bills and eight fiscal year 2001 appropriation bills. In House Report 106-286, accompanying the FY 2000 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, the House adopted report language proposed by the subcommittee to clarify the Knollenberg restriction. The subcommittee's analysis and oversight were also critical in blocking pro-Kyoto "credit for early action" legislation, in building public and congressional opposition to EPA's claim of authority to regulate CO<sub>2</sub>, in spotlighting and challenging EPA's permissive reading of the Knollenberg provision, in fending off amendments designed to weaken the Knollenberg provision, and in exposing "multi-pollutant strategies" as a backdoor method of implementing the Kyoto protocol.

*c. Hearings.*—In 1999–2000, the subcommittee held four hearings on the administration's global climate change policies and Kyoto protocol-related issues.

*Global Climate Change: the Administration's Compliance with Recent Statutory Requirements.* The May 20, 1999 joint hearing with the Senate Energy Subcommittee on Energy Research, Production, and Regulation explored two main questions. First, is the administration heeding the Knollenberg restriction against "backdoor" regulatory implementation of the non-ratified Kyoto protocol? Second, are the spending increases requested for the CCTI a prudent and effective use of taxpayer dollars? To pursue the latter question, the subcommittees examined the administration's compliance with provisions of the FY 1999 Foreign Operations, Export Financing, and Related Programs Appropriations Act, which required each climate change program funding request to be justified in terms of one or more performance measures.

The subcommittee presented a table showing that the administration had not developed performance measures for most of the 44 climate change appropriation accounts scattered across 14 agencies. Senator Larry Craig reprimanded the administration for submitting its report to Congress on climate change programs 2½ months late. He observed that Congress was already well into the appropriations process, and because the report was late, appropriators had to make decisions without adequate information. Senator Pete Domenici chided the administration for proposing to spend far more money on wind and solar power, which supply less than 1 percent of U.S. electricity, than on nuclear power, which supplies over 20 percent. Chairman Don Nickles remarked that there was zero chance Congress would approve the administration's proposed \$1 billion fiscal year 2000 funding increase for climate change programs.

Testifying at the hearing were Representative Joe Knollenberg, Republican of Michigan; officials from OMB, the General Accounting Office [GAO], DOE, and EPA; Jerry Taylor, director of natural resource policy studies, Cato Institute; and William H. Lash III, professor of law, George Mason University.

Representative Knollenberg emphasized that the language he authored in the FY 1999 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, "prevents the EPA from misusing its existing authority."

In a colloquy with Subcommittee Chairman McIntosh, Knollenberg affirmed that the provision does not hinder EPA from acting in any way required by law but does limit the agency's use of discretionary regulatory authority.

Mr. Lash pointed out that, under EPA's interpretation of the Knollenberg restriction, EPA may regulate CO<sub>2</sub> and other greenhouse gases as long as such regulation is not "for the purpose of implementing" the Kyoto protocol. But, he said, because curbing greenhouse gas emissions is the purpose of the protocol, EPA argues, in effect, that it may implement the treaty as long as it "does not truthfully report what it is doing." Lash concluded that "Congress is entitled to suspect EPA of implementing the Kyoto Protocol any and every time the agency proposes or issues any rule or regulation affecting CO<sub>2</sub>."

GAO testified that the administration's report did not always link its discussion of activities and performance goals to the specific line items shown in the President's Budget, and did not always provide a clear picture of intended performance across Federal climate change activities. It did not always specify, in measurable and quantifiable terms, the outcomes expected to be achieved by Federal spending.

Mr. Taylor delivered a harsher assessment. Instead of providing performance and results measures for each of the CCTI line-item appropriation accounts, he noted, the administration provided performance goals for each industrial sector targeted by the CCTI. This makes it difficult for outside analysts to zero-in on specific budgetary successes or failures. A more fundamental problem is that none of the administration's performance measures link the proposed expenditures to measurable benefits in people's lives. Using the most sophisticated climate model and assuming the CCTI works exactly as advertised, Taylor calculated that the proposed CCTI programs would reduce global temperatures by a mere 0.0091 degrees Celsius (16/1000ths of a degree Fahrenheit) below where they otherwise would be by the year 2050. Such a temperature change, he concluded, would be "too small to measure," and would not "affect the lives of the American people one whit."

The hearing launched several oversight inquiries by the subcommittee that uncovered additional problems in the administration's climate change policies. For example, in a letter of May 27th, the subcommittee asked OMB when it would fully comply with the House Government Reform Committee's June 26, 1998 subpoena for documents addressed to or authored by then-OMB Program Associate Director (now DOE Deputy Secretary) T.J. Glauthier—documents that might explain the administration's decision, following the December 1997 Kyoto conference, to increase its request for additional climate change program funding from \$5 billion to \$6.3 billion. Although OMB, in its July 2nd response, claimed that it was "not aware" of any missing documents, it acknowledged that "In producing documents, Mr. Glauthier did not include documents sent to him, only ones he originated and wrote on." Similarly, in a July 15th letter reply, Glauthier acknowledged the incompleteness of OMB's document search pursuant to the committee's subpoena, stating: "Those materials generally did not include copies of memos or e-mails originating from others (including my staff, other



White House offices, and other agencies) unless they had marginal notations from me.”

In another oversight action growing out of the May 20th hearing, the subcommittee, using EIA and Nuclear Regulatory Commission [NRC] data, showed (in letters of August 18th and December 14th, 1999) that DOE’s estimate of huge annual reductions in carbon emissions from the CCTI nuclear program was based on two faulty assumptions: (a) that the CCTI nuclear program would extend the life of all nuclear plants, not just those scheduled for retirement over the next 20 years; and (b) that the appropriate baseline for estimating avoided emissions is the “average emissions rate” of the current mix of coal- and natural-gas-fired electricity rather than the changing future mix, in which natural gas increasingly displaces coal. Using more realistic assumptions, the subcommittee calculated that the CCTI nuclear program would reduce emissions by as little as 30 million metric tons [mmt] per year, rather than 150 mmt per year, as DOE claimed.

On June 8, 1999 and again on March 10, 2000, the subcommittee commissioned EIA to assess the cost, fairness, and feasibility of the administration’s CCTI tax credit proposals. EIA’s analysis revealed that the CCTI tax credits would yield minuscule reductions in energy-related CO<sub>2</sub> emissions, cost up to 20 times more (on a per ton basis) than the administration’s estimated cost of implementing the Kyoto protocol, and predominantly benefit “free riders” (those who would have made the targeted energy-efficiency investments anyway, without the inducement of special tax breaks).

In March 2000, the subcommittee continued its critical assessment of the administration’s program performance measures for climate change funding proposals. On March 22nd, the subcommittee wrote OMB Director Jacob Lew about the President’s March 15th report, entitled, “Federal Climate Change Expenditures Report to Congress.” The subcommittee found few real output performance measures linking the 72 specific appropriation accounts to quantifiable reductions in greenhouse gas [GHG] emissions, and no actual outcome (results) measures showing how such GHG reductions will benefit human beings.

Throughout 1999 and 2000, the subcommittee, in several oversight letters, challenged EPA’s reading of the Knollenberg provision as permissive rather than prohibitive. EPA claims that it may, under the Knollenberg restriction, propose or issue regulations to control emissions of CO<sub>2</sub> and other greenhouse gases as long as the regulation is not “for the purpose” of implementing, or preparing to implement, the Kyoto protocol. The problem with this interpretation is obvious. Controlling greenhouse gas emissions is the purpose of the Kyoto protocol. There is no practical difference between issuing regulations to accomplish the purpose of the protocol and issuing regulations “for the purpose of implementing” the protocol. Under EPA’s interpretation, EPA may propose or issue regulations substantially similar to, or even identical with, those required to implement the treaty. In short, EPA interprets the Knollenberg provision as a practical nullity.

*Credit for Early Action: Win-Win or Kyoto through the Front Door?* This July 15, 1999 hearing examined the economic and political consequences of legislation providing regulatory credits for

early reductions of greenhouse gases. Testifying at the hearing were Jack Kemp, distinguished fellow, Competitive Enterprise Institute and former Secretary of Housing and Urban Development; Jay Hakes, Administrator, EIA; David A. Ridenour, vice president, National Center for Public Policy Research; Fred Krupp, executive director, Environmental Defense Fund; Frederick D. Palmer, general manager & chief executive officer, Western Fuels Association; and Kevin J. Fay, executive director, International Climate Change Partnership.

In his opening statement, Subcommittee Chairman McIntosh outlined several reasons for concluding that credit for early action “is the centerpiece of a strategy by the Clinton-Gore administration to divide and conquer business opponents of the Kyoto protocol.” First, early action crediting would reward companies for doing today what they would later be compelled to do under a ratified Kyoto protocol. The original legislation introduced in the Senate contained no fewer than 11 places where the early action period was identified as ending on December 31, 2007—1 day before the start of the Kyoto protocol compliance period. Thus, said McIntosh, a more honest title for such proposals would be “credit for early implementation.”

Second, the program would create credits potentially worth millions of dollars if—but only if—the Kyoto protocol, or a comparable domestic regulatory program, is ratified or adopted. Thus, participating companies would acquire an economic incentive to support ratification.

Third, although touted as “voluntary” and “win-win,” early action crediting is subtly coercive and would create a zero-sum game in which small business can only lose. Under the Kyoto protocol, credits awarded for early domestic reductions must be transferred out of—“drawn down” from—the Nation’s total emissions “budget.” Thus, for every company that earns an early action credit, there must be another that loses a credit in the 2008–2012 Kyoto compliance period. Consequently, companies that do not “volunteer” for early action would be penalized—hit with extra compliance burdens. Many large firms might “volunteer” just to avoid getting stranded in the shallow end of the credit pool in the compliance period, increasing the number of firms with a cash stake in supporting ratification. However, because small businesses and family farms typically lack the discretionary capital and technical personnel required to implement emission reduction projects, most would not participate. Therefore, while making the protocol more likely to be ratified, early action crediting would make the treaty more costly for small businesses and family farms.

The subcommittee also challenged the argument that early action crediting is a prudent “insurance policy.” Proponents contend that, without an early action program, companies that voluntarily reduce their emissions today might have to pay twice, so to speak, under a ratified Kyoto agreement. However, as a practical political matter, the Senate would never repudiate the Byrd-Hagel resolution and ratify the Kyoto protocol unless pushed to do so by the very policymakers and companies advocating credit for early action. Thus, the insurance argument implausibly assumes that the pro-Kyoto coalition is either naive about its own interest or strangely

bent on penalizing its own corporate base. Furthermore, Subcommittee Chairman McIntosh pointed out, there is something odd about an insurance policy that makes the insured-against event far more likely to happen: "It would not be smart to purchase fire insurance that virtually guarantees your house will burn down. By the same token, it would not be smart to purchase Kyoto insurance that increases the odds of the Kyoto Protocol being ratified."

Fred Krupp and Kevin Fay testified on behalf of early action crediting. They offered four reasons why early action crediting would not penalize small business. First, the task that a company would have to accomplish to earn credits "is environmentally rigorous." Second, the program would be "open to any business, large or small," and would allow participants to use "emission trading or pooling." Third, the program would slow down the projected increase in U.S. greenhouse gas emissions and boost investment in emission reduction technologies and strategies, lowering the economy-wide cost of complying with a future climate treaty. Fourth, most emissions are generated by large corporations, not small businesses, which are unlikely to face any significant requirements under a future climate treaty.

The subcommittee finds these rebuttals unpersuasive. First, an "environmentally rigorous" accounting scheme only ensures that cheating will be minimized, not that big-business participants would not corner the emissions credit market. Second, most small businesses do not have the discretionary capital to absorb the transaction costs required for effective participation in "emission trading or pooling." Third, even if early action crediting did lower U.S. emissions growth and drive down emission-reduction costs, it is doubtful that non-participants, whose share of the national emissions budget must be reduced to "pay" for the early action crediting program, would experience a *net* gain. In effect, Krupp and Fay proffer a new kind of trickle-down economics: What is good for big-business early emissions reducers is good for the country.

Finally, it is far from clear that small businesses would be exempt from Kyoto-related energy taxes, mandates, and/or regulations. Small manufacturing and farming operations, and even small service companies, like dry cleaners, are currently subject to numerous environmental laws and regulations. An estimated 1 million small- and mid-sized entities emit upwards of 100 metric tons of CO<sub>2</sub> per year. Their collective contribution to the supposed problem of global warming would be hard for Kyoto-implementing agencies to ignore.

Jack Kemp argued that the Kyoto protocol is a strategy to empower a coterie of national and international politicians and bureaucrats, not only to control the energy sources that drive the world economy but also to decide how fast our economy should grow (or if it should grow at all), where the technologies of the future will come from, and under what terms the peoples of the developing world will participate in the global marketplace. Concurring with the subcommittee's analysis, Kemp stated that early action crediting is "just the next campaign in the Battle of Kyoto, the fight over who will decide our energy future."

David Ridenour called attention to a potentially serious conflict of interest in the House and Senate early action crediting bills. The

bills authorize independent third parties to measure and track reductions on behalf of corporations. However, there are no provisions defining or prohibiting conflict-of-interest relationships. For example, nothing in the legislation would prohibit environmental organizations from both auditing a corporation and accepting charitable contributions from it. Corporations may be tempted to pay tribute to environmental groups, if the latter gain the power to decide which companies do and do not deserve emission credits, which are environmentally responsible and which are not.

Fred Palmer argued that early action crediting is “an early departure on a dead-end road.” Fossil fuels supply 85 percent of the Nation’s energy and are forecast to supply 90 percent of all new energy supply over the next 20 years. To “start early” making substantial reductions in fossil fuel use only can have one important effect: depress the U.S. economy. Palmer also argued that the Kyoto protocol is inimical to the burgeoning Internet economy. The Internet and all the devices connected to it (computers, routers, servers, printers) run entirely on electricity. Within the next decade, an estimated 1 billion people worldwide will be “on line.” Connecting 1 billion people to the Internet will require an additional electricity-generating base equal to that which we enjoy in the United States today. Palmer concluded: “To wire the world, we must electrify the world. To electrify the world, most of the world’s people will turn to their most abundant domestic resource: coal.” Thus, either the Internet economy will doom the Kyoto protocol, or the Kyoto protocol will strangle the Internet economy.

EIA testified on its existing voluntary greenhouse gas emissions reduction reporting program established by Section 1605(b) of the 1992 Energy Policy Act. Under this program, 170-plus companies and organizations have reported on more than 1,000 emission reducing investments, practices, and projects. Although not a crediting system, the voluntary reporting program clarifies the kinds of issues that would have to be resolved to establish an early action crediting program. There are essentially three such issues.

First, who can report emissions reductions? Should reductions be calculated and reported on a company-wide basis, on a plant or facility basis, or on a project or activity basis? Second, what is a reduction? Should emission reductions be measured against a historic baseline, or a projected future baseline? Should the baseline be the quantity of emissions released or the quantity per unit of production, or unit of sale? Third, who should own the emissions reduction? Must it be the entity that produces the emissions, or may it be an entity that “causes” others to reduce their emissions?

Because the 1605(b) program is strictly a reporting system, designed to encourage experimentation and capture the maximum amount of activity, it allows all these approaches to flourish. In contrast, a credit-for-early-action program would have to choose among these methods to prevent double counting of emission reductions and to harmonize the program with the accounting rules of a future climate treaty. In the question and answer period, EIA stated that policymakers were only beginning to understand the basic design choices inherent in the construction of an early action credit program. EIA also stated that any early action crediting program enacted during the 106th Congress would prejudice, and po-

tentially conflict with, the final implementing rules of the Kyoto protocol.

As a follow-up to the hearing, on July 22nd, the subcommittee wrote an oversight letter to EPA. Noting that some environmental groups oppose early action crediting, viewing it a windfall for companies that would have achieved the emissions reductions without a special reward, the subcommittee asked whether, under a well-designed early action program, the credits would be valuable enough to motivate companies to make energy-efficiency, carbon reduction, or carbon sequestration investments beyond those they otherwise would make. Responding on August 12th, EPA stated that “a well-designed early action credit program could motivate companies to make substantial investments in energy-efficiency, carbon reduction, or carbon sequestration beyond those that would occur anyway.” This is a significant statement, because in two previous letters (June 23rd and July 23rd), EPA denied that companies earning early action credits would be more likely to support the Kyoto protocol. But, if early action credits are valuable enough to change a company’s economic behavior, how could they not be valuable enough to influence its lobbying behavior?

*Is CO<sub>2</sub> a Pollutant and Does EPA Have the Power to Regulate It?*

This October 6, 1999 joint hearing with the House Science Subcommittee on Energy and Environment examined the central scientific and legal premises of the administration’s global climate change policies. Those premises are: (a) CO<sub>2</sub> is a pollutant, and (b) the CAA authorizes EPA to regulate CO<sub>2</sub>. Accordingly, the hearing had two panels, one addressing the legal issues connected with CO<sub>2</sub>, the other addressing the science issues. Testifying at the hearing were EPA General Counsel Gary Guzy; James Huffman, dean, Lewis and Clark Law School; Peter Glaser, Esq., Shook, Hardy & Bacon; Jeffrey Miller, professor of law, Pace University School of Law; Patrick Michaels, professor of environmental science, University of Virginia; Keith Idso, vice president, Center for the Study of Carbon Dioxide and Global Change; and, Christopher Field, professor of plant biology, Carnegie Institution of Washington.

EPA’s argument may be summarized as follows. The CAA authorizes EPA to regulate “air pollutants”; Section 103(g) refers to CO<sub>2</sub> and other emissions from power plants as “air pollutants”; therefore, EPA may regulate CO<sub>2</sub>. However, as Subcommittee Chairman McIntosh pointed out, Section 103(g)—the context for the CAA’s sole mention of CO<sub>2</sub>—is a nonregulatory provision, and concludes with a rather pointed admonition: “Nothing in this subsection may be construed to authorize the imposition on any person of air pollution control requirements.” If *nothing* in Section 103(g) shall be construed to authorize air pollution control requirements, then the passing reference therein to CO<sub>2</sub> as an “air pollutant” does not authorize such requirements. In support of this interpretation, McIntosh introduced an October 5th letter written to him by Representative John Dingell, who chaired the House-Senate conference committee on the 1990 CAA Amendments. Dingell wrote: “House

and Senate conferees never agreed to designate carbon dioxide as a pollutant for regulatory or other purposes.”

At the hearing, Subcommittee Chairman McIntosh, Peter Glaser, and James Huffman argued that the plain text, structure, and legislative history of the CAA all evince Congress’ intent to withhold from EPA the power to regulate CO<sub>2</sub>. Their critiques of EPA’s position may be summarized as follows. First, the CAA mentions CO<sub>2</sub> and global warming only in the context of non-regulatory activities, such as research and technology development. Nowhere does the act authorize the Administrator to list, or promulgate regulations to control, substances that may enhance the greenhouse effect. On an issue of longstanding controversy like global warming, Congress would not have delegated to EPA the power to launch a vast new regulatory program without ever saying so in the text of the statute.

Second, the provisions EPA cites as “potentially applicable” to CO<sub>2</sub> are, in fact, inapplicable. For example, the National Ambient Air Quality Standards [NAAQS] program is designed to address local air quality problems, not a global phenomenon like the greenhouse effect. If EPA were to set a NAAQS for CO<sub>2</sub> that is below the current atmospheric level, the entire country would be out of attainment—even if every power plant and factory were to shut down. Conversely, if EPA were to set a NAAQS for CO<sub>2</sub> that is above the current level, the entire country would be in attainment, even if fossil fuel consumption suddenly doubled. Thus, the attempt to mitigate global warming through the NAAQS program would be an absurd exercise in futility or even counterproductive—strong evidence that Congress, when it created the NAAQS program, never contemplated its being used to regulate CO<sub>2</sub>. Finally, Congress considered—and then rejected—greenhouse gas regulatory provisions when it amended the CAA in 1990.

Keith Idso presented evidence that CO<sub>2</sub> emissions, far from being pollution, are “greening” the planet, enhancing global food security and biodiversity. Idso summarized the results of over 2,000 scientific observations about the effects of CO<sub>2</sub>-enriched environments on plants, food production, and natural eco-systems. Elevated CO<sub>2</sub> levels enable most plants, trees, and food crops to grow faster, larger, and more profusely, and with greater resistance to environmental stresses, such as air pollution, extreme temperatures, and water deficiency. Since all animal life depends, directly or indirectly, on plant life, rising atmospheric CO<sub>2</sub> levels will help sustain all animal species, human and non-human alike.

Patrick Michaels concentrated on the weaknesses of the global climate models that form the scientific basis for the Kyoto protocol and the administration’s climate change policies. The models imply that average global temperatures should have risen about 0.23 degrees Celsius per decade over the past two decades. In fact, average global temperatures at the planet’s surface increased only 0.15 degrees Celsius per decade (of which 0.02 degrees was the result of changes in the sun, leaving 0.13 degrees ascribable to human influence or other natural variation). Most of that slight warming has been confined to Siberia and Northwest North America during the winter months and at night. These cold air masses—the deadliest on the planet—are warming up 10 times faster than the rest of the

atmosphere. As a result, the average Siberian winter has “warmed” from -40 degrees Celsius to -38 degrees Celsius. From a biocentric perspective, this is good, not bad. The region now enjoys a slightly longer growing season and is not quite as lethal to humans and other living things.

But, while there has been a slight warming of the Earth’s surface during the past two decades, highly accurate satellites and weather balloons detect no warming of the troposphere, the atmosphere’s most active weather zone. This is significant, because the models assume that the troposphere will warm at least as fast as the surface, and the troposphere, which extends from 5,000 feet to the bottom of the stratosphere, comprises over 80 percent of the atmosphere simulated by the models.

In short, the data strongly suggest that the climate system is less “sensitive” to greenhouse “forcing” than the models assume. Based on the data, and given the “linear” (non-geometric) nature of all computer model warming projections, the most reasonable forecast is that average global temperatures will increase by a modest 1.3 degrees Celsius over the next century, with most of the warming concentrated in the Earth’s coldest air masses. The bottom line is that science does not support the claim that CO<sub>2</sub> is a “climate pollutant.”

*Kyoto and the Internet: the Energy Implications of the Digital Economy*

This February 2, 2000 hearing examined the costs of the Kyoto protocol in light of the energy requirements of the “new” or digital economy. Will digital-economy efficiencies facilitate Kyoto-style decarbonization policies by decreasing the energy intensity of the United States economy? Or will digital-economy energy requirements sweep the Kyoto protocol into the dustbin of history by increasing United States and global demand for inexpensive, super-reliable electric power? Three witnesses testified: EIA Administrator Jay Hakes; Joseph Romm, executive director, Center for Energy and Climate Solutions, and former DOE Acting Assistant Secretary for Energy Efficiency and Renewable Energy; and Mark Mills, senior fellow, Competitive Enterprise Institute, and scientific advisor, Greening Earth Society.

Mr. Hakes argued that current data support neither Mr. Mills’ hypothesis that the digital economy is already a significant and growing source of U.S. electricity demand nor Mr. Romm’s hypothesis that digital efficiencies are already achieving significant net energy savings. EIA estimates that U.S. electricity demand will grow by a modest 1.5 percent per year over the next two decades. Electricity consumption by computers and the Internet will grow 3.5 percent per year. However, information technologies have a low electric load compared to space heating, cooling, and other more traditional equipment, and will not produce major increases in aggregate electricity demand. On the other hand, digital efficiencies are unlikely to halt or reverse the growth of aggregate demand. Advances in efficiency can actually stimulate demand by making energy less expensive to use.

Mr. Romm argued that, if the digital economy were energy-intensive, electricity consumption should have exploded during the past

few years. Instead, during 1996–1999, economic growth outpaced electricity demand growth. As companies manage their supply chains on-line and reduce inventories, overproduction, and mistaken orders, they achieve greater output with less energy consumption. Similarly, electronic commerce and telecommuting reduce the need for automobile use. Therefore, according to Romm, the Internet is a net energy saver. Romm also cited a Lawrence Berkeley National Laboratory [LBL] study that criticizes Mills for overestimating Internet-related electricity demand by a factor of eight. The growth of the digital economy will make Kyoto-style carbon reduction policies cheaper and easier to implement, according to Romm.

Mr. Mills noted that every single one of the millions of Internet-related devices—personal computers [PCs], routers, servers, transmitters, and so on—runs on electricity. Our economy today spends four times as much purchasing electricity as oil—exactly the reverse of the oil-electricity ratio of 25 years ago. During the past digital decade, U.S. consumption of electricity has risen by 650 billion kilowatt-hours—not a big increase in percentage terms but huge in absolute terms: an increment equal to the total electricity supply of Central and South America. The purchase rate of hardware in the information economy today runs at \$400 billion a year. In the last several years, the United States purchased and installed trillions of dollars in telecommunications hardware and infrastructure. The Internet was the driving force behind that investment, and digital traffic now dwarfs voice traffic on the telecommunications networks. According to Mills, EIA underestimated the digital economy's electricity requirements because it analyzed computers and the Internet in a category separate from telecommunications equipment and infrastructure.

Responding to his critics, Mills noted that LBL, while rejecting his estimate of 8 percent as the digital economy's share of total U.S. electricity demand, refused to offer an estimate of its own. Yet, in 1995, LBL estimated about 50 billion kilowatts for commercial sector use of PCs and related equipment. Since then, the number of PCs and related equipment in offices, homes, and schools has exploded; millions of additional people came “on line”; dot-com companies burst onto the scene; and usage levels for all computing and information technology equipment soared. One entirely new category of computer use since 1995 is Web servers. LBL claimed that Mills's estimate of 4 million servers should be adjusted downward by 80 percent to 1 million. In fact, the actual number of servers last year was 4 million, up from just 20,000 in 1995.

Mills agreed with Romm that the Internet may achieve significant energy efficiencies in particular applications. Indeed, total U.S. energy use per dollar of GDP has dropped 16 percent since 1990. However, the Nation still uses more energy today than it did a decade ago. For example, people are flying and driving more, with the result that transportation fuel use is up 12 percent. The digital revolution is driving economic growth, and a robust economy tends to use more energy.

In conclusion, Mills found it inconceivable that the digital economy and the Internet do not already account for a significant and growing share of the Nation's electricity demand. Since the Nation



gets 70 percent of its electricity from fossil fuels, any policy of decarbonization is on a “collision course” with the energy needs of the information age. Mills cautioned: “No energy policy, including and perhaps especially the anti-electricity aspects of the Kyoto Protocol, should be considered without passing it first through a Digital sanity test.”

At the hearing, Subcommittee Chairman McIntosh requested that EIA respond in writing to Romm’s criticisms of EIA’s October 1998 study, “Impacts of the Kyoto Protocol on U.S. Energy Markets and Economic Activity.” EIA’s study cast serious doubt on the administration’s economic analysis of the costs of the Kyoto protocol. Whereas the administration’s estimated a Kyoto price tag of \$14 to \$23 per ton of carbon reduced or avoided, with annual GDP losses ranging from \$1 billion to \$5 billion, EIA estimated carbon prices in the range of \$67 to \$348 per ton, with annual GDP losses ranging from \$77 billion to \$338 billion. EIA delivered its response on March 2nd. A brief summary of the three most important areas of contention follows.

First, Romm alleged that EIA assumed the United States waits until 2005 to start reducing emissions, giving businesses only 3 years to meet the first Kyoto target. In fact, emission reductions in EIA’s 1998 Kyoto study begin earlier due to anticipatory actions in the electricity, refining, and natural gas industries. Second, Romm alleged that EIA assumed the United States Government does not institute a single policy, such as utility deregulation and electricity restructuring, to reduce the impact of Kyoto. In fact, EIA included a “sensitivity” analysis that assumed full competitive electricity pricing for all regions of the country. Third, Romm alleged EIA ignored or artificially limited technologies, such as cogeneration, fuel cells, and renewables, that other major studies indicate would reduce Kyoto’s impacts. In fact, EIA carefully considered the contribution of such technologies. For example, fuel cells for automobiles are not likely to be economically competitive with other technologies for at least two decades. In summary, in the subcommittee’s judgment, EIA refuted Romm’s critique, effectively defending its Kyoto study, which discredited the administration’s low cost estimates for implementing the protocol.

#### *4. Investigation of Other Environmental Protection Agency Initiatives.*

##### *Transportation Partners Program*

*a. Summary.*—In 1995, EPA established a program called Transportation Partners [TPP], a network of organizations advocating mass transit systems as an alternative to single occupancy vehicle [SOV] travel and various “smart growth” measures, including land-use planning initiatives, to reduce the growth of vehicle miles traveled [VMT]. The TPP developed from the administration’s Climate Change Action Plan [CCAP] and became an important base of political support for Vice President Gore’s “livable communities” agenda.

During fiscal years 1994 through 1999, EPA dispensed over \$7 million in grants to nine “Principal Partners”: Bicycle Federation of America (\$465,000), Center for Clean Air Policy (\$225,000), En-

vironmental Defense Fund [EDF] (\$1,485,000), International Council for Local Environmental Initiatives (\$1,075,937), Local Government Commission (\$1,192,000), Public Technology, Inc. (\$395,000), Renew America (\$585,000), Surface Transportation Policy Project (\$1,480,000), and the Transportation Demand Management Institute (\$565,000). EPA's December 1997 publication indicated that the Principal Partners had built up a network of 347 "Project Partners" in 42 States and the District of Columbia.

In 1997, EPA's Transportation Partners and the Surface Transportation Policy Project [STPP] published the Directory of Transportation Reform Resources. Posted on STPP's EPA-funded Web site, "TransAct," the Directory revealed that many Project Partners were "working in opposition" to Federal highway construction and improvement projects. The fact that EPA was using taxpayer dollars to subsidize an anti-car, anti-road activist network provoked the ire not only of automotive and highway construction interests but also of elected officials, like West Virginia Senator Robert Byrd, who regard highway expansion as critical to job creation and economic growth.

The subcommittee began investigating the TPP in late May 1999 as part of its oversight of the Vice President's urban sprawl initiative. The subcommittee staff learned that the TPP, although not listed anywhere in the President's FY 2000 Budget, was funded at almost \$1 million per year in fiscal years 1998 and 1999 under the Global and Cross Border subaccount of EPA's Environmental Programs and Management line-item budget account. The subcommittee further learned that EPA only funded unsolicited proposals, instead of following the standard Federal Government practice of awarding discretionary grants through a competition open to all eligible entities.

On June 9th, the subcommittee wrote Administrator Browner requesting information about the specific statutory authority for the TPP, the funding for each of the nine Principal Partners, the output and performance measures EPA uses to evaluate the work of those organizations, and any litigation instigated by any of the Principal Partners to halt or restrict highway improvement or expansion. The subcommittee noted that EPA had not awarded TPP grants on a competitive basis. The subcommittee also asked for an explanation of why a program called "Transportation Partners" included no organizations promoting road and highway construction, even though "the overwhelming majority of commuters drive to work."

Five days later, on June 16th, Administrator Browner wrote Senator Byrd informing him that EPA planned to make "a number of important changes that will substantially improve the program's accountability and balance, broaden the group of funded participants, and lead to more effective policies to harmonize environmental and transportation policy." First, EPA would no longer fund the Principal Partners "to maintain a network" for the local activist groups. In this connection, EPA also terminated its funding of the TransAct Web site. Second, EPA promised to replace the existing non-competitive grant process "with a competitive Request for Proposals [RFP], open to all transportation and environmental organizations." Last, EPA pledged to replace the TPP with a new, broadly

representative “forum” called the Transportation and Environment Network [TNN]. In short, EPA terminated the TPP. Subcommittee Chairman McIntosh and Senator Byrd both deserve credit for this program termination.

The subcommittee wrote EPA again about the TPP on August 10th and November 16th. In the August 10th letter, the subcommittee noted a possible conflict between the statutory authority cited by EPA for the TPP—Section 103(g) of the CAA—and activities funded by the program. Section 103(g) authorizes EPA to fund “research,” “studies,” “investigations,” and the like. It does not authorize support for grassroots advocacy. Yet, one of the TPP grants EPA awarded to EDF and two other groups outlined a vigorous advocacy component. The grant proposal states: “[W]e intend to involve, educate and organize coalitions of citizens.”

In its November 16th letter, the subcommittee inquired whether EPA had, in fact, taken several actions it had outlined in its July 13th and September 27th letters. Those actions were to: request an Office of Inspector General audit of TPP grants for possible improper use of taxpayer funds to support lobbying or litigation, provide an accounting of all EPA support for EDF via other EPA programs, and send written communications to all Principal Partners announcing the program’s termination.

In the same letter, the subcommittee also challenged EPA’s legal opinion that “reducing vehicle miles traveled (VMT) is an official goal of United States Government policy.” The subcommittee wrote:

Only in the CCAP [the President’s Climate Change Action Plan]—an Administration policy plan rather than a statute—is reducing VMT affirmed as a goal in its own right. In the statutes cited, reducing VMT is presented as one among several means States may employ to improve air quality in non-attainment areas, not as the objective of the policy or program, and not for the country as a whole. In contrast, the TPP assumes that reducing VMT—i.e., limiting automobile use—is inherently desirable, a goal to be pursued nationwide, even in attainment areas.

Finally, the subcommittee noted that EPA failed to retract a blatantly false statement about the relationship between automobiles and air quality. In its August 10th letter, the subcommittee asked EPA to verify its claim that “vehicle-caused pollution doubles periodically in most metropolitan areas.” Specifically, the subcommittee asked EPA to estimate changes in vehicle-caused pollution in the 10 largest metropolitan areas. Instead, in its September 27th letter, EPA estimated the growth in VMT for the 10 largest metropolitan areas. Subcommittee Chairman McIntosh commented: “EPA answered a question I did not ask, and did not answer the question I did ask.” Therefore, the subcommittee’s November 16th letter put the question to EPA again: Does the agency stand by, or retract, its statement that “vehicle-caused pollution doubles periodically in most metropolitan areas”?

*b. Benefits.*—The subcommittee’s oversight contributed to EPA’s termination of the TPP.

*c. Hearings.*—None held.

*Comment on the Environmental Protection Agency's Notice of Proposed Rulemaking for the Tier II/Sulfur Rule*

*a. Summary.*—On August 5, 1999, the subcommittee submitted a comment to EPA on its proposed tier II rule on tailpipe emission standards and sulfur content in gasoline. The subcommittee's comment letter raised both procedural and substantive concerns about the proposed rule and clarification notice. These include: EPA may not be in compliance with Section 202(i) of the CAA, which requires the Administrator to show that reductions in vehicle emissions are necessary to attain NAAQS; EPA's preliminary Regulatory Impact Analysis [RIA] is incomplete and does not provide information necessary to allow timely and complete comments on the proposed rule; EPA did not provide access to key scientific data used in the benefit-cost analysis of the preliminary RIA; EPA did not adequately address the health impacts of the rule; and, EPA did not estimate how many areas will fall out of compliance with the NAAQS for ozone due to the negative environmental impacts of the rule.

Of particular interest is subcommittee's finding that EPA may have ignored its own air quality analysis, performed by Abt Associates, which shows that in certain metropolitan areas, reducing NO<sub>x</sub> will paradoxically *increase* ozone smog levels. This is noteworthy, because EPA's insufficient consideration of the rule's negative impacts ignores the spirit of the recent U.S. Circuit Court of Appeals decision concerning the new air quality standard for ozone (*American Trucking Associations, Inc., et. al. v. EPA*). The court found that EPA must consider "disbenefits," or negative health effects, when revising or creating new air quality standards. Although the decision does not directly apply to the tier II/sulfur rule, EPA should candidly analyze and divulge any potential negative health impacts of the proposed rule.

*b. Benefits.*—The subcommittee's comment letter raised a serious concern that EPA addressed on February 10, 2000, in the preamble to its final rule (65 FR 6698). EPA acknowledged that a few metropolitan areas are projected to experience ozone increases in certain places at certain times. However, EPA claimed, most of those places would experience net ozone reductions as a result of tier II, and that the significant ozone reductions from the rule outweigh the limited ozone increases that may occur.

*c. Hearings.*—None held.

*Investigation of EPA's Change in its Definition of Routine Maintenance and the Resulting Electric Utility Enforcement Actions*

*a. Summary.*—The subcommittee conducted oversight of EPA's recent Clean Air Act [CAA] enforcement action against certain electric utilities and the Tennessee Valley Authority [TVA]. The subcommittee sent three oversight letters (on February 28, 2000, May 5th, and June 19th) concerning EPA's abandonment of its historical and common-sense interpretation of routine maintenance, repair, and replacement in its recent CAA lawsuits against 25 coal-fired power plants in the Midwest and Southern States and its Administrative Compliance Order against seven TVA facilities. The subcommittee's major concerns are that EPA's retroactive change in its

rules is unfair and may force utilities to delay or forgo important maintenance projects, risking worker safety and electricity reliability at these units, to the detriment of the public.

Under its New Source Review [NSR] program, EPA reviews the construction plans for environmental controls of new power plants and power plants undergoing a “major modification.” EPA’s NSR regulations define a “major modification” as “any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the [Clean Air] Act” (40 CFR § 52.21(b)(2)(i)). “Routine maintenance, repair, and replacement” are specifically excluded from the definition of “major modification” (40 CFR § 52.21(b)(2)(iii)(a)). Thus, routine maintenance, repair, and replacement activity does not trigger NSR requirements to retrofit a power plant with state-of-the-art pollution control technology (40 CFR § 51 et seq.).

During 1999, in the midst of negotiations with the industry about reform of the NSR program, EPA sued 25 coal-fired power plants in the Midwest and Southern States alleging that they had repeatedly violated the CAA. EPA filed an Administrative Compliance Order against an additional seven TVA facilities making similar allegations. EPA’s lawsuits represented a change in EPA’s position. In effect, EPA now argued that only “patch and weld” repairs were covered by the routine maintenance exemption, and that all other common repair, maintenance, and replacement activities triggered NSR. EPA argued that these common activities, some of which occurred decades ago, were ongoing violations of the CAA.

Until it filed its recent lawsuits, EPA’s statements consistently indicated as recently as 1997 that maintenance, repair, and replacement commonly undertaken by utilities were *not* expected to trigger NSR. For example, in the preamble to the 1997 New Source Performance Standard [NSPS] rulemaking, EPA confirmed that “[f]ew, if any changes typically made to existing steam generating units” would be deemed to trigger NSR (62 FR 36948, 36957, July 21, 1997). Similarly, in a 1996 letter to Senator Byrd, EPA stated that “it is anticipated that no existing utility unit will become subject to the [NSPS] revision due to being modified or reconstructed.”

EPA responded to the subcommittee’s February 28th letter on March 31st and April 14th, and to the subcommittee’s May 5th letter on June 23rd, August 21st, and September 14th. On June 23rd, EPA responded to the subcommittee’s June 19th questions about the procedure for resolving this issue in regard to TVA.

The subcommittee’s oversight letters expressed concern that EPA appears to be abandoning its historical and common sense interpretation of routine maintenance, repair and replacement activity. The subcommittee’s investigation found that this retroactive change in EPA rules was not made through public notice and comment rulemaking. The subcommittee is concerned that EPA’s lawsuit discourages utilities from performing needed maintenance, jeopardizing worker safety and the reliability of the Nation’s electricity supply.

In its March 31st response, EPA claimed that its enforcement actions are consistent with the Seventh Circuit’s decision in *Wisconsin Electric Power Co. v. Reilly (WEPCo)*, in which the court found

that a utility's proposal for "massive" and "unprecedented" modifications was not routine (*WEPCo*, 893 F.2d 901, 911, 7th Cir. 1990). However, the subcommittee found that, according to EPA's own documents, the *WEPCo* case is easily distinguishable from the facts in EPA's current lawsuits. Unlike the projects targeted by the current enforcement action, the comprehensive "life extension" project proposed by *WEPCo* was not routine because: (a) the project involved the replacement of "numerous major components;" (b) the purpose of the project was to extend the life of the facility beyond its originally planned retirement date as an alternative to building new capacity; (c) the units had been formally derated and operated in that condition, or had been shut down, for 4 years; (d) the work was "highly unusual, if not unprecedented" rather than "regular" and "customary;" (e) the work involved 4 years of successive 9-month outages; and (f) the project was extremely costly, estimated at \$87.5 million or about 15 percent of the cost of a new facility.

While EPA now professes a lack of prior knowledge of boiler maintenance, repair, and replacement projects, the subcommittee's investigation found that an EPA consultant, the Radian Corp., undertook a boiler life extension survey in 1986 and reported to EPA that "common repair/replacement jobs include: re-tubing, replacing waterwalls, air heater, duct work, or casing, and updating burners or controls"—some of the very types of projects now targeted in EPA's enforcement actions.

*b. Benefits.*—The subcommittee's oversight revealed serious flaws in EPA's enforcement actions, such that they could be challenged in court.

*c. Hearings.*—None held.

##### *5. Investigation of Two Department of Labor Major Rules.*

*a. Summary.*—The subcommittee investigated two major regulatory proposals by the Department of Labor [DOL]: the "Birth and Adoption Unemployment Compensation" rule (popularly known as "Baby UI") (64 FR 67972) and the "Ergonomics Program; Proposed Rule" (64 FR 65768). Following up on its investigation of backdoor rulemaking through agency non-codified guidance documents, the subcommittee's Baby UI investigation was used to examine the Federal agencies' use of codified regulations instead of legislation for significant policy changes without a specific delegation by Congress, i.e., backdoor legislating. The subcommittee's ergonomics investigation focused on DOL's improper use of contractors in its rulemakings.

##### *Baby UI*

The subcommittee reviewed DOL's proposed Baby UI rule, the public comments received before its publication, during the 60-day public comment period, and after the close of the comment period, and all of DOL's internal legal analyses relating to its decision to propose a regulatory change instead of initiating a legislative proposal ("DOL's 48 internal documents").

On May 18th, the subcommittee wrote the Office of Management and Budget [OMB] some of its concerns with the Baby UI rule, which was then under review at OMB under regulatory Executive Order No. 12866. The concerns included: the absence of a regu-

latory impact analysis [RIA] due to DOL's underestimate of the costs of its proposed rule; the absence of specification of the reporting and recordkeeping requirements which are essential to the evaluation of the Baby UI experiment and which require public review under the Paperwork Reduction Act [PRA]; and the statutory basis for the rulemaking.

On May 31st, Subcommittee Chairman David McIntosh wrote the Department of Justice [DOJ] about both DOL major rules, which appeared to be defective. McIntosh asked DOJ to provide a legal opinion of its ability to defend the Baby UI rule against a claim of usurpation of legislative authority.

On May 31st, the subcommittee sent detailed findings to DOL on its Baby UI rule. First, the subcommittee found that DOL's regulatory proposal to use unemployment compensation for paid family leave seemed to be backdoor legislating. The subcommittee expressed concerns not only about the statutory basis for this rulemaking but also about DOL's compliance with certain provisions governing codified regulations, including Executive Order No. 12866, the Small Business Regulatory Enforcement Fairness Act [SBREFA], the Regulatory Flexibility Act [RFA], the Unfunded Mandates Reform Act [UMRA], and the PRA. The subcommittee analyzed DOL's legal obligations under Executive Order No. 12866 and the aforementioned laws governing rulemaking.

The subcommittee challenged DOL's decision to pursue a regulatory change instead of initiating a legislative proposal. Section 604.10 in DOL's proposed rule states, "Under [DOL's] authority to interpret Federal unemployment compensation law, the DOL interprets the Federal able and available requirements to include experimental Birth and Adoption unemployment compensation" (64 FR 67977). However, DOL's preamble admits that "no explicit able and available requirements are stated in Federal law" (64 FR 67972). Interestingly, there are also no able and available requirements in DOL's codified rules governing its unemployment compensation program.

Instead, Federal law authorizes DOL to "make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which [DOL] is charged under this chapter" (42 U.S.C. § 1302(a)). Federal law requires DOL to approve any State law which provides that "all money withdrawn from the unemployment fund of the State shall be used *solely* in the payment of unemployment compensation" (26 U.S.C. § 3304(a)(4), emphasis added). Federal law defines "compensation" to mean "cash benefits payable to individuals with respect to their unemployment" (26 U.S.C. § 3306(h)). Federal law does not define "unemployment," presumably since its meaning is commonly understood.

In a March 1999 memorandum, DOL's Solicitor's Office asserted that the design of the unemployment compensation system is rooted in the common understanding of the word "unemployment" and that DOL has consistently held that unemployment must be involuntary and due to an inability to find suitable work. A 1945 Social Security Board non-codified guidance document provided by DOL stated, "The Board has held consistently on the basis of the legislative history of the Federal Acts, that the word 'unemployment' as

used in the Social Security Act and the Federal Unemployment Tax Act refers only to unemployment due to lack of work.” A November 1998 DOL internal document points to the DOL Bureau of Labor Statistics’ definition of “unemployed” as referring to someone available to the labor market. In contrast, Baby UI is for persons who voluntarily take a leave of absence or quit their jobs and are not available to the labor market. Also, DOL admits in appendix B to its proposed rule that Baby UI “will require some legislation on the part of every State seeking to adopt this program” (64 FR 67977).

Of especial importance is DOL’s own rejection of a 1997 proposal by Vermont to use unemployment compensation for paid family leave. On July 17, 1997, DOL wrote Senator Patrick Leahy that, “We have consistently interpreted these provisions as requiring that State UI [unemployment insurance] laws contain tests to assure that UI is *paid only to workers who lose their positions* when employment slackens and who . . . cannot find other work . . . . That this was the intent behind these provisions is clearly demonstrated by the history of the 1935 legislation creating the Federal-State UI program . . . stated that, to serve its purposes, UI ‘must be paid only to workers *involuntarily unemployed*’” (emphases added).

A DOL internal document admitted that, after the decision was made to use unemployment compensation for paid family leave, DOL challenged its employees to think outside the box and see what flexibility actually existed in Federal law. Unfortunately, several DOL internal documents, including a March 1998 memorandum, conclude that Federal law needs to be amended to use unemployment compensation for paid family leave. In a March 1999 memorandum, DOL’s Solicitor’s office presented the pros and cons of a legislative fix as opposed to a regulatory fix, recommending that carefully drafted legislation is the best vehicle because a regulatory fix would likely not survive a court challenge given the legislative history, the legislative framework of the unemployment compensation program, and the Federal Government’s longstanding interpretation. The memorandum concluded that the court is likely to invalidate such a DOL regulation as an arbitrary agency action. Another DOL internal document mentioned possible challenges to the rule on equal protection and/or Administrative Procedure Act [APA] grounds.

As a consequence, the subcommittee found that, even for an experiment, such a major substantive revision of the unemployment compensation program requires a change in Federal law. Congress did not delegate its legislative authority to DOL to make such a major revision of this program through rulemaking. The Supreme Court recently struck down a similar attempt by an executive agency, holding that the Food and Drug Administration could not regulate tobacco products without a specific authorization from Congress. The Supreme Court found that “an administrative agency’s power to regulate in the public interest must always be grounded in a valid grant of authority from Congress” (*Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 120 S.Ct. 1291, p. 1315). The subcommittee found that DOL’s proposed major revision of unemployment compensation was a usurpation of legislative



authority solely granted to Congress under Article I of the Constitution and, therefore, is illegal.

Second, Executive Order No. 12866 requires agencies to provide an assessment of the potential costs and benefits of the regulatory action for all “significant” regulatory actions, i.e., including DOL’s Baby UI regulatory action. For those regulatory actions which “*may*” have an annual effect on the economy of \$100 million or more, the order requires agencies to provide more detailed cost-benefit analysis (also known as a RIA), including an identification and assessment of “reasonably feasible alternatives to the planned regulation” (Sec. 3(f)(1) & Sec. 6(a)(3)(C)). Section 804 of SBREFA defines a major rule as one which is likely to result in an annual effect on the economy of \$100 million or more.

The subcommittee questioned the underlying logic behind DOL’s proposed rule cost estimate, which ranged from zero to \$68 million, because DOL’s flawed methodology assumed that only four States would volunteer for Baby UI. DOL’s preamble admits that the \$68 million estimate “is based on the expressed interest of a small number of States” (64 FR 67975). Many public commenters challenged DOL’s underestimate of the costs and instead estimated costs up to \$36 billion (e.g., see 2/2/00 U.S. Chamber of Commerce, pp. 2 & 8). If more States volunteered, the cost clearly “*may*” exceed the \$100 million threshold for an RIA. In fact, March 9, 2000 testimony before the House Ways and Means Subcommittee on Human Resources revealed that eight States are considering Baby UI. A March 2000 DOL decision memorandum admitted that DOL’s authority and cost considerations are, indeed, the most sensitive issues in the 3,800 congressional and public comments. However, this same memorandum did not reveal to the Secretary the methodologies behind the many estimates in the billions of dollars and the reasons for DOL staff’s rejection of these methodologies. Instead, the memorandum revealed DOL staff’s revised upper costs estimate as \$91 million instead of \$68 million.

Commenters also expressed concern about noncompliance with the RFA and the SBREFA (e.g., see 2/2/00 U.S. Senate Committee on Small Business, pp. 1 & 3). Chairman Kit Bond stated,

The Department has misconstrued its obligation under the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA) and consequently has wrongly decided not to determine the consequences of this rulemaking on small businesses. . . . this rule has a potentially very serious impact on virtually all small businesses which should have triggered a regulatory flexibility analysis as required by the RFA . . . any employer that is subject to the federal unemployment tax will be covered and would be obligated to provide this leave if the state in which the employer operates implemented this provision (p. 3).

The subcommittee shared this concern, especially about the absence of a full analysis in DOL’s proposed rule and DOL’s 48 internal documents of the substantial effects on small businesses.

Congress specifically exempted small businesses from the Family and Medical Leave Act’s [FMLA’s] *unpaid* leave provisions. In fact,

in recognition of the effect on employers, FMLA included other eligibility factors as well. The Associated Builders and Contractors, Inc. comment letter stated,

this aspect of the proposal is inconsistent with Federal FMLA law as written and passed by Congress. Congress extensively debated and ultimately required a whole host of eligibility factors for family leave provided under the Family and Medical Leave Act. For example, Congress decided to limit employee eligibility to those with 12 months of service and to those who worked at least 1,250 hours within the 12 months preceding the leave. Congress also chose not to cover businesses with fewer than 50 employees. Additionally, Congress provided a key employee exemption that allows companies to exclude certain highly compensated and key individuals from the unpaid mandate. In contrast, the BAA-UC [Baby UI rule] provides leave payments to all covered individuals, regardless of income (2/2/00, p. 5).

LPA, Inc. commented, "Although Congress found that unpaid family leave was too burdensome to impose upon small business and therefore exempted them from the obligations imposed by the FMLA, see 29 U.S.C. § 2612(c), no similar exception can be carved out of the unemployment compensation system because, as the NPRM recognizes, any eligibility test for unemployment compensation must relate directly to the fact or cause of the individual's unemployment" (2/2/00, p. 12).

The Republican Governors Association objected to the proposal on several grounds, commenting,

The Department of Labor's proposed regulations also create another layer of administrative burden on states and employers, which could further harm the solvency of the UI system. This action creates more opportunities for fraud and abuse, again placing the solvency of the fund at risk. This effort is a backdoor, *unfunded* approach that would be harmful to state government treasuries as well as the UI Trust Fund. It could also threaten the continued growth and prosperity of small businesses. If the federal government wants to pursue this as national policy, then the issue should be taken before the U.S. Congress, and funded accordingly (emphasis added) (12/2/99, p. 1).

The Employment Policy Foundation's comment letter analyzed the effect of Baby UI on recommended State solvency levels and projected State tax rate increases that would be needed to stem the trust fund depletion. For example, under four scenarios (with 12 or 26 weeks of paid leave and under two different take-up assumptions), New York would require a 32 percent to 129 percent tax rate increase (1/26/00, p. 10).

Interestingly, DOL's 48 internal documents gave short shrift to compliance with the UMRA. In fact, there appeared to be only one dismissive reference to the impact on States, referring to the fact that DOL's experimental approach calls for voluntary participation by a State. Nonetheless, as noted above, there are various costs

and cost considerations for States under this significant rule. As a consequence, the subcommittee requested that DOL prepare a final RIA, including costs and cost considerations for States, and a final regulatory flexibility analysis, including costs for small businesses, before DOL issues a Baby UI final rule.

Third, the subcommittee was surprised that DOL's preamble for the proposed experiment admits that "The Federal evaluation methodology has not yet been completed" (64 FR 67974). In fact, a DOL internal document indicated that DOL felt that it seemed counterproductive to spend considerable time developing a methodology that would delay implementation of the experiment. However, an evaluation is critical for any experiment, especially this one since DOL's preamble states that the evaluation "may also serve as a basis for further expanding coverage to assist a broader group of employees to better balance work and family needs" (64 FR 67974). The subcommittee asked: what will be the effects of the experiment on State taxes, State unemployment benefit levels, solvency of State unemployment funds, et cetera and by what outcome performance measures will the success or failure of this experiment be judged?

The subcommittee requested that DOL complete its proposed evaluation methodology, including the specifics of any necessary reporting and recordkeeping, and submit its proposed paperwork burden for public comment under the PRA before DOL issues a Baby UI final rule. The subcommittee also requested that DOL delay the final rule's effective date until DOL analyzed the public comments and finalized the reporting and recordkeeping requirements essential to the evaluation of the experiment.

On June 13th, DOL issued a final Baby UI rule with a RIA, which never received public comment (65 FR 37210). Incredibly, DOL's final rule neither included a RFA analysis nor the specifics of the evaluation methodology for this "experiment." On June 26th, various parties filed a legal challenge to this rule—a complaint for declaratory, injunctive and other relief.

### *Ergonomics*

Before the start of its investigation of improper use of contractors in DOL rulemakings, on January 28, 2000, the subcommittee submitted extensive comments to DOL on its proposed ergonomics major rule. The subcommittee's comment letter may be summarized as follows.

First, OSHA's own data show that there is no "market failure" that might justify regulatory action to address workplace-related musculoskeletal disorders [MSDs]. Workplaces are becoming safer, not more hazardous, with total injuries and illnesses per 100,000 workers falling from 4,970 in 1974 to 2,800 in 1991. Reported lost workday MSDs have declined each year from 1994 through 1997, the last year for which data were available. OSHA's 1993 ergonomics survey showed that 50 percent of all general industry employees worked in establishments that have ergonomics programs. That is a high degree of penetration, especially considering that OSHA did not hold major regional ergonomics conferences or establish an ergonomics Web site until 1997.

However, OSHA's error goes deeper than a misreading of its own data. OSHA assumes that, if a company has not "implemented engineering controls to reduce ergonomic risk factors," then the company's employees enjoy no protection from MSD hazards. That view betrays a basic misunderstanding of market processes. If, as OSHA reports, 80 percent of large companies have ergonomics programs, that sends a strong market signal to manufacturers of industrial machines and office equipment. It tells them to increase production and marketing of ergonomically-designed products. A company purchasing such products will effectively protect its employees, even if it has no ergonomics program.

Second, a major study commissioned by the Small Business Administration concluded that the costs of the ergonomics rule may significantly exceed the benefits, especially for small businesses. Indeed, OSHA's own data show that, for numerous categories of small business, the compliance costs of the ergonomics rule would exceed 10 percent of profits. For example, the cost to men's and boys' clothing stores is estimated by OSHA to be 114.7 percent of profits. The costs to small manufacturers of primary metal products is 47.4 percent of profits. The cost to 10 other types of small business equals or exceeds 20 percent of profits. Such firms may be forced to cut back on bonuses, wages, new hires, health insurance coverage, or retirement benefits.

Third, OSHA unreasonably rejected (or simply ignored) less costly alternatives. Under the ergonomics rule, employers would have to implement the "full" ergonomics program (engineering controls plus paid medical leave) if only one employee incurs an MSD. This is called the one-MSD "trigger." A two-MSD trigger would appear to be more sensible, helping to ensure that the full program responds to systematic problems rather than isolated incidents. OSHA, however, rejects the two-MSD trigger, because in small businesses with five or fewer employers, it would take "30 years before 50% of such establishments would have controlled any jobs." This comment betrays a falsely static conception of the marketplace. Few five-employee firms last 30 years, and few 30-year-old firms of any size have their original workforce. Therefore, the notion that a two-MSD trigger would exclude millions of people from ergonomic protections for decades at a stretch is not credible.

OSHA similarly rejected a trigger of two MSDs in the same job category of the same establishment within 1 year. "If this trigger were adopted," OSHA warned, "it would be 95 years before 50% of all typical uncontrolled jobs . . . were controlled, and 325 years before 90% of such jobs were controlled." This statement borders on the frivolous. It implies that business practices are frozen in time—as if OSHA could foresee and prevent workplace injuries 95 or even 325 years into the future! Nobody can imagine the workplace of 2095, much less that of 2325. In all likelihood, the issues addressed by modern ergonomists will be about as relevant to the workplace of 2095 as steam-engine and horse-and-buggy hazards are to managers and engineers today.

An even more fundamental problem was OSHA's failure to consider any non-regulatory alternatives. Given the recent vintage of ergonomics as a discipline, the fact that more than 8 out of 10 large firms have ergonomics programs is nothing short of remarkable.

OSHA's data point to widespread market success, not significant market failure. Therefore, instead of regulatory action, OSHA should develop legislative proposals to encourage voluntary business investment in ergonomic equipment and management practices. The chief barrier to such investment, especially by small businesses, is the cost of capital. The Federal Government can lower capital costs by accelerating depreciation schedules or, more potently, by allowing businesses to write off ("expense") the full cost of equipment purchases and engineering investments in the year they are made. OSHA should withdraw the ergonomics rule and work with business and labor to develop worker safety-enhancing tax cuts.

From December 3, 1999 through March 21, 2000, the subcommittee sent four letters to DOL which questioned possible augmentation of DOL full-time equivalents [FTEs] by use of contractors. These letters posed many questions, such as "under what specific legal authority is the Department using contractors 'to perform specific tasks during peak workloads' and 'when it would not be practical or cost effective to hire federal staff?'"

On May 10, 2000, the subcommittee sent a letter to DOL focusing specifically on its draft, proposed and pending final ergonomics rule. The subcommittee requested the name of each contractor, the date of the award, the amount of the contract award, whether the contract was awarded competitively or not, the statement of work specified in the contract, and the deliverables specified in the contract. Also on May 10th, the subcommittee wrote the Eastern Research Group [ERG], DOL's major ergonomics contractor. The subcommittee requested copies of all contracts, and all documents and deliverables prepared under these contracts.

On May 31st, Subcommittee Chairman David McIntosh wrote DOJ about both DOL major rules, which appeared to be defective. McIntosh asked DOJ to provide a legal opinion of the propriety of DOL's use of contractors for what may be inherently governmental functions related to the ergonomics rulemaking, DOL's use of paid witnesses in its rulemaking hearings, and DOL's use of non-competitive contracting for noncommercial functions related to its rulemakings.

On June 1st, the subcommittee requested 28 additional contractors, including 25 of the 28 individuals paid to testify as expert witnesses for this rulemaking, to produce documents relating to their work on the ergonomics rulemaking.

On July 5th and August 10th, the subcommittee sent detailed findings to DOL on its improper use of contractors in its ergonomics rulemaking. The July 5th letter questioned possible augmentation of DOL FTEs by use of contractors, DOL's improper use of contractors for inherently governmental functions in the rulemaking process, and DOL's use of contractors to unfairly bias its ergonomics rulemaking.

In response to the subcommittee's May 10th request for information about each DOL contract for its ergonomics rulemaking, on May 26th, DOL provided partial information about 70 contracts awarded for \$1.8 million from 1996 to the present, including 28 contracts (at \$10,000 apiece) for individuals to testify as "expert" witnesses in this rulemaking. ERG, which DOL identified as only

receiving \$0.6 million in awards from 1996 to the present, separately revealed to the subcommittee that it received \$2.5 million in funding for its work on this rulemaking from 1992 to the present. Therefore, the total known to the subcommittee by July 5th was at least \$3.7 million in contract awards for this rulemaking, which is a huge cost to the American public.

At least 5 of the 28 individuals retained by DOL to serve as experts submitted invoices for less than their \$10,000 contracts. One of the 28 experts, who did not testify at the public hearings, was told, in a March 2000 e-mail from DOL to him, that DOL felt that he should invoice DOL for \$5,000 even though DOL did not need his oral testimony. Another of the 28 experts expressed, in an April 2000 e-mail to DOL, thanks to DOL for inviting him to revisit his bill to receive \$18,000 instead of \$10,000.

The Occupational Safety and Health [OSH] Act of 1970 authorizes DOL to issue occupational safety or health standards and to follow procedures, including requested public hearings, more stringent than those established in the APA (29 U.S.C. § 655(b)(3)). Federal law also authorizes DOL to employ experts and consultants but does not specifically state that they may be used in rulemaking proceedings (29 U.S.C. § 656(c)). DOL's rules of procedure for promulgating occupational safety or health standards are specified in 29 CFR Part 1911. They specify that "*fairness* may require an opportunity for cross-examination on crucial issues" during DOL's rulemaking hearings (§ 1911.15(a)(3)) and that the presiding officer at the hearing shall conduct "a *fair* and full hearing" (§ 1911.16) (emphases added).

A 1980 Court of Appeals 2-1 decision (*United Steelworkers of America v. Marshall*, 647 F.2d 1189, D.C. Cir. 1980) found nothing illegal in the Occupational Safety and Health Administration's [OSHA's] procedural conduct for its rulemaking establishing a new lead standard and did not object to DOL's use of expert consultants, including for testifying in the rulemaking hearing, reviewing the record, and preparing parts of the preamble. A dissent stated that "fundamental requirements of fairness and due process in administrative law compel that these outside consultants to whom the agency delegates its obligation to evaluate the evidence must be unbiased and neutral in their evaluation of the record. Just as the actual decisionmaker is to be unbiased, so must those to whom such duty is delegated." No other court ruling examined so extensively DOL's use of contractors in an OSHA rulemaking. To ensure fairness and absence of any bias, Subcommittee Chairman McIntosh stated his belief that now, 20 years later, it is time for the court to reexamine this decision.

The subcommittee's March 21st letter to DOL Solicitor Solano responded to his March 16th reply about DOL's use of contractors. The subcommittee stated,

Your answers to Questions 12a and 12b about the Department's use of contractors are quite troubling. Office of Management and Budget Circular A-76, "Performance of Commercial Activities," and Office of Federal Procurement Policy Letter 92-1, "Inherently Governmental Functions," are quite specific about the restrictive use of contractors only for commercial activities or for "special knowledge

and skills not available in the Government.” As a consequence, under what specific legal authority is the Department using contractors “to perform specific tasks during peak workloads” and “when it would not be practical or cost effective to hire federal staff”?

DOL tried to defend its use of contractors in an April 20th Solano reply. However, the subcommittee remained concerned about: DOL’s improperly augmenting its staffing ceiling by use of contractors; DOL’s improperly using contractors for inherently governmental functions, which should be conducted by DOL employees; turning its truth-seeking, scientific rulemaking proceeding into an adversarial proceeding; and, use of contractors with a vested interest in the outcome of the rulemaking.

The subcommittee expressed its disappointment in DOL’s interference with its investigation of DOL’s use of contractors for the ergonomics rulemaking. On May 10th, the subcommittee requested ERG to produce documents relating to its work on the ergonomics rulemaking. The subcommittee asked for production by May 24th. At ERG’s request, this deadline was extended until June 7th. On June 7th, ERG’s attorney stated that production was completed but delivery would not be possible because DOL refused to waive its special contract requirement entitled, “Treatment of Confidential Information.” This DOL contract provision specified that ERG could “not disclose the information to anyone without prior written approval [by DOL].” DOL advised ERG that this nondisclosure provision applied to Congress.

However, since Congress is part of the Federal Government and is not specifically named in DOL’s contract provision, the subcommittee asserted that DOL’s interpretation, which is inconsistent with case law allowing disclosure to Congress, was wrong. Nonetheless, ERG’s attorney did not want his client to face a contractual disagreement with DOL and, thus, promised prompt delivery if the committee issued a subpoena. On June 13th, with a June 12th House subpoena in hand but not yet served, the subcommittee finally reached agreement with DOL on the subcommittee’s use of the information in these documents, including the ability for other Members of Congress, but not their staffs, to review the documents. On June 14th, DOL waived its confidentiality clause for ERG. ERG finally produced its documents on June 16th, i.e., 9 days after production was completed.

On June 1st, the subcommittee requested 28 additional contractors, including 25 of the 28 individuals paid to testify as expert witnesses for this rulemaking, to produce documents relating to their work on the ergonomics rulemaking. The subcommittee asked for production by June 23rd. Apparently, prior to the June 13th agreement, DOL contacted the contractors and directed them *not* to produce the requested information to Congress. A June 2000 letter from one of them to DOL stated that he would send the documents to Congress unless he hears otherwise from DOL. In fact, as of July 5th, the subcommittee still did not have documents from seven experts, although five of them already provided the requested information to DOL.

On June 21st, Senator Mike Enzi, chairman of the Senate Health, Education, Labor, and Pensions Subcommittee on Employ-

ment, Safety and Training, spent an hour in the subcommittee's office reviewing the initial set of contractor documents because DOL would not allow subcommittee staff to bring them to the Senator's office. On June 22nd, Senator Enzi spoke extensively in the U.S. Senate about his concerns with DOL's improper use of contractors for this rulemaking (146 CR S5592-4, S5634-5 & S5644).

The subcommittee found from its investigation that DOL, in fact, was augmenting its FTEs by use of contractors. One of the contractors identified by DOL apparently worked for DOL under successive contracts and, 21 days after the end of his last contract, became a DOL employee. His contract tasks included a variety of "project support tasks" for the ergonomics rulemaking, which did not require any special knowledge or expertise. Other contractors, e.g., ERG and ICF Information Technology, Inc. [ICF], likewise performed a variety of tasks for the ergonomics rulemaking which did not require any special knowledge or expertise, such as reviewing public comments, developing draft summaries of the comments, developing basic spreadsheets for summarizing the comments and testimony, and drafting potential responses to the comments.

The subcommittee also found from its investigation that DOL, in fact, had improperly crossed the line by using contractors for inherently governmental functions, such as regulatory policy development. For example, ERG's contract task orders revealed that DOL "will need assistance with early policy development" and with "policy development strategy." ERG tasks were comprehensive, including selecting supportive expert witnesses for DOL's hearings, assembling them into panels, assisting them in developing their written expert testimony, reviewing and analyzing comments by unpaid public witnesses, et cetera. ICF also analyzed public comments and testimony and prepared summaries of them for DOL use. It was unclear if at least one DOL employee read every public comment letter or if DOL, in its policy setting, instead relied on contractors' summaries of the points made by the public witnesses.

Especially troubling to the subcommittee was DOL's unfairly turning its ergonomics rulemaking into an adversarial proceeding instead of a truth-seeking, scientific proceeding. In fact, the record shows that DOL did not disclose in its Federal Register notices of the hearings or orally at the start of the public hearings themselves that DOL's expert witnesses were paid (\$10,000 each) to testify. The subcommittee stated its belief that the American people deserve better from their government. The contractor documents reveal that DOL:

- prepared an outline for its 28 expert individuals to use in preparation of their testimony;
- provided extensive substantive edits on their draft expert testimony, including specific points that DOL's attorneys wanted at least 3 of the 28 experts to make;
- allowed the 28 experts to read each other's draft expert testimony before finalizing their testimony to ensure consistency (or, as DOL stated in a March 2000 e-mail, for the doctors all together on the phone to just iron a few things out);
- rehearsed each of its expert witnesses in practice sessions in Washington, DC at considerable expense to the taxpayers, including mock cross examinations;



- required the 28 experts to review pre-delivery public “opposition” testimony and provide questions for DOL to use in cross examination of public “opposition” witnesses (interestingly, DOL, in a March 2000 e-mail, surmised that UPS canceled all of its witnesses because UPS was concerned that DOL’s expert witnesses would be helping DOL prepare to cross examine UPS’s witnesses); and

- required them to rebut points made and contradict the logic used by specifically-named public “opposition” witnesses during the hearing and challenge the credibility of their credentials for the post-hearing record (e.g., 1 of the 28 experts submitted a detailed May 2000 rebuttal for the Chamber of Commerce’s appearance). A May 2000 e-mail from DOL to 1 of the 28 experts stated that he would be receiving an e-mail through her from the Solicitor’s Office as to what is expected from him regarding rebuttal and post hearing comments and that he would be asked for rebuttal data on six specifically named witnesses (five individuals and one organizational witness).

Last, the subcommittee also stated concerns that some of DOL’s paid experts may have a vested interest in the outcome of the ergonomics rulemaking due to the nature of their businesses, e.g., a doctor working for Eastern Rehabilitation Network, which provides professional services in 16 Connecticut locations, and the executive vice president of the Ergonomic Technologies Corp. [ETC]. ETC, a privately held consulting company founded in 1993, provides ergonomic engineering consulting services to industry.

The subcommittee concluded that DOL’s ergonomics rulemaking is fatally flawed. A June 23, 2000 Washington Legal Foundation [WLF] paper, entitled, “OSHA’s Ergonomics Standard is Flawed Beyond Repair,” analyzed DOL’s flawed procedures, the flawed substance, the price of DOL’s flexibility approach, DOL’s not useful “Grandfather Clause,” and DOL’s not so “Quick Fix” option. WLF’s paper concluded that DOL’s proposal is a “sham,” which is “designed to create the appearance of objective analysis while avoiding objectivity altogether” (p. 4). Also, the subcommittee encouraged DOL to change the way it is apparently conducting its OSHA rulemakings to ensure fairness and due process for the public in all future DOL rulemakings.

The August 10th letter also questioned possible augmentation of DOL FTEs by use of contractors, DOL’s improper use of contractors for inherently governmental functions in the rulemaking process, and DOL’s use of contractors to unfairly bias its ergonomics rulemaking. It posed 10 sets of questions to DOL.

The first set concerned DOL’s incompletely-provided contract expenses. For example, it stated, “Since the National Archives and Records Administration (NARA), in its ‘Baseline Services’ document, currently commits to produce all Clinton Administration agency records within 24 hours, on what date(s) did DOL request archived information on pre-1996 awards and on what date(s) did DOL receive archived information?”

The second set concerned augmenting FTEs. It requested DOL to provide information in chart form about DOL’s actual (vs authorized) FTE staffing by year for all of OSHA’s rulemaking activities from 1992 to present and separately for its ergonomics rulemaking,

and DOL's contract expenses by year for all of OSHA's rulemaking activities from 1992 to present and separately for its ergonomics rulemaking.

The third set concerned specific information about a contractor who became a DOL employee, including DOL's advice to him in how to respond to the subcommittee's questions. The fourth set concerned inherently governmental functions, including where DOL draws the line between allowable and unallowable contracting activities for regulatory policy development and what DOL considers unallowable activities for regulatory policy development.

The fifth set concerned targeted outreach. Documents (e.g., a December 1999 "Dear Stakeholder" letter from OSHA Administrator Jeffress) submitted by DOL's contracted "expert" witnesses reflected DOL's attempt to influence the record in support of OSHA's November 23rd proposed ergonomics program standard. The subcommittee requested DOL to provide information in chart form about each person or entity sent a Dear Stakeholder letter, with an indication if each submitted a written comment and/or testified orally and if the comment was in support or opposed to the standard.

The sixth set concerned DOL editing, since documents submitted by DOL's contracted "expert" witnesses reflected DOL's editing of their draft testimony. The seventh set concerned DOL coaching, since documents submitted by DOL's contracted "expert" witnesses reflected DOL's rehearsal (practice) sessions.

The eighth set concerned DOL advice to contractors on the subcommittee's requests to them. DOL staff had informed subcommittee staff that DOL had used a "script" for calls to the "expert" witnesses, asking for their delivery of subcommittee requested documents to DOL instead of to the subcommittee. Also, documents (e.g., a June 2000 DOL Solicitor's Office letter to the "expert" witnesses, which was after the subcommittee's June 23rd deadline for replies) submitted by DOL's contractors reflected DOL advice on how to respond to the subcommittee's requests. For example, since documents (e.g., a July 2000 e-mail from DOL to the "expert" witnesses) submitted by DOL's contractors reflected DOL's offer to increase their contract awards, the subcommittee asked how much will DOL be paying its contractors to respond to the subcommittee's requests and what procurement rules governed amendments to increase the dollar awards for these \$10,000 apiece contracts.

The ninth question concerned conflict-of-interest. It stated, "Even though Federal contractors are not subject to the strict conflict-of-interest restrictions applicable to Federal employees, what, if any, checks does DOL make to ensure that its contractors have no conflict-of-interest in the outcome of a rulemaking?"

The last set of questions related to Marthe Kent, a key DOL official leading the ergonomics rulemaking effort. In 1994, she was president and CEO of Meridian Research, Inc., a company which DOL identified on July 21, 2000 as receiving a 1993 contract for the ergonomics rulemaking. In 1995, Meridian sold its assets to ERG, a company which received at least \$2.5 million in DOL contract awards for the ergonomics rulemaking. According to a September 4, 1995 Washington Times article, "Three days before beginning at OSHA, Ms. Kent disqualified herself from all matters

involving Meridian or its successor.” The subcommittee asked for a copy of each release or any other document that Ms. Kent signed regarding her employment at DOL.

The subcommittee also asked if Ms. Kent reviewed any ERG bids or proposals before DOL awarded contracts for its ergonomics rulemaking. Last, the subcommittee asked for DOL to provide a copy of all of Ms. Kent’s ergonomics rulemaking documents (including but not limited to e-mails sent and received and memoranda sent and received) relating to Meridian and/or ERG. Since the Federal Acquisition Regulation [FAR] generally requires that contract records be retained 3 years after final payment (48 CFR § 4.703), the subcommittee asked where Meridian’s records are housed and for production of them if they are still in Ms. Kent’s possession. To date, DOL has not yet produced a complete set of documents relating to Ms. Kent, such as her e-mails.

On September 1st and September 14th, DOL provided a partial two-part reply to some of the subcommittee’s August 10th questions. Unfortunately, much of the reply was not responsive to the specific questions asked. In response to the subcommittee’s objections, DOL promised to provide some additional information “as soon as possible.”

Of especial concern to the subcommittee was whether the ergonomics rulemaking was in any way tainted because of ethical issues relating to three DOL employees. During December 1994, the three principals of Meridian Research joined OSHA’s staff. On December 19th, Meridian Research president, Marthe Kent, became a full-time OSHA employee. On December 16th (i.e., before officially becoming a Federal employee), she signed a “Conflict of Interest Disqualification,” disqualifying herself from personal participation in any Meridian Research and ERG matters. The disqualification states, “Specifically, I will not be involved in assigning work to Meridian, Its Successor, or any other contractor, recommending that Meridian, Its Successor, or any other contractor be given additional work . . . or . . . a new contract.” The disqualification appears to be permanent. She is now the principal OSHA official directing the ergonomics rulemaking. After Ms. Kent’s hiring at DOL, ERG received at least \$1.2 million in additional awards from OSHA for this rulemaking.

On December 27th, Meridian Research vice president, William Perry, and secretary/treasurer, Robert Burt, became full-time OSHA employees. During January through March 1995, while Mr. Burt was a full-time Federal employee, he continued to conduct Federal contracting work for Meridian Research and signed documents on Meridian Research letterhead as its new president. In an October 1996 report, the House Education and the Workforce Subcommittee on Oversight and Investigations questioned the propriety of this behavior and reported that GAO “is reviewing several matters relating to the hiring of MRI’s [Meridian Research’s] principals.”

In 1995, Meridian Research sold its assets to ERG. As part of the transfer, counsel for ERG confirmed to the subcommittee that Ms. Kent’s son (Mr. Rosenthal) transferred from Meridian Research to ERG as a professional staff member.

During the subcommittee's investigation, ERG revealed that it received at least \$3.7 million in awards to ERG from OSHA for this rulemaking. (The \$3.7 million total reflects additional information from ERG since the \$2.5 million estimate reported in the subcommittee's July 5, 2000 letter to DOL.) As noted above, Federal procurement rules require contractors to retain records for at least a 3 year period after final payment. The subcommittee asked to see Ms. Kent's records (e-mails sent and received, memoranda sent and received, et cetera) to ensure that she recused herself from all decisions relating to contract awards and additional task orders for ERG. In response to the subcommittee's requests, Ms. Kent did not supply any of records and claimed not to know where Meridian Research's procurement records are currently housed.

Curiously, on July 13, 2000 and August 16th, the subcommittee received anonymous letters. The first stated, "I read your July 5 letter to Alexis Herman about OSHA's violations of contracting procedures. You are on the right track but you need to pursue the conflict of interest route more thoroughly, especially with regard to ERG Corporation and Marthe Kent" and "One thing Marthe Kent got [from the sale of Meridian Research to ERG] was employment for her son—now hired by ERG—so Marthe gives contracts to ERG, who gives work to her son." The second stated, "You are right to look at Marthe Kent's connection to ERG. The three main drafters of the Ergo reg for OSHA are Marthe Kent, Bill Perry, and Bob Burt. All three were officers of Meridian Corp. All three benefited financially from the sale of Meridian to ERG" and "ERG bought the Meridian business with the explicit understanding that they would get more business from OSHA." On September 11th, the subcommittee received an anonymous telephone call from an OSHA employee, requesting the subcommittee to pursue its investigation of the ethical issues surrounding the ergonomics rulemaking.

On September 18th, the subcommittee sent DOL a draft subpoena for document production. On September 19th, DOL agreed to provide documents without a subpoena "before Congress adjourns." To date, DOL has not yet provided the requested documents.

*b. Benefits.*—The subcommittee's investigations revealed fatal flaws in both of DOL's major regulatory proposals, such that it is unlikely that either could withstand a legal challenge.

*c. Hearings.*—None held.

#### 6. *Investigation of Agency Responses to Waiver Requests by the States Under Federal Grant Programs.*

*a. Summary.*—Currently, Federal department and agency processes for reviewing State waiver requests are time consuming and costly, diverting time and dollars away from program delivery of services to those in need. President Reagan's federalism policies recognized the partnership between the Federal Government and State and local governments in the implementation of certain Federal programs. His federalism policies were premised on a recognition of the competence of State and local governments and their readiness to assume more responsibility.

Currently, Federal agencies make awards to State and local governments under almost 600 categorical, block grant, and open-

ended entitlement grant programs. In 1998, these awards totaled \$267.3 billion, which is more than all Federal procurement for goods and services. Although 23 Federal departments and agencies make grant awards, six departments account for 96 percent of all grant award dollars—Health and Human Services [HHS] (58 percent), Transportation [DOT] (11 percent), Housing and Urban Development [HUD] (9 percent), Education (8 percent), Agriculture [USDA] (7 percent), and Labor [DOL] (3 percent). The top 20 programs account for 78 percent of all grant award dollars; the top 27 programs (all programs over \$1 billion each) account for 87 percent. Several of these programs allow waivers of key statutory and/or regulatory requirements, including Medicaid (the largest Federal grant program, accounting for 39 percent of total dollars), welfare (the third largest Federal grant program, now called “Temporary Assistance for Needy Families,” accounting for 6 percent of total dollars), and Food Stamps (the 21st largest Federal grant program; however, the grant award only covers the administrative expenses for State administration of the program; if both the administrative expenses and benefit portions are included, the grant program would rate between the second and third largest grant program in size).

On August 3, 1999, the subcommittee wrote all of the departments and agencies with Federal grant programs where States are eligible recipients to identify their statutory and regulatory waiver processes and to reveal their track records in responding to State waiver requests, including those that are similar to another State’s already approved request. DOT, which is the second largest grantmaking agency, only provided some of the requested information.

Sixteen of the 24 departments and agencies had any statutory waiver provisions; 12 of the 24 had any regulatory waiver provisions. Over the last 3 years, 12 of the 17 agencies with any statutory or regulatory waiver provisions received waiver applications from the States. Five of the 12 agencies—the Departments of Energy, Justice, and Treasury, the Appalachian Regional Commission, and the Corporation for National Service—approved all such requests. Seven agencies—the Departments of USDA, Education, HHS, HUD, DOL, and DOT and the Environmental Protection Agency—denied some waiver requests. Of the 1,801 waiver applications government-wide which were reported to the subcommittee, only 5 similar applications (or less than one-third of 1 percent) were denied.

The bottom line is that 85 percent of all State waiver requests during this period were approved. DOL and USDA had the highest proportion of denials (29 percent and 13 percent, respectively). Curiously, both DOL and USDA denied a higher proportion of requests from Republican Governors (31 percent and 16 percent, respectively) than from Democratic Governors (23 percent and 8 percent, respectively).

Statutory waiver provisions are diverse. For example, some allow waivers relating to program financing, such as both the grantee matching funds and maintenance of effort requirements for State pollution control agencies implementing the Clean Air Act, the maintenance of effort requirement under certain Education pro-

grams, and the grantee matching funds requirements under the Corporation for National Services' Learn and Serve and AmeriCorps programs. Besides program financing, some statutory provisions allow waiver of programmatic provisions. For example, the Social Security Act authorizes the Secretary of HHS to waive compliance with certain program requirements for an experimental, pilot, or demonstration program under Medicaid and the former Aid to Families with Dependent Children [AFDC] welfare program.

*b. Benefits.*—States often take the initiative for major reform efforts. They end up being the experimental “laboratories of democracy” (as Justice Brandeis called them) for the rest of the country. These reform efforts, performed on a small scale, often lead to a nationwide overhaul of outdated systems. In recent years, States have experimented successfully in reforming welfare and health care systems. It is important for the Federal Government not only to encourage these “social experiments” but also to provide an environment that will foster these types of initiatives. State and local governments often understand the needs of their constituents and the problems they face better than the Federal Government. They are more familiar with the unique problems that must be addressed in implementing a new system.

The subcommittee reviewed how the Federal Government can create an environment that will encourage State and local governments to explore alternative solutions to social problems. It also examined agency processes for review of State requests for waivers of statutory and/or regulatory requirements for Federal grant programs, agency track records in processing such State requests, and ways to streamline agency processes for the States. Streamlining would result in a real reduction in paperwork and costs for the States, freeing up resources for additional delivery of services to the needy.

*c. Hearings.*—A “H.R. 2376, Grant Waivers and Streamlining the Process,” hearing was held jointly with the Government Reform Subcommittee on Government Management, Information, and Technology on September 30, 1999. Witnesses included the executive directors of the National Governors' Association and the National Conference of State Legislatures, USDA, HHS, and DOL.

## *7. Investigation of State Environmental Initiatives.*

*a. Summary.*—Over the past 30 years, environmental protection in the United States has taken a largely top down, command-and-control approach to solving environmental problems. This approach has largely been implemented by pollution type. For example, Congress passed one law to address air, another law to address water, another to address endangered species, another to address toxic waste in the ground, et cetera. Policymakers in Washington, DC, prescribed uniform environmental standards and, in certain cases, the means of attaining those standards for the entire country.

When Congress first began enacting environmental laws, that approach was feasible. In the 1970's, the United States was faced with rivers that were catching fire, raw sewage being discharged directly into our rivers and streams, smokestacks billowing untreated fumes, and toxic waste threatening neighborhoods. Current

environmental problems, however, such as habitat conservation, agricultural runoff, and watershed management, are more complex than those the United States faced in the 1970's, and more dependent on local circumstances and knowledge for their solution. The original top down, command-and-control, one-size-fits-all approach cannot easily solve these problems.

Recognizing the need to tailor local solutions to local circumstances, State environmental agencies increasingly set priorities, partner with EPA and the private sector, streamline permitting procedures, develop new performance measures of environmental quality, and utilize market forces to achieve greater results at lower cost.

At the subcommittee's September 13, 2000 hearing, representatives of several State environmental agencies gave examples of the innovations in their States, Pennsylvania's brownfields cleanup program, Oregon's Green Permits program, Florida's environmental performance indicators program, and Minnesota's shift from medium-specific environmental departments to multi-media departments divided along geographic lines.

*b. Benefits.*—Investigating the successes of various State environmental initiatives should help set the stage to improve both the efficiency and effectiveness of Federal environmental laws.

*c. Hearings.*—"Lessons From the Laboratories of Democracy: Environmental Innovation in the States," hearing was held on September 13, 2000. Witnesses included the National Conference of State Legislatures, Florida Department of Environmental Protection, Minnesota Pollution Control Agency, Oregon Department of Environmental Quality, Pennsylvania Department of Environmental Protection, Reason Public Policy Institute, and Natural Resources Defense Council.

#### *8. Investigation of the Economic Effects of the Proposed Merger of B.F. Goodrich Co. and Coltec Industries.*

*a. Summary.*—The B.F. Goodrich Co. [BFG] and Coltec Industries [Coltec] announced intentions to merge in November 1998. This proposed merger would mean the existence of only one major domestic and two major international suppliers of airplane landing gears. Because of the domestic monopoly this merger would create, the subcommittee began an investigation of this merger, including the Federal Trade Commission's [FTC] review of the proposal. In June 1999, the subcommittee wrote the FTC about its intention to commence an investigation and request all relevant documents. In a second letter, the subcommittee expressed its concerns with the FTC's review of the merger.

The subcommittee brought to light several confidential documents that appeared to detail plans that contradicted BFG's public and private statements to the Federal Government, the press and the public about its post merger intentions. Furthermore, the subcommittee learned that AlliedSignal, Inc., which objected to the merger, offered to purchase a BFG landing gear facility that would have ensured competition in the domestic market. BFG rejected this offer. After the subcommittee's investigation, BFG, Coltec and AlliedSignal, Inc. agreed to terms that would allow more than one domestic supplier of airplane landing gears.

*b. Benefits.*—The existence of competition in the domestic market for airline landing gears is important for: consumers, who benefit from lower equipment cost; the Department of Defense and the Federal Government, which do not have to rely on only one domestic manufacturer; and, the economy.

*c. Hearings.*—“Economic Effects of the Proposed Merger of B.F. Goodrich Company and Coltec Industries, Part I” was held in South Bend, IN. “Economic Effects of the Proposed Merger of B.F. Goodrich Company and Coltec Industries, Part II” was held in Cleveland, OH. Witnesses included representatives from BFG, Coltec, AlliedSignal, and an anti-trust law professor.

*9. Investigation of Reformulated Gasoline Regulations and Their Effect on Midwest Gasoline Prices.*

*a. Summary.*—Gasoline prices in the Chicago-Milwaukee area dramatically escalated during the spring and summer of 2000. For example, in June, gas prices in Chicago surpassed \$2, going as high as \$2.30. According to energy economists, there were several identifiable factors that contributed to the increase in prices. These include the rise in world crude oil prices and low world stocks resulting from OPEC’s production decisions.

Within the United States, interrelated problems associated with the introduction of more stringent, phase II reformulated gasoline [RFG] this year inhibited both domestic production and imports. The UNOCAL patent infringement case further inhibited supply. Disruptions to the logistics system, notably pipelines serving the Midwest, and problems of blending ethanol as opposed to MTBE in making phase II gasoline, contributed to even sharper price increases in the Midwest, than elsewhere.

The hearing included testimony from witnesses regarding the effect of the Environmental Protection Agency’s [EPA’s] recently implemented gasoline standards and from environmental experts on the reasons for the new gasoline standards, particularly in rural counties. The hearing also included testimony from affected small businesses, local governments and consumers.

Of particular concern to many counties in the Midwest is the fact that the new RFG is required to maintain air quality, in particular for ozone. According to hearing witnesses, ozone is produced when volatile organic compounds [VOCs], such as solvents, or gasoline, breakdown in the atmosphere. In the Chicago-Milwaukee non-attainment zone, the majority of VOCs are produced in counties in Chicago and Indiana. Nearby rural counties, although in the non-attainment zone, are relatively insignificant contributors to the overall pollution problem. Nonetheless, rural counties are required by the EPA to sell the reformulated gasoline even though, according to air quality experts, they are not significant contributors of the air quality problem.

*b. Benefits.*—Gasoline price spikes cause immediate economic hardship to businesses, local governments and consumers, particularly those on fixed incomes or budgets. Long term high energy prices can also produce a significant drag on the local, regional or national economy. Understanding the role of Federal regulatory policy in producing these elevated prices enhanced the ability of



policymakers to avoid policies that would result in higher energy prices.

*c. Hearings.*—“Ozone Transport and Reformulated Gasoline: How EPA Regulations Are Raising Gas Prices,” was held in Racine, WI on July 6, 2000. Witnesses included EPA, the Lake Michigan Air Directors Consortium, the Racine County Sheriff’s Department, the Cato Institute, and North Star Shell.

SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS, AND  
INTERNATIONAL RELATIONS

Hon. Christopher Shays, *Chairman*

*1. Cabinet Department and Agency Oversight.*

*a. Summary.*—The National Security, Veterans Affairs, and International Relations Subcommittee, which has oversight jurisdiction over those departments and agencies of government managing defense, international relations and veterans affairs, conducted an oversight investigation examining the most pressing management and programmatic problems facing those departments and agencies in the 106th Congress. The subcommittee also explored the extent to which they are able to comply with the requirements of the Government Performance and Results Act [GPRA]. According to GAO, too often the government’s performance is limited by a failure to manage on the basis of a clear understanding of the results that agencies are to achieve and how performance will be gauged. Over the course of its investigation, the subcommittee reviewed budget data, department and agency reports to Congress, Inspector General [IG] reports and audits, and General Accounting Office [GAO] studies and recommendations including the GAO’s High Risk Series Update and a new series of special GAO reports entitled Performance and Accountability Series: Major Management Challenges and Program Risks. The undertaking culminated in oversight hearings with Under Secretaries of the Department of Defense [DOD], Department of State [DOS], and Department of Veteran Affairs [VA] as well as representatives from IG offices and GAO.

The DOD inquiry focused on the problems and challenges that led the \$267 billion department to be rendered a “high-risk” agency by the GAO—namely systematic management challenges dealing with financial management, information management, weapon systems acquisition and contract management, and program management challenges dealing with infrastructure, inventory management, and personnel. In addition, the subcommittee reviewed the DOD–IG’s 10 most serious management problems facing DOD. The DOD–IG identified similar management problems confronting the Department of Defense including financial and information management issues, inventory and other procurement issues, and quality of life issues including military health care.

The subcommittee’s investigation into the \$43 billion Department of Veterans Affairs began with an examination of the VA’s decentralized health facilities management structure. Both the GAO and the VA–IG identified significant management problems including poor infrastructure utilization, poor monitoring of the effects of

health service delivery changes on patient outcomes, ineffective management of non-health care benefits and inefficient management information systems.

The Department of State is the lead agency responsible for the conduct of American diplomacy. DOS accomplishes this with a budget of \$2.7 billion. The oversight inquiry into the Department focused on the IG's concerns about the immediate need to address physical security vulnerabilities, consolidation of foreign affairs agencies, and inadequately secure information systems and financial management.

*b. Benefits.*—The record developed through the subcommittee's oversight of Department and agency problems and weaknesses provided valuable information regarding how and where the government can take corrective action. The hearings also gave members a valuable overview and insight into how to focus future oversight efforts.

*c. Hearings.*—The subcommittee held oversight hearings with each of the three Cabinet agencies under its jurisdiction. "Waste, Fraud and Abuse at the Defense Department, Veterans Affairs, and Department of State," was held on February 25, 1999. "Vulnerabilities to Waste, Fraud, and Abuse: Views of the Departments of Defense, State, and Veterans Affairs," was held on March 2, 1999.

## 2. *Oversight of the Application of the Prompt Payment Act in the Department of Defense.*

*a. Summary.*—The General Accounting Office [GAO] reported that serious financial management weaknesses continue to plague the Department of Defense [DOD] stewardship of \$1 trillion in assets and \$250 billion in annual spending. Despite ongoing reform efforts and some improvements to financial systems, erroneous, fraudulent and improper payments persist. Though not always asked to do so, contractors return almost \$1 billion in overpayments from DOD every year. The subcommittee examined one aspect of the complex, erratic DOD disbursement process: compliance with the Prompt Payment Act [PPA]. The PPA requires agencies to pay interest to contractors and vendors for any late payments for goods or services. For fiscal year 1998, DOD penalty interest payments were \$36.7 million, and in fiscal year 1999 (March) DOD penalty interest payments were \$ 28.8 million.

*b. Benefits.*—The subcommittee identified a number of potential modifications which might improve DOD's payment processes under the PPA. These included easier implementation of best commercial practices such as the use of electronic payments, elimination of small interest payments, streamlining the allocation of penalty interest payments, clarifying when penalty interest is paid, taking better advantage of vendor and contractor cash discounts, and the inclusion of interim payments and progress payments under the PPA.

*c. Hearings.*—A hearing entitled, "Financial Management: Time to Reform the Prompt Payment Act?," was held on June 16, 1999.

3. *Oversight of Department of Defense Anthrax Vaccination Immunization Program [AVIP].*

a. *Summary.*—The subcommittee investigated the Anthrax Vaccine Immunization Program [AVIP] as a medical program and as a force protection measure, examining the concept, operation and management of the force-wide anthrax vaccine program begun in 1997.

With the assistance of the GAO, the subcommittee studied safety issues raised by the widespread use of a rudimentary vaccine previously administered to a very limited population. The subcommittee learned that data on adverse events and adverse reactions are not being systematically gathered. DOD reliance on a passive surveillance system, the Vaccine Adverse Events Reports System [VAERS], means actual health effects will be under-reported. As a result, the actual health effects of the program will remain difficult to determine.

GAO also studied the AVIP acquisition strategy and the risks attendant to the precarious financial condition of the sole-source vaccine manufacturer. Despite DOD indemnification of the vaccine maker against liability for adverse reactions, including death, and against liability for any failure of the vaccine to confer the desired immunity, the company was found to need substantial, extraordinary financial assistance from DOD in addition to the contract amounts negotiated less than a year before.

In response to investigative requests, the subcommittee received more than 100,000 pages of documents and electronic records from DOD and the Food and Drug Administration [FDA]. Review of those documents disclosed weaknesses in the AVIP recordkeeping system and communication effort. The documents also raised questions as to the efficacy of the vaccine against the most deadly threat—aerosolized mixtures of multiple strains of virulent anthrax spores. The subcommittee also discovered that weaknesses in DOD's medical recordkeeping also resulted in an apparent tolerance for deviations from the FDA-approved inoculation schedule. Although GAO discovered the anthrax vaccine regimen of six shots over 18 months was arrived at arbitrarily, it is the only approved course to protect against anthrax infection. The likely effect of deviations from the schedule is a reduction in the degree of protection provided by the vaccine against the disease.

The investigation also looked at the potential impact of the mandatory vaccination program on unit readiness, retention and morale, specifically in reserve component units. The subcommittee received reports of numerous resignations and transfers from Reserve and Guard units as a result of opposition to the anthrax vaccine program. Active duty personnel are being disciplined, demoted or court martialed. DOD was unable to provide the subcommittee accurate data on the impact of the anthrax program, but claimed those effects to be "negligible."

b. *Benefits.*—The subcommittee investigation into the Anthrax Vaccination Immunization Program prompted the Department to re-examine the sole-source acquisition strategy and to study broader, more secure procurement sources for the current, or a more advanced, vaccine. Service members has an opportunity to express their concerns about the safety, effectiveness and necessity of a

mandatory force protection program. In response to issues raised by the subcommittee, DOD has also begun to design an active surveillance study of adverse events associated with the vaccine, particularly those experienced by women.

*c. Hearings.*—A hearing entitled, “The Impact of the Anthrax Vaccine Program on Reserve and National Guard Units,” occurred on September 29, 1999, with testimony from witnesses from the DOD and armed service members. A hearing entitled, “Anthrax Vaccine Adverse Reaction” occurred on July 21, 1999, with testimony from GAO, FDA, DOD and service members. A hearing entitled, “Department of Defense’s Sole-Source Anthrax Vaccine Procurement,” occurred on June 30, 1999, with testimony received from officials from DOD, GAO and BioPort Corp. A hearing entitled, “DOD’s Mandatory Anthrax Vaccine Immunization Program for Military Personnel,” took place on April 29, 1999, with testimony from officials with GAO, DOD and members of the armed services. A hearing entitled, “The Anthrax Immunization Program,” occurred on March 24, 1999, with testimony received from officials with the DOD, members of the armed forces, and concerned citizens.

#### *4. Oversight of Government-wide Coordination of Programs to Combat Terrorism.*

*a. Summary.*—The subcommittee investigated the overall Federal effort to prevent and combat terrorism in the United States and abroad. The subcommittee examined government-wide spending coordination of anti- and counter-terrorism programs found in more than 40 agencies and departments, including the specific programs and initiatives to train first responders, deploy National Guard rapid response teams, and enhance public health capabilities to deal with weapons of mass destruction [WMD]. The subcommittee also examined the scientific and practical aspects of terrorists carrying out large-scale chemical or biological attacks on U.S. soil.

The subcommittee investigation focused on reports issued by the U.S. General Accounting Office [GAO] entitled, “Combating Terrorism: FBI’s Use of Federal Funds for Counter Terrorism-Related Activities”; “Combating Terrorism: Spending on Governmentwide Programs Requires Better Management and Coordination”; “Combating Terrorism: Federal Agencies’ Efforts to Implement National Policy and Strategy”; “Combating Terrorism: Threat and Risk Assessment Can Help Prioritize and Target Program Investment”; “Combating Terrorism: The Need for Comprehensive Threat and Risk Assessment of Chemical and Biological Attacks”; “Combating Terrorism: Use of National Guard Response Teams is Unclear.”

*b. Benefits.*—The subcommittee inquiry continues to be the only government-wide review of the evolving response to the terrorism threat. The subcommittee inquiry permitted Members and the public to weigh the benefits and pitfalls of the proposed transfer of certain Nunn-Lugar-Domenici act responsibilities from the DOD to the DOJ. Investigations led to a more precise understanding of the role of National Guard Rapid Assessment and Initial Detection [RAID] teams in domestic response scenarios. This investigation also kept administration focus on the need for more sophisticated,

updated threat and risk assessments to guide U.S. programs and policies to prevent and combat terrorist attacks.

*c. Hearings.*—A hearing entitled, “Combating Terrorism: Assessing the Threat,” took place on October 20, 1999, with testimony from GAO, and subject matter experts. A hearing entitled, “Terrorism Preparedness: Medical First Response,” occurred on September 22, 1999, with testimony from Health and Human Services [HHS] and the Center for Disease Control and Prevention [CDC], State and local government officials, and subject matter experts. A hearing entitled, “Combating Terrorism: Role of the National Guard Response Teams,” occurred on June 23, 1999, with testimony from officials from the GAO, DOD National Guard Bureau. A hearing entitled, “Combating Terrorism: Proposed Transfer of the Domestic Preparedness Program,” occurred on May 26, 1999, with testimony from officials with the DOD, DOJ, and the Federal Emergency Management Agency [FEMA]. A hearing entitled, “Government-wide Spending to Combat Terrorism: General Accounting Office Views on the President’s Annual Report,” took place on March 11, 1999, with testimony from the GAO.

5. *Oversight of the Implementation of the Department of Veterans Affairs Hepatitis C Testing and Treatment Initiative.*

*a. Summary.*—The subcommittee investigated implementation of a major new VA health initiative. The Hepatitis C virus [HCV] represents a serious health threat nationwide, but is found at a much higher rate among the veteran population. Recognizing the public health threat Hepatitis C poses to veterans, in January 1999 the Department of Veterans Affairs [VA] announced their intention to undertake a program to respond to this epidemic among veterans. Those efforts included testing and treatment for all veterans diagnosed with the illness. The VA initiative is consistent with recommendations for HCV outreach and treatment made by the Government Reform Committee in the 105th Congress.

Despite the positive response to this VA initiative, the subcommittee was concerned that current resources of the department may be inadequate to meet the demand for HCV screening and treatment. In addition, veterans groups remain concerned the program is not being implemented equitably within or between the 22 Veterans Integrated Service Networks. Veterans groups argue the regional network structure lacks the accountability, in the form of data tracking and reporting, to ensure the promised reach of the HCV program.

*b. Benefits.*—The investigation gave veterans and health groups the opportunity to expand their involvement in the VA’s HCV initiative. The goals and time lines of the VA program were clarified, as were treatment criteria. The need for more refined tracking and accountability systems was documented. The subcommittee explored the potential budget implications of addressing an epidemic of unknown size. VA made commitments HCF programs would not be pursued at the expense of other core VA health care efforts.

*c. Hearings.*—The subcommittee held a hearing entitled, “VA Outreach to Veterans at Risk for Hepatitis C Infection,” on June 9, 1999, and heard testimony from VA, the American Liver Foundation, private researchers and others.

6. *Oversight of the Inter-American Foundation.*

a. *Summary.*—The subcommittee's oversight investigation of the Inter-American Foundation examined its mission, management and performance. The Foundation is an independent and experimental Federal agency that supports social and economic development in Latin America and the Caribbean. It makes grants primarily to private, indigenous organizations that carry out self-help projects benefiting poor people. Following years of inattention, the Inter-American Foundation came under scrutiny after a number of public reports came to light regarding IAF grants to alleged criminals and terrorists, mismanagement and internal agency strife. The subcommittee focused on two issues: (1) the post-cold war mission of the Inter-American Foundation, and (2) how effectively was the Inter-American Foundation addressing its management, accountability, and internal control problems.

b. *Benefits.*—After 10 years without an authorizing or oversight hearing on the Inter-American Foundation, the IAF was subject to long overdue scrutiny. Policymakers got a clearer view of the challenges and choices facing international aid efforts seeking to reach the grass roots level while still attaining sufficient critical program mass to be able to measure effectiveness.

c. *Hearings.*—A hearing entitled, "Oversight of the Inter-American Foundation," was held on October 13, 1999.

7. *Oversight of VA Implementation of the Persian Gulf War Veterans Act of 1998.*

a. *Summary.*—The subcommittee examined efforts by the Department of Veterans Affairs to implement the Persian Gulf War Veterans Act of 1998. Included in the act was the provision that the VA contract with the National Academy of Sciences [NAS] to review any associations between illnesses and wartime exposure that warrant a presumption of service-connection for sick Gulf war veterans. VA claimed a pre-existing agreement with NAS met the spirit, if not the letter, of the 1998 law. The objective of the inquiry was to determine if timeliness under the law would be met by VA.

b. *Benefits.*—As a result of the hearing, Congress, VA and the public better understood the sequence of events and time lines anticipated under the Persian Gulf War Veterans Act of 1998, and the importance of establishing a presumption of service connection for undiagnosed illnesses that can be associated with wartime exposures.

c. *Hearings.*—A hearing was held on April 22, 1999, entitled, "VA Oversight: Implementation of the Persian Gulf War Veterans Act of 1998." The Honorable Robert C. Byrd, Senator from West Virginia, testified along with officials from the Department of Veterans Affairs, and the Institute of Medicine.

8. *Views of Veterans Service Organizations.*

a. *Summary.*—The National Security Subcommittee examined the fiscal year 2000 budget for the Department of Veterans Affairs [VA] as proposed by the President. Discussion with veterans service organizations and other advocacy groups centered on the impact of the proposed budget on existing healthcare and benefits programs. Other issues were raised regarding the impact of VA reor-

ganization on health care quality and the effects of funding shifts under the Veterans Equitable Resource Allocation [VERA] system.

*b. Benefits.*—The investigation provided insight on the likely growth in demand for mental health services and long-term care. Each VSO provided specific recommendations on issues they believed need to be resolved by the VA and the DOD.

*c. Hearings.*—A hearing entitled, “Views of Veterans’ Service Organizations,” occurred on March 18, 1998, with witnesses from the American Legion, Veterans of Foreign Wars, AmVets, Disabled American Veterans, Vietnam Veterans of America and the National Gulf War Resource Center.

#### *9. DOD Administration of Investigational New Drugs on U.S. Service Personnel.*

*a. Summary.*—As a result of a recommendation approved by the committee in the 105th Congress, Congress enacted legislation strengthening protections for U.S. service personnel when requested or ordered to take an experimental drug or vaccine as protection against, or treatment for, chemical or biological weapons exposures. During the Gulf war, investigational products were used with FDA approval, but DOD failed to provide information to those receiving the substances, failed to follow agreed-upon medical protocols and failed to keep required medical records. Under the new law, written medical information must be provided before any drug or vaccine is administered. Only the President may authorize administration of an investigational product to service personnel, and only after certification by DOD of adherence to FDA standards. A new FDA regulation was proposed and the President issued an Executive order reflecting his responsibilities under the act. The subcommittee inquired regarding the new authorization process, the rigor of the proposed review and the adequacy of the medical recordkeeping required under investigational protocols.

*b. Benefits.*—This investigation helped reassure U.S. service personnel they will not be used as “guinea pigs” in future conflicts under the pretext that the threat of biological or chemical warfare justifies the hurried abandonment of longstanding ethical and medical protections for those involved in research.

*c. Hearing.*—A hearing entitled, “Force Protection: Improving Safeguards for the Administration of Investigational New Drugs to Members of the Armed Forces,” occurred on November 9, 1999.

#### *10. Defense Security Service Oversight.*

*a. Summary.*—The General Accounting Office [GAO] reported serious performance and management challenges confronting the Defense Security Service [DSS] resulting in a backlog of personnel security investigations [PSI]. Despite ongoing efforts to reduce this backlog the number of pending PSI cases is growing. Awaiting reinvestigation are thousands who should not, or need not, have access to classified material any longer. Historically one-half of 1 percent of these backlogged individuals would have had their clearances revoked as the result of a timely reinvestigation. At the same time, agencies are losing qualified new hires who cannot wait almost a year for DSS to complete an initial investigation. Defense contractors have found themselves unable to perform billions of

dollars worth of work because employees have not obtained routine clearances. These delays threaten to affect some facilities' ability to effectively perform on defense contracts and meet cost schedules.

*b. Benefits.*—The record identified problems and weaknesses of the Defense Security Service's [DSS] handling of personnel security investigations. Through the subcommittee's oversight, it was determined DSS needed to redouble their efforts to render accurate and timely personnel security investigation [PSI] reports, insure a fully trained investigative staff, determine the size and then reduce and eventually eliminate the reinvestigation backlog and provide for a fully functional case control management system.

*c. Hearings.*—A hearing entitled, "Defense Security Service Oversight," occurred on February 16, 2000 with testimony from witnesses from GAO and DSS, and a hearing entitled, "Oversight of the Defense Security Service: How Big is the Backlog of Personnel Security Investigations?," on September 20, 2000 with testimony from witnesses from GAO, DOD-AS3CI, DDS and DOD-IG.

#### *11. Combating Terrorism: Management of Medical Supplies.*

*a. Summary.*—Congressional concern about the control and adequacy of current medical stockpiles under the management of the Office of Emergency Preparedness [OEP], the Department of Veterans Affairs [VA] and the Marine Corps' Chemical Biological Incident Response Force [CBIRF] resulted in an October 1999 General Accounting Office [GAO] report entitled, "Combating Terrorism: Chemical and Biological Medical Supplies are Poorly Managed." GAO's report focused on the inventory and management of Federal medical stockpiles which would be used to treat civilians should a chemical or biological attack occur. GAO found the OEP, VA, and CBIRF all lacked the internal controls needed to manage these stockpiles, thereby resulting in overages, shortages, expired, missing and improperly recorded supplies.

*b. Benefits.*—The oversight record resulting from the investigation of the management of medical stockpiles provided members of the subcommittee the opportunity to question the VA and OEO how risks are identified that could threaten the use and availability of medical stockpiles. It established a record of the VA's, OEO's and CBIRF's intention to conduct risk assessments and implement a tracking system that retains complete documentation for all stockpiled medical supplies that have been ordered, received, and destroyed.

*c. Hearings.*—A hearing entitled, "Combating Terrorism: Management of Medical Supplies," was held on March 8, 2000 with testimony from witnesses from GAO, the Department of Veterans Affairs [VA], the Office of Emergency Preparedness [OEP], the Center for Disease Control and Prevention [CDC], and the Chemical Biological Incident Response Force [CBIRF].

#### *12. Combating Terrorism: Coordination of Non-Medical R&D Programs.*

*a. Summary.*—The General Accounting Office [GAO] has reported the importance of achieving better coordination of the various individual agency efforts that conduct research and development of nonmedical chemical and biological defense technology.



The subcommittee explored the extent to which the Department of Defense [DOD], the Department of Justice [DOJ], and the Department of Energy [DOE] include a sound threat and risk assessment process to prioritize and focus funding of research and development [R&D] for programs to detect, identify and protect troops and civilians.

*b. Benefits.*—The subcommittee was able to determine there is no clear threat or risk assessment for either prioritizing funding or for research and development for programs to detect, identify and protect troops and civilians. The hearing gave members a valuable overview and insight into the coordination of non-medical R&D programs and how to best focus their energies as an oversight body for future reform and savings.

*c. Hearings.*—A hearing entitled, “Combating Terrorism: Coordination of Non-Medical R&D Programs,” occurred on March 22, 2000 with testimony from witnesses from GAO, DOD’s Defense Threat Reduction Agency [DTRA], DOE’s Chemical and Biological Nonproliferation Program and the FBI.

### *13. Joint Strike Fighter [JSF] Acquisition Reform.*

*a. Summary.*—The Joint Strike Fighter [JSF] is part of the Department of Defense’s tactical aircraft modernization plan, which includes the Air Force F–22 Raptor, and the Navy F/A–18 E/F Super Hornet. The Joint Strike Fighter [JSF] program is unique because the aircraft would incorporate common components and parts for several services and allied governments for their different missions.

Rushing weapon systems from laboratory, through development, and into production has been a persistent problem for the Department of Defense [DOD]. The Joint Strike Fighter acquisition strategy is designed to meet affordability goals by reducing program risk before proceeding into the engineering and manufacturing development [EMD] phase. To that end, the acquisition strategy is designed to ensure a better match between the maturity of key technologies and aircraft requirements. At the subcommittee’s request, the General Accounting Office [GAO] analyzed the Joint Strike Fighter [JSF] acquisition strategy to determine to what extent DOD is staying within the JSF acquisition strategy. GAO recommended the JSF development schedule should be changed to be reduced potential program risks.

*b. Benefits.*—The oversight record resulting from the investigation of the Joint Strike Fighter provided members of the subcommittee the opportunity to question the effectiveness of acquisition reform. The subcommittee learned the JSF will enter the EMD phase without having an acceptable level technology maturation. The JSF program office identified as critical to meeting the program’s cost and requirement objectives. This is not consistent with best commercial practices in which technologies are more fully developed before proceeding into product development.

*c. Hearings.*—A hearing entitled, “Joint Strike Fighter [JSF] Acquisition Reform: Will it Fly?,” occurred May 10, 2000 with testimony from witnesses from GAO, DOD, U.S. Air Force, RAND, 3M Corp., and Massachusetts Institute of Technology.

#### 14. *F-22 Cost Controls.*

*a. Summary.*—The F-22 Raptor is part of the Department of Defense's tactical aircraft modernization plan, which includes the Joint Strike Fighter [JSF], and the Navy F/A-18 E/F Super Hornet. The development of the F-22 Raptor emerged from the considerable research effort the Air Force mounted in the 1980's during the Reagan administration defense buildup. The Air Force decided on the procurement of a new tactical fighter to replace the current F-15 Eagle after a series of tests and after evaluating two competing aircraft designs.

In 1996, due to unanticipated cost growth in the F-22 program, the Assistant Secretary of the Air Force for Acquisition established the Joint Estimating Team [JET] consisting of personnel from the Air Force, Department of Defense, and private industry. The objective of the JET was to estimate the most probable cost of the F-22 program and to identify realistic initiatives that could be implemented to lower both EMD and production costs. Because of escalating program costs over the last 10 years, the quantity of aircraft in the F-22 Raptor program was reduced from 750 to 648 in 1991, then to 438 in late 1993, and then to 339 in 1997, and to 333 aircraft in late 1999.

In December 1999, the subcommittee held an oversight hearing to examine how the Air Force implemented EMD cost control strategies and dealt with schedule overruns in the F-22 Raptor program. The Deputy Undersecretary of the Air Force indicated at least \$15.1 billion in cost reduction initiatives were needed to stay within the cap portion of the production program from the airframe manufacturer and \$2.5 billion from the engine manufacturer.

As a follow-up to that hearing, the subcommittee requested the General Accounting Office [GAO] to study the F-22 Raptor production cost reduction plans [PCRPs] initiated by the Department of Defense and the contractors and determine what progress has been made in implementing and achieving production cost reductions by the projected \$16 billion.

*b. Benefits.*—As a result of the subcommittee's oversight of the F-22 program, members learned about half of the \$21.0 billion in cost reductions identified by the F-22 contractors and program office have not yet been implemented and the Air Force may not be able to achieve the expected results from some of the plans because they are beyond the Air Force's ability to control. The discussions brought out the need for better coordination of production cost estimates between the Air Force program office and the Department of Defense.

*c. Hearings.*—A hearing entitled, "F-22 Cost Controls," occurred on December 7, 1999, and a hearing entitled, "F-22 Cost Controls: Will Production Cost Savings Materialize?," occurred on June 15, 2000 with testimony from witnesses from GAO, DOD and the U.S. Air Force.

#### 15. *Combating Terrorism: Assessing Threats, Risk Management, and Establishing Priorities.*

*a. Summary.*—The Subcommittee on National Security, Veterans Affairs, and International Relations investigated how current threat assessments and associated risk management strategies af-

fect funding priorities to combat terrorism. Over the past 4 years funding to combat terrorism increased 43 percent to \$11.3 billion. The administration argues increased funding is required to enhance ongoing efforts and launch new initiatives to deter and respond to terrorist attacks. The requirement for the increased spending is based on the emerging terrorist threat and how vulnerable the United States is to such an attack. In the fall of 1999, the General Accounting Office [GAO] recommended the Federal Bureau of Investigation sponsor a national-level risk assessment using national intelligence estimates and inputs from the intelligence community and others to help form the basis for and prioritize programs and associated funding to combat terrorism. GAO further explained that terrorist threat assessments are decision support tools. The assessments would form a deliberate, analytical approach resulting in a prioritized list of risks. This list would assist in establishment of funding priorities for counterterrorism programs. The Department of Justice [DOJ] concurred with the recommendation. In an associated effort, the GAO, in April 2000, assessed how other countries allocate their resources to combat terrorism. Officials in other countries, because of limited resources, make funding decisions by assessing the likelihood of terrorist activity actually taking place, not the countries' overall vulnerability.

*b. Benefits.*—The investigation found the administration had not developed a comprehensive or integrated threat assessment incorporating the threat to military installations and forces, the threat to embassies and diplomats, the international terrorist threat, and the domestic terrorist threat. It was concluded all programs to combat terrorism could not be funded equally. Priorities should be established. Listing the threats, determining which are most likely, and establishing priorities will assist in determining which programs are most important and receive priority funding. Such an assessment forms the basis for establishment of overall Federal funding priorities.

*c. Hearings.*—A hearing entitled, "Combating Terrorism: Assessing Threats, Risk Management, and Establishing Priorities," was held on July 26, 2000. The hearing had open and closed sessions. During the closed session witnesses from GAO, the Congressional Research Service [CRS], Federal Bureau of Investigation, Central Intelligence Agency, Defense Intelligence Agency, and Department of State testified. The transcript for the closed session will not be printed. During the open session witnesses from the GAO, CRS, RAND Corp., National Commission on Terrorism, National Defense University, and Monterey Institute of International Studies testified.

*16. Department of Defense Chemical and Biological Defense Program: Management and Oversight.*

*a. Summary.*—The Subcommittee on National Security, Veterans Affairs, and International Relations investigated the Department of Defense [DOD] Chemical and Biological Defense Program [CBDP]. The program's objective is to enable U.S. forces to survive, fight, and win in a chemical or biological contaminated warfare environment. The DOD CBDP provides for development and procurement of systems to enhance the ability of U.S. forces to deter and defend

against chemical and biological [CB] agents during regional contingencies. According to DOD, the probability of U.S. forces encountering CB agents during worldwide conflicts remains high. An effective defense reduces the likelihood of a CB attack, and if an attack occurs, enables U.S. forces to survive, continue operations, and win. In August 1999, the General Accounting Office [GAO] evaluated the CBDP and examined the extent to which DOD applied the Government Performance and Results Act's outcome-oriented principles to the CBDP. The GAO concluded DOD has not incorporated key Results Act principles, as evidenced by the fact the goals of the CBDP are vague and unmeasurable and do not articulate specific desired impacts. Additionally, the GAO stated DOD emphasized activities rather than impacts. The program is not being evaluated according to its impact on the defensive or operational capabilities of U.S. forces, either individually or collectively. Finally, GAO concluded the DOD CBDP incorporated Results Act principles inconsistently. The GAO recommended the Secretary of Defense take actions to develop a performance plan for the CBDP based on the outcome-oriented management principles embodied in the Results Act. GAO also recommended the plan should be agreed to and supported by the relevant organizations and incorporated in DOD's annual report to Congress. The DOD concurred with the GAO report and attempted to describe its CBDP vision, mission, and goals in the March 2000 CBDP Annual Report to Congress.

*b. Benefits.*—Investigation of the CBDP provided members of the subcommittee the opportunity to question to what extent, and when, the DOD CBDP management intends to comply with the Results Act. Additionally, the investigation brought to light problems with the management and oversight structure of the CBDP, specifically; the CBDP management structure is redundant and convoluted.

*c. Hearings.*—A hearing entitled, "Department of Defense Chemical and Biological Defense Program: Management and Oversight," was held on May 24, 2000. The GAO and Deputy Assistant Secretary of Defense for Chemical and Biological Defense provided testimony.

#### *17. Force Protection: Current Individual Protective Equipment.*

*a. Summary.*—The Subcommittee on National Security, Veterans Affairs, and International Relations investigated the acquisition and the maintenance of selected chemical and biological individual protective equipment for U.S. forces. The Defense Logistics Agency [DLA] is the Department of Defense [DOD] logistics combat support agency whose primary role is to acquire supplies and services to military forces worldwide. Chemical/biological protective equipment for military forces is acquired from various vendors by the DLA. In 1999, the General Accounting Office [GAO] identified DOD's management of secondary inventories (spare and repair parts, clothing, medical supplies, and other items to support the operating forces) as a high-risk area because levels of inventory were too high and management systems and procedures were ineffective. A DOD Office of Inspector General [IG] audit (February 1997) at a Defense Depot in Columbus, OH found that the Depot did not include 696,380 chemical protective suits in its inventory records. A

second IG audit (February 2000) found that the February 1997 problems were not corrected. In late February an Associated Press article reported "The Pentagon has alerted U.S. facilities around the world that hundreds of thousands of protective suits meant to shield GIs from gas and germ attack may have holes and other critical defects."

In a related problem, it was found there were failures of protective masks. Chemical protective masks provide respiratory, eye, and face protection against chemical and biological agents. It is critical for the warfighter to be fully protected and have a fully serviceable protective mask in such an environment in order to survive and accomplish the mission. In response to a DOD Hotline allegation the IG completed (June 30, 1994) a quick-reaction, independent, random test of the Army's protective masks. The allegation questioned the serviceability of fielded protective masks. The complete results of the test are classified, however an unclassified portion states numerous failures were found among the masks tested.

One of the reasons for the failures was that soldiers were not adequately following the procedures for performing preventive maintenance checks and services. A more detailed audit was completed on November 2, 1994 and found that soldiers were not adequately performing the checks and services or reporting maintenance problems as required by technical manuals. The report concluded there was a lack of oversight by unit leaders. Leaders were not ensuring soldiers were performing the necessary checks and services or following and adhering to the PMCS instructions in the technical manuals. Based on these lingering concerns about protective masks, DOD's Joint Service Integration Group [JSIG] initiated a 2-year pilot program to assess the condition of fielded protective masks. Testing was conducted on over 19,000 protective masks utilizing visual examinations followed by assessments using special test equipment. Defective severity was classified as minor (dirty mask), major (may cause leakage), and critical (leakage will result). The assessment team found over 1,400 minor defects, 2,500 major defects, and 10,000 critical defects. The report concluded that technical manuals are not being used effectively, training is not adequate, and leaders need to place greater emphasis on nuclear, chemical and biological defense. Several letters were sent to the Office of Secretary of Defense requesting how the recommendations would be implemented. The Deputy Assistant to the Secretary of Defense for Chemical and Biological Defense, Dr. Anna Johnson Winegar, stated in a letter to the IG that the problems identified in the audits were of a logistical and training nature and therefore a service branches' problem. She forwarded the recommendations to the Joint NBC Defense Science Board for further distribution to the service branches.

*b. Benefits.*—The investigation concerning acquisitions revealed significant problems with DLA management of individual protective equipment stocks. First, GAO documented inventory problems for individual protective equipment. The DLA appears to have adequate inventory procedures in place, however inventories are not accurate. If inventories are not accurate, commanders do not know if there are adequate quantities of wartime stocks available. The

investigation on maintenance of individual protective equipment revealed the DOD, especially the service branches, need to place more emphasis on chemical and biological defenses. Based on IG reports, it was determined warfighters are not paying attention to the critical requirement of preventive maintenance for protective masks. Warfighters fight the same way they train. If leaders emphasize the need for maintenance and incorporate it in training, the soldier, sailor, airman, and marine will be better prepared for a chemical/biological attack. A second problem concerning maintenance appears to be the lack of responsiveness by DOD to the IG recommendations. After several requests by the IG to determine corrective action OSD stated the matter was referred to the service branches for corrective action. This may be a service branches related problem; however it was determined this should not absolve the manager of the Chemical and Biological Defense Program from responsibility for oversight of the service branches' corrective action.

*c. Hearings.*—A hearing entitled, “Force Protection: Current Individual Protective Equipment,” occurred on June 21, 2000. Testimony was provided by witnesses from the DOD IG, DLA, Defense Criminal Investigative Service, U.S. Army Soldier and Biological Chemical Command, Deputy Assistant Secretary of Defense (Chemical and Biological Defense), U.S. Army, Navy, Air Force, and Marines.

#### *18. National Missile Defense: Test Failures and Technology Development.*

*a. Summary.*—The Subcommittee on National Security, Veterans Affairs, and International Relations investigated National Missile Defense [NMD] technology development and the impact of test failures and other constraints on deployment of an effective ballistic missile defense system. NMD is a program designed to protect the continental United States, Alaska, and Hawaii against a limited long-range missile attack, such as the small arsenal of a regional power or an accidental or unauthorized launch of a major power. Congress passed H.R. 4 on May 20, 1999. The President signed the legislation in July making it the policy of the United States “to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack—with funding subject to the annual authorization of appropriations and the annual appropriation of funds for National Missile Defense.” Several tests of have taken place. On October 2, 1999, the Ballistic Missile Defense Office [BMDO] reported it had successfully intercepted an intercontinental ballistic missile over the Pacific Ocean. On January 18, 2000, a second test failed to destroy its target as planned. On July 7, 2000, another test failure occurred. Critics say the rigorous test program is causing the test failures. Others conclude the United States should pursue more robust and advanced technologies. However, in order to proceed with a robust and advanced program other constraints need to be eliminated. The ABM Treaty constrains development of an effective NMD program. A recent study by the Heritage Foundation concluded that the ABM Treaty does constrain the research, design, testing, and deployment of ef-

fective ballistic missile defenses for the United States. Because of interpretations of the ABM Treaty, the United States is restricted from fully developing technologies such as early-warning sensors, boost-phase (immediately after launch of a ballistic missile) intercept capability, and space-based defenses. President Clinton provided an assessment of NMD on September 1, 2000. He said he would not make a decision to deploy a NMD system because more testing is required. These test failures identify problems with the technology. There are also constraints on the program.

*b. Benefits.*—The investigation revealed that although there have been technological problems the problems are not insurmountable. Modifications of the testing program need to be made. One of the problems is the compressed scheduling of the test program that does not allow effective evaluation of technology development. DOD should use the same type of testing techniques as commercial firms. This testing technique should be applied to the NMD program; test components individually, test components together in a controlled setting, and test components together in a realistic setting. Additionally, the ABM Treaty constrains deployment of an effective missile defense system. The Treaty is a relic of the cold war in which strategic stability between two nuclear powered adversaries was required. The concept behind the Treaty was, and still is, mutual assured destruction or allowing each side to annihilate the other with no means of defense. There can be no decisive anti-missile protection for the American homeland or for U.S. troops and allies overseas so long as the ABM Treaty continues to be observed. The Treaty is no longer strategically valid in a multipolar world of proliferating weapons of mass destruction with threats coming from quarters other than the former Soviet Union.

*c. Hearing.*—A hearing entitled, “National Missile Defense: Test Failures and Technology Development,” occurred on September 8, 2000. Witnesses from the DOD, Department of State, Council on Foreign Relations, Union of Concerned Scientists, the Heritage Foundation, and National Security Research, Inc. provided testimony.

#### *19. The Biological Weapons Convention: Status and Implications.*

*a. Summary.*—The Biological Weapons Convention [BWC] is an arms control treaty prohibiting the development, production, and stockpiling of biological weapons. Ratified by the United States in 1972 and in effect since 1975, the BWC does not include any enforcement mechanism. Signatory governments decided in November 1996 to begin negotiating how to verify compliance with the agreement and are developing a BWC protocol. Verification is the process of determining whether the behavior of other parties is consistent with an arms control treaty. The verification process consists of three objectives, monitoring, evaluation, and implementation. Monitoring it provides ground truth through on-site inspection that a nation is abiding by an agreement. There has always been a debate over how much verification is enough for arms control treaties. There are two standards, adequate verification and effective verification. Adequate verification is the ability to identify attempted evasion if it occurs on a large enough scale to pose a significant risk and can be done in time to mount a sufficient response. Effec-

tive verification means having the ability to detect a violation, regardless of its significance. The proliferation of biological programs and advances in biotechnology demand stronger international controls on these weapons of mass destruction. On the other hand, the ease of producing biological weapons and the large number of facilities capable of such production preclude an effective verification regime. Additionally, industry has expressed concern about the intrusiveness of the verification regime and the possible loss of proprietary information. The intelligence community is also concerned about on-site inspections.

*b. Benefits.*—Investigation of the status and implications of the BWC protocol highlighted industry and national security concerns about the BWC intrusive inspection regime under development. Additionally, witnesses testified the BWC is not verifiable. The verification regime under development would not stop violations of the agreement.

*c. Hearings.*—A hearing entitled, “The Biological Weapons Convention: Status and Implications,” occurred on September 13, 2000. Witnesses from the DOD, Department of State, Department of Commerce, and General Accounting Office testified.

*20. Hepatitis C: Access, Testing and Treatment in the VA Health Care System.*

*a. Summary.*—On January 27, 1999 the Department of Veterans Affairs [VA] announced its Hepatitis C Virus Initiative. This initiative established “two hepatitis C centers of excellence” in Miami and San Francisco in order to coordinate hepatitis C treatment efforts, promote research and provide education for patients, and health-care providers. Since that time, veterans groups have expressed concern that funding for hepatitis C patients is insufficient, outreach is lacking, and data regarding hepatitis C patients is inadequate. There has also been concern that the lack of funding for hepatitis C has put a strain on the Veterans Integrated Service Networks [VISNs].

*b. Benefits.*—The subcommittee hearing enabled members to examine and question the status of the Department of Veterans Affairs HCV (Hepatitis C Virus) Initiative, including outreach to veterans, screening, consistency of care, access to care, and treatment outcomes. During the oversight hearing, it became apparent that the Department of Veterans Affairs does not have an effective system in place to accurately track and record hepatitis C costs. The VA could not explain why it had to dip into the National Reserve Fund in order to offset network expenditures on hepatitis C, when the VA had only spent \$39.2 million of the \$190 million that was allocated for hepatitis C. The VA explained that it is in the process of setting up a system to track patients and the costs associated with them, but it is not completed. Since the hearing, the Department of Veterans Affairs has responded to concerns of insufficient funding by establishing a new Complex Care patient class for hepatitis C patients who are on drug therapy for fiscal year 2001. This will provide more money to the Veterans Integrated Service Networks [VISNs] to cover the cost of treating hepatitis C patients.

*c. Hearings.*—A hearing entitled, “Hepatitis C: Access, Testing and Treatment in the VA Health Care System,” occurred on July



12, 2000 with testimony from Miss America, Veterans Aimed Towards Awareness, Inc., Vietnam veterans, the Department of Veterans Affairs, and staff physicians from VA medical centers. The hearing record is in preparation for printing.

21. *VA Health Care in the New Millennium.*

*a. Summary.*—In April 1997, the VA established a new system to allocate funds called the Veterans Equitable Resource Allocation [VERA]. VERA attempts to create a more effective and efficient system in which veterans will be able to receive equal treatment no matter where they live, and a system in which facilities experiencing an increase in patient workload will have sufficient resources to cover all care. Efficiency is achieved by eliminating duplications (combining medical facilities) and by moving from expensive inpatient care to less expensive outpatient care. VERA distributes funds to the 22 Veterans Integrated Service Networks [VISNs] which in turn distribute funds to each individual VA health care facility. VERA bases network funding on the number of veterans who use the VA health care system (workload) and three national capitation rates, rather than historic funding patterns. VISN 1 is the VA New England Health care System [VA NEHS].

*b. Benefits.*—The subcommittee was able to examine the impact the VERA system had on the VA New England Health care System [VA NEHS]. The move from inpatient to outpatient services has increased the number of veterans served. Since access to facilities has improved, and networks have an incentive to seek out patients, veterans are more likely to take part in the VA health care system. VA NEHS hopes to increase the number of veterans served by 5 percent and decrease the price of treatment by 5 percent by fiscal year 2001. Since VERA allots funds based on workload, VA NEHS plans to increase workload through outreach. Plans also include consolidating Boston and West Roxbury facilities in order to save money and eliminate duplications.

*c. Hearings.*—A hearing entitled, “VA Health Care in the New Millennium,” occurred on April 10, 2000 with testimony from witnesses from the Department of Veterans Affairs, the Director of VISN 1 and local veterans services directors from Massachusetts. The hearing record is in preparation for printing.

22. *Oversight of the American Battle Monuments Commission and World War II Memorial.*

*a. Summary.*—The subcommittee’s oversight investigation of the American Battle Monuments Commission [ABMC] and World War II Memorial examined its mission, management and performance. The Commission is a small independent agency established by Congress in 1923 to honor the accomplishments of the American Armed Forces and commemorate their sacrifices. The ABMC maintains 24 American cemeteries overseas and 27 monuments and memorials, most of which are located abroad. The ABMC has also been tasked with the erection of the World War II Memorial to be located on the Mall in Washington, DC. The subcommittee focused its attention on two questions: (1) how is the ABMC measuring its performance and meeting its mission?; and (2) what is the status of the World War II Memorial?

*b. Benefits.*—After 6 years without an oversight hearing on the Inter-American Foundation, the subcommittee conducted its proper oversight role over the agency. The agency demonstrated its commitment to be a model government agency, working effectively to meet the five goals it established under the Government Performance and Results Act. The subcommittee was also able to establish that the ABMC would meet its fundraising goals to build the World War II Memorial.

*c. Hearings.*—A hearing entitled, “Oversight of the American Battle Monuments Commission and World War II Memorial,” was held on June 6, 2000.

*23. Oversight of the State Department’s Compliance with the Results Act and Efforts to Improve Security.*

*a. Summary.*—The subcommittee’s oversight investigation of the State Department focused on two issues, the Department’s compliance with the Government Performance and Results Act (Results Act) and the Department’s continuing problem with security issues. The Department continued to struggle with the requirements of the Results Act. While the Department showed some improvement in refining its goals and measurement systems, it continues to view the Results Act as a seemingly fruitless endeavor in an unpredictable environment.

In regards to security matters, in 1998 two Embassies in Africa were blown up in terrorist attacks, and in 1999 and 2000 Department suffered a number of security breaches, prompting Secretary Albright to comment that any Department employee who was not following security protocols was a failure, no matter the quality of their other work. Unfortunately, while the Department has made progress in improving the physical security of property and has finally instituted new intelligence security measures and punishments, the Department has made a little progress in changing the culture of Department employees, giving the Secretary’s comments a hollow ring.

*b. Benefits.*—Following the 1998 terrorist bombings in Africa, several security breaches, and structural and organizational changes, the Department has found itself flailing to adapt itself to new challenges. The investigation was able to establish that the Department is continuing to make progress on both its compliance with the Results Act and its efforts to improve security. However, our investigation also demonstrated a difficulty in getting Department employees, especially management and senior-level staff, to embrace these necessary changes.

*c. Hearings.*—A hearing entitled, “Oversight of the State Department: Is Management Getting Results,” was held on July 19, 2000.

*24. Gulf War Veterans’ Illnesses.*

*a. Summary.*—More than 125,000 veterans of the gulf war have complained of illnesses since the war’s end in 1991. Many believe they are suffering chronic disabling conditions as a result of war-time exposures to 1 or more of 33 toxic agents known to be present in the gulf war theater of operations. These potential exposures include chemical and biological warfare agents as well as pesticides, insect repellants, leaded diesel fuel, depleted uranium, oil well

fires, infectious agents, the experimental drug pyridostigmine bromide [PB], and multiple vaccines including anthrax. Gulf war veterans are concerned about inappropriate medical treatment or denial of treatment, inaccurate diagnoses, missing or inadequate personal medical records, claims and compensation issues, difficulty of establishing service-connection, and lack of valid and timely research conclusions about the causes of their illnesses.

*b. Benefits.*—The subcommittee hearings enabled members to evaluate the status of the Federal Government's research program into gulf veterans' illnesses. The Department of Veterans Affairs [VA] signed a contract with the National Academy of Sciences' [NAS] Institute of Medicine [IOM] to "review the potential exposures of military members who served in the gulf war and summarize the biological plausibility that those risk factors, or synergistic effects of combinations of those risk factors, are associated with illnesses suffered by gulf war veterans." The IOM examined published, peer reviewed research in order to find, "any evidence of a link between long-term health effects and exposure to sarin, pyridostigmine bromide [PB], depleted uranium, and the vaccines to prevent anthrax and botulism." The study found that most of the toxic agents fell into the category of inadequate/insufficient evidence to determine whether an association does or does not exist. Sarin was the only agent that the NAS was able to categorize as having sufficient evidence of a casual relationship. The fact that the IOM could not determine whether there was an association between an agent's exposure and a subsequent illness, re-enforces the subcommittee's recommendation that the Department of Veterans Affairs act now to help veterans, instead of waiting for scientific certainty.

*c. Hearings.*—A hearing entitled, "Gulf War Veterans Illnesses: The Current Research Agenda," occurred on February 2, 2000. Another hearing entitled, "Gulf War Veterans: Linking Exposure to Illnesses," occurred on September 27, 2000.

#### SUBCOMMITTEE ON THE POSTAL SERVICE

Hon. John M. McHugh, Chairman

*1. General Oversight of the U.S. Postal Service: The Inspector General; the General Accounting Office; the Postmaster General, and Chief Executive Officer.*

*a. Summary.*—The Inspector General and the General Accounting Office are America's postal watchdogs and report to the subcommittee on a broad range of postal operations. The independent Office of Inspector General [OIG] has been in existence for 3 years. Congress recognized that an independent and objective perspective was needed to monitor the activities and operations of the Postal Service. The first year the OIG established a separate mission from the Inspection Service, developed a strategic plan, crafted a budget and drew up initial office plans. The next year it identified Postal operations, hired personnel and initiated audits and investigations. In the 3rd year the OIG reviewed key Postal Service programs, initiatives and activities. The OIG has issued more than 100 reports, saving the Postal Service more than \$1.1 billion and has initiated

investigative projects to target fraud and corruption. Additionally, it has more than 190 ongoing investigations that have resulted in 5 arrests, 7 indictments, 5 convictions, and \$2 million in civil case recoveries and more than \$100,000 in fines and restitution. The OIG has provided recommendations to improve Postal Service operation in five critical areas: performance, technology, financial management, labor relations, Inspection Service oversight, and other areas.

The Office of the Inspector General and the U.S. Postal Service Inspection Service submit unified reports semi-annually to Congress. This reporting provides stakeholders a complete accounting of the Postal Service's major programs and activities and their joint efforts to deter and detect mismanagement, waste, fraud, and abuse. During this reporting period, the Inspection Service issued 225 other audits and 121 expenditure, financial and revenue investigative reports, and the OIG issued 22 audit reports, 81 management advisory reports and other products, and closed 36 investigations.

Among these reports, the examples of work include Corporate Call Management Program where the OIG identified potential cost avoidance of nearly \$1 billion as a result of technological changes. The OIG determined that the USPS could save more than \$100 million through better contract administration and oversight of emergency trip expenditures on highway routes. It was further determined that rail detention costs could be saved by nearly \$50 million by ensuring that trailers are not used by facilities management. The OIG determined that a telecommunications contractor had subcontractors who billed the USPS for services it did not render or provided incomplete and defective work; so far the Postal Service was able to recover \$2 million from the subcontractors. The Inspector General reported that as compared to other Federal agencies, the Postal Service rarely suspends or debars contractors. The Postal Service is now establishing a task force to review and improve its suspension and debarment procedures.

Other reviews by the OIG found that the Atlanta Olympic Facility Improvement Plan did not receive approval and oversight at an appropriate level, which contributed to an increased cost of at least \$9 million over projections. The Priority Mail Processing Center Network was found to cost the Postal Service \$101 million, or 23 percent more, to process through this contract rather than in-house. A considerable amount of the OIG resources were utilized to review Postal Services' Y2K readiness; nine reports were issued in 18 months on this issue. The Postal Service accepted the OIG recommendations that ultimately helped to improve the quality of the systems. At the time of the testimony, the OIG had four more ongoing projects on Postal Service Y2K readiness and their own vendor certification. The IG reported her office would be monitoring the newly announced Postal Service high-level Internet strategy.

Additional areas of review by the OIG and the Inspection Service are: improvement of registered priority and first-class mail service; recommendations to improve computer security, ensuring that the Postal Service's electronic commerce products and service remain secure; review of the Dinero Seguro money transfer program and the subsequent discovery of the money laundering scheme; mon-

itoring of the Postal Service compliance with the Bank Secrecy Act; audits to review the adequacy of internal controls; and investigation of a major printer of catalogs and magazines for underreporting charges due to the USPS which led to a \$22 million settlement. The OIG has focused on issues related to labor management and issues related to violence in the workplace, investigations of 62 robberies and the arrest of 14 Postal Service employees for narcotics violations.

The IG, Karla Corcoran, reported that labor management is one of the most difficult areas to address. The OIG has received more than 2,500 individual labor management complaints since 1996. The Postal Service also identified labor management as being an important challenge in achieving its goals in the next century. It has, therefore, put in place various initiatives focused on reducing workplace conflicts. The Postal Service estimated that it has spent at least \$216 million on grievances in fiscal year 1997. The IG testified that the Postal Service must give labor management issues more visibility if it is to address these challenges. Because of the sensitivity of labor-management issues and the sheer volume of complaints, the Inspector General has focused on systemic issues and conducted Postal-wide reviews designed to identify and nip potential problems.

Other investigations and reviews include the administrative improvement of the Postal Service's ethics program, investigations of senior-level Postal Service executives, monitoring of the Government Performance and Results Act, physical security, narcotics trafficking, fraud against businesses, consumers, and the government, child exploitation, mail bombs and prohibited mail.

One of the statutory duties of the OIG is to have oversight on the Postal Inspection Service which employs about 4,500 persons—including 2,100 Postal Inspectors in 185 offices who enforce more than 200 statutes relating to crime against the U.S. mail, Postal Service employees and customers. All complaints received by the OIG against the Inspection Service are investigated. By way of a hotline tip, OIG investigations determined that \$82,000 of the expenditures for the Postal Inspection Service Leadership Conference was extravagant and unnecessary. The OIG also established that a greater level of investigative effort by the Inspection Service was needed to deter the use and sale of illegal drugs on Postal Service premises. Postal Inspectors are required to spend at least 50 percent of their time performing duties of law enforcement officers. The OIG found that 250 Postal Inspectors who performed audits did not meet the law enforcement component of their jobs. Because this performance deficiency will be corrected, the OIG may need to hire additional personnel to take over the audit function that the Inspection Service will now not be performing. Additionally, the OIG must hire 200 additional personnel to meet the hiring level prescribed by the Board of Governors.

Several other challenges face the OIG, such as continuing to add value to the Postal Service endeavors by providing meaningful work results in a timely manner, educating the management and employees of the Postal Service on the responsibilities and independence of the OIG role, and its duty to report significant issues to the Board of Governors and to Congress. The OIG is still con-

tinuing to gain expertise on Postal Service issues to become more effective and trying to make the results of their work public without harming the Postal Service's competitive position.

The General Accounting Office testified that the Postal Service, during the past 5 years has made significant improvements in its delivery performance in specific classes and has recorded a positive financial position. In spite of these improvements, the Postal Service expects declines in its core business products in the following years due to growth of electronic communication, electronic commerce and the Internet. In an effort to combat these challenges, the Postal Service must make changes to maximize performance, manage employees, maintain financial viability and adapt to competition. Time is growing short to address these formidable tasks and to remain competitive in a fast paced and changing environment.

In addition, the Postal Service faces increasing competition from private delivery companies and mail alternatives. It projects an annual 0.8 percent decline in first-class-mail volume during fiscal years 1999 to 2008; it is this category of mail service for which the Postal Service is charged to providing universal service at reasonable rates. Most of the diversion to electronic mail would be as a result of consumer movement to alternative bill payment methods and the consolidation of the financial sector resulting in less bills, statements, and payments in the mail stream. It is projected that total mail volume, however, will continue to increase in fiscal years 2000 through 2008 by an average annual rate of 1.7 percent with the growth rate tapering off and the total mail volume peaking in fiscal year 2006. Even though total mail volume increases, the decline in first-class mail would require the Postal Service to make corresponding reduction in the cost of handling that class of mail in order to hold down first-class rates. A reduction in first-class mail volume would reduce its contribution to institutional costs, which may cause higher postal rates. However, the Postmaster General has noted that because of the rapidly changing environment, the Service cannot precisely predict when, or to what extent, competitive pressures may affect revenues. He stated that the Postal Service is cutting costs to preserve affordable rates but service would not be affected. The Service's Integrated Financial Plan for fiscal year 2000 reported that to accomplish net income of \$100 million in fiscal year 2000, it would need to realize a 1-percent reduction in work hours.

A major challenge the USPS faces is to maximize performance because of customers' demands and choices. The Government Performance and Results Act of 1993, in which the Postal Service participated, will provide the framework to fulfill these objectives. The Postal Service will publish its first annual program performance report under this act next year, which will help Congress and other stakeholders assess USPS performance in this and other areas.

The GAO reported that, under an agreement between the USPS, the Postal Rate Commission and the GAO, A.T. Kearney, Inc., studied the Postal Service's data quality, which is vital to decision-making in various mission-critical areas of the Postal Service. The report issued by A.T. Kearney, Inc., included 47 recommendations designed to improve and enhance the integrity and completeness of the Service's data provided for ratemaking and related data sys-

tems. However, the contractor concluded that the quality of the Postal Service data provided for ratemaking has been sufficiently complete and accurate to enable subclass rates to be based on reasonably reliable data, though, in some instances, the best available data were used regardless of their intrinsic levels of error or antiquity. Some of their key recommendations were in reference to: better measuring costs relating to mail processing; updating and improving the quality of special study data used to determine delivery costs; improving the measurement of capital and support costs; and improving the completeness and accuracy of mail revenue, volume, and weight data and the accuracy of the impact of weight on costs. This report was requested by the chairman of the subcommittee to address the concerns brought to his attention by the chairman of the Rate Commission regarding data deficiencies during the 1994 rate filing case.

GAO recognized that the Postal Service is the largest single civilian Federal agency, therefore, Postal management must give human capital issues higher priorities, mainly to enhance the contribution of each employee to the organization, emphasizing that the end result should achieve organizational and individual success. The GAO in the past has reported on labor-management friction in the Postal Service and those barriers still exist in spite of some improvements. These barriers have obstructed the ability of contract agreements to be reached with the employee organization. Though the Postal Service has identified goals and strategies to improve these relations it is evident that success is unlikely without a partnership between employees and management.

In the most recent contract negotiations with unions whose contracts expired in November 1998, contracts between two of three unions produced settlements without the use of arbitration. The third union, the National Association of Letter Carriers, utilized interest arbitration involving a third-party negotiator to settle contract disputes regarding wages and benefits. Recent information indicates that the fourth union, the National Rural Letter Carriers Association, has broken off contract negotiations with the Postal Service.

The General Accounting Office supports the subcommittee in its efforts to oversee and to improve the performance of the Postal Service for the benefit of the users of this mail service. The GAO, by request of the chairman of the subcommittee and guided by its own findings, has issued several reports to the subcommittee on matters that have been of concern and interest to the subcommittee. These issues, discussed in more detail under the topic, Other Current Activities, have been used to monitor the Postal Service's National Change of Address program to improve the quality of mail address to improve the quality of mail, including the efficient delivery of mail. Mail sortation and distribution has been enhanced through automation. Much of this effectiveness is dependent on the Postal Service's ability to provide address management services that assist mailers in accurately addressing their mail. The National Change of Address [NCOA] program began in 1986. It used the change-of address information submitted by postal customers and provided that information to business mailers to update their mailing lists. Improperly addressed mail is costly to the Postal

Service to sort, transport, deliver and dispose. In 1996, the Postal Service spent an estimated \$1.5 billion a year in this endeavor. In 1997, incomplete or inaccurate address elements affected the delivery of more than 63 billion pieces, or about one-third of all mail processed. NCOA data are disseminated to business mailers through a network of 21 private businesses licensed for a fee. Various issues emanate from this framework which the subcommittee is able to monitor because of the information provided by the GAO.

The Postmaster General [PMG], Bill Henderson, testified to a century of postal service. He said that the Postal Service earned record revenues of more than \$62 billion and broke the 200 billion mark in total annual mail volume, achieving its best overall performance ever in first-class mail delivery and an unprecedented 5th straight year of positive net income. The PMG articulated that the American public is the beneficiary of the exceptional performance by the Postal Service. This included the reduction of its negative equity by about \$1 billion (the USPS still carries a \$3.5 billion deficit on its books, accumulated during the years when it operated in the red). Furthermore, the decision to delay the smallest rate increase in postal history by 7 months provided a \$800 million "dividend" to the American people. The next rate increase is not expected until 2001.

The Postal Service is continuing to invest in automation and introduction of robotic handling systems in processing mail. The USPS expects fully automated processing facilities within the next several years that will give postal customers and managers real-time performance information. The Postal Service is hardwiring postal facilities into a national network providing a communications backbone for new information technologies. The Postal Service will make a priority of encouraging employee success in the use of technology.

The Postal Service reported progress in: developing more effective means of resolving workplace differences; improving workplace safety; improving workplace relations; training for all craft and EAS employees; issuing quarterly surveys to understand and measure employee concerns; and, issuing and developing of a fair and inclusive environment. The Postal Service is one of the most diverse work forces in the Nation; therefore, the Postal Service Governors commissioned an independent study on diversity. The Service adopted the 23 diversity initiatives recommended in that study which include: comprehensive communications; appropriate recruitment, retention and promotion practices; an environment which is free of discrimination and sexual harassment and which utilizes a diverse supplier base.

The busiest time for the Postal Service is during the holiday season, which is also the period of the presumed Y2K computer problems. As the Postal Service is a vital part of the Nation's communication's infrastructure, it is critical that the Service not be disrupted by these concerns. The PMG testified that all the mission critical information and mail-processing systems have been tested and independently verified. More than 500 local contingency plans have been completed based on the Postal Service's experience in dealing with natural disasters that disrupt utilities, transportation and other important services.



The PMG recognized that the new century would present crucial challenges to the Postal Service because of growth in electronic communications and communications' choices to postal customers from private delivery carriers and deregulated foreign posts. The Postal Service will increase the value of mail by keeping costs low and quality high but it still anticipates nearly \$17 billion at risk from electronic diversion alone. The USPS will have to generate new growth in order to maintain affordable prices and sustain the existing infrastructure and delivery network that continues to grow at the rate of a million stops each year.

The Postal Service has an Internet presence—the most heavily trafficked government site. It is used to find ZIP Codes, calculate rates, buy stamps, track packages and obtain other postal information. Mr. Henderson said that the Postal Service would continue to endeavor to combine private-sector efficiency with the responsibilities of good government and public service.

*b. Benefits.*—The Office of the Inspector General and the GAO provide Congress with complete and unbiased information regarding Postal Service operations. The OIG is able to initiate its own studies and audits as they see problems as well as when issues are brought to their attention. Several topics of investigation by both the GAO and the OIG were a result of subcommittee inquiry. Though there may be some broad areas of overlap, the organizations are careful to consult with each other so that they do not duplicate the other agencies work due to limitations of time and funding. Generally both entities are privy to the same information which is used in context of the independent judgment of each organization. These evaluations give the subcommittee a more complete study of the issues. The reports of these agencies will result in greater economy, efficiency and integrity of the Postal Service. Also, relative to the OIG, it will provide employees and stakeholders of the Postal Service a venue to report allegations of mismanagement, waste fraud and abuse.

## *2. Y2K Technology Challenge: Will the Postal Service Deliver?*

*a. Summary.*—As the country prepares to avoid the Y2K millennium computer challenges, it is evident that the Postal Service has become the back up delivery system for the government, other major industries, banks and other financial entities, if there is a major malfunction and electronic-mail users are unable to utilize their preferred mode of communication. To meet this challenge, the Postal Service must be totally prepared with its own computers. Additionally, it must make its contingent plans to proceed with its own delivery of mail in a timely manner during its busiest season of the year, and be prepared to take on additional challenges from those entities that are using the Postal Service as their contingency plan.

The Postal Service was late in assessing and updating its computer system and was slow to recognize the scope of the problem; it failed to take early and necessary action to ensure that the computers were Y2K compliant. It is expected that the total cost for fixing the potential Postal Service computer problems would be one-half to three-quarters of \$1 billion.

At the time of the hearing, 311 days before the anticipated year 2000 challenge, 148 of the 156 most critical systems had been repaired and placed into service. However, just 40 of the 148 systems had had their repairs tested and verified.

The following witnesses presented testimony before the three subcommittees: Karla W. Corcoran, Inspector General, U.S. Postal Service; Jack L. Brock, General Accounting Office; and Norman E. Lorentz, U.S. Postal Service.

Ms. Corcoran said that the Office of the Inspector General asked four key questions to evaluate the Y2K problem: why is it critical for the Postal Service to address the Y2K issue; will the Postal Service be able to deliver mail after January 1, 2000; what is the current status of the Postal Service's Y2K effort; and what can the Postal Service do to minimize the Y2K risk?

To these questions, the OIG answered that the Postal Service is heavily dependent on automation for its delivery of 650 million pieces of mail daily and for transmittal of information to its more than 38,000 post offices and facilities and for its payment to its nearly 800,000 employees. The IG reported that while the Postal Service has made progress in finding solutions to the Y2K problems and is currently spending about \$200 million to address the Y2K challenge, it still faces significant challenges in the period that remains. The total estimate for resolving these problems will be about \$607 million. Whether the Postal Service is able to deliver the mail over the Y2K crucial period depends on how much progress the Postal Service will make over the following 10 months. The Postal Service has 661 critical national suppliers, but knows the readiness status of less than 15 percent of these suppliers. The Postal Service has 7,000 field suppliers but knows very little about their Y2K readiness. Postal operation may be disrupted if the suppliers are not Y2K compliant. In the area of data exchange, the Inspector General testified that only 6 percent of its 2,000 exchanges needed to transfer data with other government agencies are ready. At this time the Postal Service was still assessing whether the controls for heating, cooling and fire suppression, and other support systems to maintain its 38,000 facilities were compliant. Additionally, the major automated systems for moving mail were almost compliant but the concern was whether the Postal Service would adequately deploy and test them. Information systems and information technology infrastructure had solutions developed but independent verification to these systems could become a challenge and the Postal Service had not yet made final determination of when readiness testing would be performed. The Postal Service plans to complete their continuity plan by July and test it in August. The Inspector General said there are three things that the Postal Service should do to minimize the Y2K risk: reevaluate its initial assessment to identify only the most critical business operation systems; focus on correcting systems, equipment and processes that are essential to ensure core business practice; and develop, implement and test business continuity plans for core business processes.

With just 10 months remaining this process is challenging. The Inspector General and her office will continue to work with and help the Postal Service identify and minimize the Y2K risk. The

OIG supplied the Postal Service four audit reports regarding Y2K issues.

Mr. Jack Brock, Director of the General Accounting Office's Government-wide and Defense Information System under the Accounting and Information Management Division testified that the Postal Service faces the same sorts of problems as all computer-dependent entities. However, the Postal Service is a huge organization that is, in reality, a public utility that the 130 million household and business customers it serves assume will function without interruption. Information technology is integral to postal operations, including sorting, processing, distributing mail, dealing with customers, accounting for and managing cash flow, communicating with business partners and modernizing Postal facilities. Though the Service has been working hard to address the Y2K problem, it is running behind the Office of Management and Budget's schedule for system renovation. It must still complete equipment correction and testing, ensure the readiness of hundreds of local facilities and verify the readiness of key suppliers. The Postal Service also needs to complete simulation testing and complete the development and testing of its business continuity and contingency plans. Mr. Brock commented that this activity is intensified because the surge in workload due to the holiday rush and requires greater management attention. Because the Postal Service will become the contingency plan for so many entities, disruption of mail delivery would have a serious impact on each sector of American economy.

The GAO compared the Postal Service's efforts to their Year 2000 Assessment Guide, Business Continuity and Contingency Planning Guide, and Testing Guide to obtain a structured comparison. These studies were conducted between September 1998 and February 1999 with the cooperation with the Office of the Inspector General of the Postal Service and in accordance with generally accepted government auditing standards.

The Postal Service has 152 "severe and critical" business systems that must be assessed, corrected, and verified to ensure Y2K compliance. These systems include the Postal Metering System, Money Order System, Mail Distribution Requirements Systems, Air Contracting Support System, Vehicle Tracking and Performance System and critical financial management systems. Many of these systems do not have any "workarounds" and any disruption to their operation would disrupt the postal system. The Postal Service reported to the GAO that by the OMB's target March 31, 1999, deadline, all but 11 of the 152 systems would be compliant; 10 of the 11 remaining systems would be ready by July 1999, and the remaining 1 by mid-November 1999. The 349 "important" business systems owned by the Postal Service have "workarounds" so disruption in their workings would cause an inconvenience but would not be a catastrophe. Of these systems, 215 have been renovated and are not required to undergo independent validation and verification. Various other computer systems, hardware and software, would be corrected on an as needed basis.

Because of the vast scope of the Postal Service, contingency plans and validation of mission-critical systems should have been done in a more timely manner. The delays in correcting the problem were in part attributable to the fact that the USPS was slow to recognize

the severe impact of the problem and lacking in sufficient planning process and involvement. However, when the Postal Service was reorganized in 1998 to strengthen management and to ensure continuity of operations, the program better reflected the year 2000 effort; the new organizational structure represents a matrix approach to managing ongoing efforts. Senior vice presidents have been tasked with taking responsibility within their functional areas and the Chief Operating Officer will be responsible for developing business continuity plans. There are still unknowns regarding the Postal Service's core business processes; the Service does not have a complete inventory and status of its information technology infrastructure, interfaces and field equipment and systems. Without simulation testing and contingency and business plans being in place and tested, there is no assurance on Postal Service readiness. GAO concluded that the Postal Service should ensure that adequate support is being provided throughout the process and that key stakeholders make key decisions. However, because the Postal Service has been behind schedule, the primary challenge is time.

Norman E. Lorentz, senior vice president and chief technology officer of the Postal Service testified that the fact that this hearing is taking place is proof of the relevance of paper-based communications and the dependency of the American people on reliable, reasonably priced postal service. The challenges of the year 2000 have been met by the Postal Service, he said. The Postmaster General and the senior management team meet weekly with the Management Committee for discussion, and have conferred for a number of years to minimize and eliminate potential disruption that could arise from the Y2K computer problem. Because the Postal Service will become the contingency plan for numerous organizations, its readiness efforts must be able to process and deliver normal mail volumes and to absorb additional volumes that could be diverted to it from the electronic message stream. Mr. Lorentz unequivocally stated that the USPS was ready; it has delivered mail under most difficult of situations and natural disasters and it would continue to deliver. He said that the Postal Service started with an inventory of all components and systems that can be affected, then an assessment of the criticality of these systems. After that was the remediation process of the mission-critical systems. Independent verification was done on these systems and processes and they were on schedule. The USPS is focusing on business continuity planning and recovery management to give employees a structured way to report problems and implement plans that have been designed to address them. Simulation testing in an actual operating environment will further confirm the status of the remediation. Critical mail-processing systems were tested in Tampa and Atlanta in August 1998 and the results of the tests are encouraging. However, despite the best efforts to fix all the vulnerable systems and components and testing them to make sure they work, there may still be some Y2K problems. The Postal Service is developing "workarounds" to help minimize potential problems. Throughout the processes of remediation, business continuity planning and recovery management the schedule has been consistent with those taken by other government and private-sector organizations. The Postal Service contracted with 1,300 technical support personnel to

implement and manage many of the critical technical elements of the program. Mr. Lorentz testified that unlike other government agencies, the Postal Service is not receiving any appropriations for this readiness program. Though there can be no guarantee of problem-free performance, the Postal Service is confident of delivering the mail.

*b. Benefits.*—The joint hearing on the Postal Service's Y2K readiness gave the subcommittees and the Postal Service timely insights into this important planning and strategy to insure that the Nation's financial and communication lines will not be interrupted because of computer problems. Because the Postal Service is the contingency plan for so many entities it was of particular necessity to air the efforts and problems facing the Postal Service; the hearing provided important information in this regard.

*c. Hearings.*—A hearing under the auspices of three subcommittees, the Subcommittee on the Postal Service, the Subcommittee on Government Management, Information, and Technology, and the Subcommittee on Technology of the Committee on Science was conducted on February 23, 1999.

### 3. *Executive Relocation Benefits.*

*a. Summary.*—The chairman received an anonymous complaint alleging that two Postal Service officers, the Chief Financial Officer and the Comptroller, received relocation benefits for changes in residence without change of duty station. An audit was requested by the subcommittee. The results of the audit by the Office of the Inspector General of the Postal Service revealed that the two officers received relocation benefits of about \$248,000 for moves within the local commuting area. One officer received about \$142,000 and the other officer received about \$106,000. These relocations were paid as part of an incentive plan and approved by postal management as deviations from postal policy. These relocation benefits exceeded the relocation packages offered to executives by private industry and other government agencies. These benefits, which were not included in the statutory limits on compensation of Postal Service employees, also could be perceived as a way to circumvent the limits. The audit found that the controls were not in place to ensure that postal management requested and obtained Board of Governor approval of all significant provisions of incentive plans such as relocation benefits. Board approval for deviations was generally not obtained for relocation of those officers because relocation benefits were not considered compensation.

*b. Benefits.*—This investigation and resultant policy changes to address the concern that such special benefits violated the public trust. The Postal Service Board of Governors adopted a resolution that expanded its review to executive compensation to include each component of the compensation and benefits, including relocation benefits, to be provided to each officer. Such compensation and benefits shall be submitted for the approval of the Board of Governors. In addition, the resolution called for the Board to set standards for deviation from the benefits program. The Board called for further review by the Inspector General of executive benefits in comparison with other agencies and corporations in order to consider further policy changes.

*c. Hearings.*—None.

#### *4. Cost Pertaining to Processing Periodicals.*

*a. Summary.*—The Postal Service has struggled to control the cost of processing periodicals (magazines and newspapers). Such cost increases have recently led to rate increases for periodicals above the rate of inflation. This has seriously impacted the periodicals industry. Congress has always recognized that periodicals support free speech and education, cultural, scientific, and informational values. As part of the program to control the cost of periodicals, the Service worked with the periodicals industry to identify and implement operational changes to reduce such costs. The Periodicals Joint Industry/Postal Service Task Force recommended a number of operational changes that would, if implemented, result in cost savings. Nonetheless, when the Postal Service filed its request for a recommended decision before the Postal Rate Commission on January 12, 2000, it proposed an average 15 percent postal rate increase for Periodicals. The Postal Service's cost projection from the base year to the test year did not include many of the cost savings as identified by the task force. The subcommittee sent a letter signed jointly by Chairman Burton, and Chairman Kolbe of the Subcommittee on Treasury, Postal Service, and General Government, Committee on Appropriations to the Postmaster General urging the Postal Service to redouble its efforts in this area. Subsequently, top Postal Service officials including the Postmaster General ensured the industry that the originally proposed 15 percent increase would be reduced to no more than a single digit, and the Postal Service would identify cost savings to achieve that result.

*b. Benefits.*—Following the letter to the Postmaster General, the Postal Service provided testimony to support cost savings that would allow the Postal Rate Commission to recommend an average rate increase for Periodicals of less than 10 percent.

*c. Hearings.*—October 21, 1999.

#### *5. International Postal Policy.*

*a. Summary.*—The United States of America has been a leader in promoting free trade and international competition. It has set the trends in telecommunications and the airline industry. However, we have not been trend setters in the international mail system. The U.S. Postal Service has not met the measure for competition in the international mail system. A variety of customs and competition rules govern the moving of goods and services inbound and outbound. The U.S. Customs Service enforces two standards for the international exchange of documents and parcels: one for postal shipments and one of private carriers. Although there may be justifiable reasons to maintain this two-tiered system depending on items shipped, it appears there is no reason to maintain widely differing standards for comparable shipments. Maintaining different standards implicates America's position in trade as it limits our ability to request opening of markets in other countries and it adds additional costs for the consumer. Domestically, we remain enmeshed in the debate between the private and public sector of who enjoys greater advantages or is burdened by operational disadvantages. It is apparent that unless we make available a variety

of customs and competition rules that meet the needs of the American consumer, commercially focused foreign postal and delivery firms will overtake American initiatives. The issues have been longstanding. Even if the laws governing the U.S. Postal Service are modernized, the challenge is whether U.S. traditions for fair and undistorted competition will translate into advocating needed changes at the Universal Postal Union, the World Trade Organization, and the World Customs Organization. In 1998, the U.S. Congress enacted legislation to transfer primary responsibility for U.S. policy concerning the UPU from the U.S. Postal Service [USPS] to the Department of State. The legislation further required that the Department of State consult with private providers and users of international postal services, the general public, and such Federal agencies and other persons that it considers appropriate in carrying out its international postal responsibilities. Under this new law, the Department of State may, with the consent of the President, negotiate and conclude postal treaties, conventions, and amendments within the framework of UPU agreements that are binding on the United States and other UPU member countries. USPS can also negotiate agreements and conduct business with foreign countries, provided such actions are consistent with the policies set by the Department of State.

A "Sense of Congress" resolution included in the 1998 legislation stated that "any treaty, convention, or amendment entered into . . . should not grant any undue or unreasonable preference to the Postal Service, a private provider of postal services, or any other person." Private operators are anxious to ensure that congressional intent is being followed and that the development of U.S. policies for all international exchange treaties and policies is fair, evenhanded, and open to all interested parties. However, USPS has expressed concern about the influence of private parties who may share their market, but who are not subject to the same statutory responsibilities, such as a universal service mandate. The legislation also mandated that the Department of Commerce add "postal and delivery services" to the International Trade Administration's [ITA] Service Industries Development Program, which is intended to help American business compete in the global marketplace by ensuring market access and compliance with existing trade agreements.

Among key international postal and delivery issues include "terminal dues" which are assessed on all inbound international mail, as a means of compensating the receiving country for the cost of delivery within its borders. The rates are established in the UPU Convention and increased every 5 years by the UPU Congress. Dues are higher for developed countries, which generally have a high volume of outbound mail, than they are for developing countries, which generally have a low volume of outbound mail. Some countries have formed agreements to negotiate cost-based terminal dues with those countries that exchange large volumes of mail. Private operators have alleged that these terminal dues agreements are designed solely to discourage re-mailing and are anti-competitive. Participants in such agreements claim, however, that they are necessary to lower terminal dues losses by making the system more consistent with operating and delivery costs.

Re-mailing is a process through which private carriers deposit outbound domestic mail directly into foreign postal systems either for return to the originating country, for delivery to a foreign country, or for delivery to a third country. Because the mail is routed through the most economically advantageous countries, mailers can save on the cost of international postage rates or terminal dues. Some public postal operators claim that re-mailing results in substantial losses because the postal service of the destination country performs the in-country delivery but does not collect the terminal dues that would have been assessed if the mail had been posted in its actual country of origin. Therefore, the destination country's postal service receives a fraction of its anticipated revenue per piece, and the balance of costs between those countries exchanging large volumes of mail is not maintained. UPU Article 40 permits its member's postal administrations to intercept inbound international mail that has been posted in a country other than where the sender is considered to reside. Private operators have alleged that Article 40 operates as an anti-competitive market-allocation scheme.

The UPU coordinates with the World Customs Organization [WCO] on international postal customs issues. Private operators have complained that international customs procedures put them at a competitive disadvantage because government postal services currently enjoy simplified customs procedures that are unavailable to non-governmental entities. While the Department of State filed a formal statement at the UPU Congress urging a commercially neutral customs policy in the future, the U.S. Customs Service has been opposed to liberalizing customs procedures and has sought to raise the level of data required of public operators.

Questions remain whether the UPU will allow membership for private postal and delivery services. Some nations in the UPU have raised concerns about admitting private operators since they do not operate under commitments similar to those of public operators, such as a guarantee of universal service. FedEx and other private operators have countered that they are currently affected by UPU agreements, including those they consider to be anti-competitive (such as those concerning customs procedures and re-mailing), but have not been permitted any input into those decisions. At the Congress in Beijing, the UPU formed a "High Level Group" to study the reform proposals, but it is unclear whether the group's work will result in any modifications.

*b. Benefits.*—The movement of international goods and services by our Nation's postal and delivery operators is worth billions of dollars and millions of jobs to the U.S. economy. New communication technologies such as the Internet are changing the nature of international communication, while postal regulatory reform in other industrialized countries is changing the landscape on which operators must compete. Steps taken at the UPU Congress have raised the stakes for U.S. policy on international delivery. The study of this situation, the results of the UPU Congress, and the impact of the organization on international document and package delivery operation, the issue of terminal dues, re-mailing, customs procedures and the status of the U.S.-backed UPU reform will be valuable as we endeavor to keep pace with the aggressive develop-



ment of mail operations and delivery by other nations that may undermine our national efforts. The process for the development of U.S. postal policy has also changed in the past year, and may be in need of further revision. Many have urged that a more transparent policymaking system is required to complete the congressional mandate of forming undistorted and nondiscriminatory postal policy. The effectiveness of the Department of State, the interrelationship between State and other agencies, and the quality of private operator's input will determine the success of U.S. international postal policy.

*c. Hearings.*—The subcommittee held a hearing on International Postal Policy on March 9, 2000. The witnesses included: Director, Government Business Operations Issues, GAO; vice president, TNT Post Group; member of the Management Board of Deutsche Post AG; Postmaster General and Chief Executive Officer, United States Postal Service; chairman, president, and chief executive officer, FedEx Corp.; Deputy Assistant Secretary for International Organization Affairs, Department of State; Deputy Assistant Secretary for the Services Industry U.S. Department of Commerce-International Trade Administration; Assistant U.S. Trade Representative for Services, Investments, and Intellectual Property, Office of U.S. Trade Representative; Director of Trade Programs, U.S. Department of Treasury, U.S. Customs Service; Deputy Assistant Attorney General, U.S. Department of Justice, Antitrust Division; Director of Office of Rates, Analysis and Planning, U.S. Postal Rate Commission.

Mr. Ungar of the General Accounting Office summarized his prepared statement. He stated that despite the short time period that the State Department had between enactment of the October 1998 legislation shifting responsibility for U.S. policy development, coordination and oversight from the U.S. Postal Service to the State Department, the State Department did a reasonably good job and made progress. It provided stakeholders, including private sector participants, with an opportunity to provide input, and conducted the proceedings in an even-handed manner. At the UPU Congress, the State Department signaled a new direction in policy for the United States with respect to the UPU and included private sector participants in the U.S. delegation. The U.S. Department of State was able to get a number of issues on the table, including terminal dues, and commenced work toward changes in those policies. However, Mr. Ungar mentioned that probably because of the short time period, the Department did not have a structured, well documented, process to get input which resulted in short advance notice of some meetings, and lack of minutes of the meetings resulting in no public record. Because of the complexity of the issues undertaken by the UPU, the State Department was at a disadvantage because of the turnover in its staff that handles such matters. The Department was receptive to the recommendation made by GAO that the State Department provide sufficient staff continuity and expertise to handle its UPU responsibilities.

Ms. Simone Bos, vice president of the TNT Post Group, emphasized the changing postal world within the past few years and the importance of globalization, liberalization, and consolidation in the postal world. She summarized her core message as firmly believing

that the government should take the lead in reshaping the international regulatory framework and creating a level playing field for all parties, though this is a difficult task. She said that public postal operators should be able to set their rates in a normal manner like other companies do and be able to invest and to negotiate their own collective labor agreements. Though public postal operators have special rights and special obligations there should be a good framework to ensure that there is no abuse of dominant position. She also said that UPU needs to change just as postal operators need to change. She opined that UPU appears to promote commercial service of public postal operators to the disadvantage of other in the market. International postal policy must be seen in the context of rapid developments of cross-border exchange and market of documents and parcels. Increasing more businesses are focusing on trade in goods and services on both the national and international market, therefore their ability to compete depends on the quality and reliability of cross border physical and electronic networks and supply chains. The impact of international regulations, the development of an international policy toward the delivery of goods and services, and the role of governments is crucial to its success. Where rules are opaque and discriminatory, they create artificial trade barriers to the detriment of both the senders and the service providers.

Mr. Uwe R. Doerken of Deutsche Post explained that the newly unified Germany in 1991 had to restructure and integrate two postal systems into one. For the benefit of their customers' needs, it was determined that just remaining a German distribution company would not bring sustainable business in the long run and would endanger the employment of the people and the universal service for the country. They started an international and diversification strategy. They now base their business on the German and cross-border worldwide mail, including forwarding services, and a banking service in Germany. Though Deutsche Post is highly unionized, it was able to decrease its staff without major layoffs in an amicable and cooperative manner, extending the project over a period of year. They have fulfilled the universal service obligation. Their parcel distribution industry is almost as large as the United States, because it encompasses the European market. He submitted that the international competitive environment of traditional postal services is determined by the globalization of markets, the growing demand of customers for full service one-stop shopping and the liberalization and privatization of the postal sector.

William J. Henderson, Postmaster General said that the international mail market is characterized by accelerating competition, affecting domestic postal markets as well. There is tremendous aggressive competition. Liberalization and deregulation that has occurred overseas have enabled alliances between various posts that would not have been expected previously. Competition and technology have made letter monopoly less relevant in our country. There is need to better anticipate the changing needs of customers. He said that successful postal systems of the future will be competitive and develop value-added services to keep mail relevant. The PMG said that the Postal Service supports H.R. 22, introduced by Chairman McHugh. The reforms therein would increase flexibil-

ity to introduce and price products and service competitively and balance competitive freedom with the interest of competitors. The PMG said that the new role for the Department of State to promote the interests of American industry are consistent with public policy and the business objects of the Nation and the Postal Service. He commended the Department and Ambassador Southwick for their prompt actions in developing a plan and strategy. The Postal Service assumed the role of the State Department's advisor to the UPU Beijing Congress. The courier industry submitted proposals calling for dramatic changes for the development of all global delivery services—public and private—to assure fair competition among all operators. The issues raised by this group, the USPS believes, deserve serious consideration by the UPU. Another proposal to eliminate UPU Convention provisions protecting postal administration from remail was strongly opposed by the USPS unless there was a more objective and in-depth analysis of its implication of our Nation's domestic revenue base and ability to assure adequate revenues to finance our universal service obligations. USPS's preliminary estimates show a loss of more than \$1 billion to \$5 billion. A more thorough study, in cooperation with the Postal Rate Commission, the Department of State and other interested parties is being arranged. The PMG said that the outcomes of the Beijing Congress are mixed. Some nations who had been traditionally supportive of U.S. proposals were confused and suspicious of USPS's aggressive support of UPU reform, as they viewed the U.S. position to be in greater support of the interests of private sector competitors and to the interests of universal service providers. Ultimately, the UPU reform was approved by the Beijing Congress in a modified form. The Congress adopted a new terminal dues structure that moves the UPU closer to a cost-based system for postal administrations to reimburse each other for the cost of delivering each other's mail. The PMG stated that the private carriers hold about two-thirds of the revenue in the outbound international mail market. They are dominant in the higher growth segments such as expedited mail. Foreign post have privatized or have been authorized by their governments to aggressively seek and acquire new assets and market their services internationally. The Department of State and other intergovernmental agencies have understood that the Postal Service must fulfill its universal service obligation and must cooperate with other postal administrators to deliver international mail originating in the United States. The USPS is still dependent on delivery services with other postal administrators.

Frederick W. Smith, chairman, president, and chief executive officer of FedEx Corp. made the points that delivery services are evolving into a global business that includes elements of postal, express, and logistics services. The legal framework for this sector, the UPU is outdated. It needs to be revised to become pro-consumer, pro-competitive, pro-global, and pro-reform. He opined that the new UPU Beijing Congress in 1999 was anticompetitive and anti-reform; it should not be ratified at this time. Transferring policy responsibility of UPU to the State Department was a major improvement but additional legislation, such as reforms envisioned in H.R. 22, is urgently needed. The United States needs to put the case for reform of the international legal framework directly to

other governments, but it also must undertake a major review of its policy goals and options. FedEx, in less than three decades, has helped to change how we view delivery service. Economic trends have favored national and global economy and air express has been integral in global economic advancement. Though air transport accounts for less than 2 percent of the weight of internationally shipped goods, it accounts for more than 40 percent of the value. International delivery service has specialized in collection and delivery of urgent document and parcels; they have developed a seamless global service that is dependable nationally and globally making it a central feature of world-wide economics. There is serious question of whether the international legal structure will help or hinder the process. Mr. Smith, in his submitted testimony proposed that the fundamental flaw of the UPU is that it is an inter-governmental organization of post offices, by post offices for post offices. But post offices no longer speak for their governments; they are commercial self-interests competing more aggressively against private operators. The UPU Convention hinders reform and simplification of customs laws, thereby reinforcing national barriers rather than encouraging global economy. The greatest consideration should be given to the consumer, not the provider. He asserts that the Postal Service continues to insist that it is both an interested party and a government decisionmaker, maintaining a dual status; the decisionmaking process, even following the 1998 legislation, is still opaque.

Michael Southwick, Ambassador and Deputy Assistant Secretary, Bureau of International Organization Affairs, U.S. Department of State clarified that the Department of State did not seek the lead role to the UPU, but it is an extremely important and difficult position, which it takes seriously. Participation in the UPU congresses was always considered part of the Postal Service's job, so the State Department had to learn the job hurriedly in time for the Beijing Congress. State found that UPU was an organization which was in danger of being eclipsed by developments in the sector where it was supposed to be a major player. The UPU is led by an American who was elected to the post. The UPU is a 100-year-old organization whose members believed that they were representing the interest of the public. Now the UPU is more an organization for other organizations, that is, state monopoly postal services. The State Department believes that much reform is needed of the UPU. That reform includes: openness and transparency; encouragement of a more open and competitive system; entry opportunities to all stakeholders; fairness to all competitors; providing postal consumers with valuable benefits, including lower costs, faster deliver time, and a greater choice of services. Because of the need to consult with other countries in the matter of postal issues, the State Department can use its entire diplomatic structure and diplomatic missions to engage postal services of other nations along with their foreign, trade and other pertinent ministries, and therefore have a wider audience abroad. Nationally, Ambassador Southwick has endeavored to engage all stakeholders while following the mandate of the legislation. An open door policy is maintained and many public meetings have been held. Though there were few experts on board in the realm of postal service, it was found that there were many

who volunteered their advice. Though the UPU has been successful in dealing with direct mailers, it has excluded the competitors. Ambassador Southwick made efforts to make sure that UPU documents were available to all and that private sector stakeholders were included in the delegation to Beijing. Several issues were of import in Beijing: Article 40, customs, and the terminal dues structure. The State Department was responsible for authoring the reservation on the terminal dues agreement. There is now a serious reform in consideration after the State Department's participation. The UPU is trying to get input from interested stakeholders.

Robert Cohen, Director of Office for Rates, Analysis and Planning, U.S. Postal Rate Commission, spoke about the PRC's first international mail report, submitted to Congress in June 1999. The most important conclusion of the report was that international mail is not cross-subsidized, but it does make a much smaller contribution to institutional costs than domestic mail. The important contribution of the UPU is creating a single, worldwide postal territory, which includes the universal service obligation [USO]. However, that is not a good reason not to have fair and open competition in international mail. The universal service obligation is not supported by international mail activities but by the domestic mail monopoly which sufficiently supports the USO. The PRC believes that the State Department exercised its authority in a most competent and skillful manner. PRC recommends that Congress should call on State to establish an advisory commission under the Federal Advisory Committee Act to institutionalize a consultative process. It also suggested that State should issue and make public statements of policy under procedures resembling notice and comment in the Federal Register to memorialize decisionmaking and prevent arbitrary changes in policy.

Mr. T.S. Chung, Deputy Assistant Secretary, Services Industry, International Trade Administration, U.S. Department of Commerce, said that his agency is the U.S. Government's chief agency with responsibility for promoting the interest of U.S. businesses overseas. The involvement of the Department of State in the UPU congress has been beneficial to the Department of Commerce and has better aligned international postal policy with U.S. international trade policy. The Department of Commerce is involved in the UPU congress as a member of the U.S. delegation. This department works to improve the international competitive position of U.S. private business providers, including international postal and parcel services sector, as well as major customers of their services—the direct mailers. As a general rule, the Department of Commerce favors the efficient and timely facilitation of movement of goods across international borders. The Commerce Department is also actively seeking reform of the UPU which has enjoyed status quo for many decades. The collective effect of liberalization, removal of barriers and reform will improve international commerce for the United States. The international postal and delivery services serves the global economy therefore private postal providers must be given similar access to customs facilities as that given to public postal service providers.

Mr. Joseph Papovich, Assistant U.S. Trade Representative for Services, Investments and Intellectual Property, Office of the U.S.

Trade Representative testified that one of the central goals in trade negotiation is opening markets to trade and services. The services industries range from finance to telecommunication to distribution, health, education, travel, tourism, construction, engineering, architecture, law, and postal and delivery services. These industries provide over 86 million American jobs and more than \$5.5 trillion worth of products, nearly 70 percent of our gross national product. The Department is cognizant of the importance of postal and delivery services in international trade; exporters and importers rely on these services to deliver their products, documents, advertising materials, bills, and payments. Individuals also make up a significant percent of those dependent on these services to deliver their ordered goods. There are fundamental changes taking place globally and the structure and competitive status of postal and express delivery services is evident. In Europe many postal services are being privatized or outsourced to the private sector and the line between government and private sector services is diminishing.

Ms Elizabeth Durant, Director of Trade Programs, U.S. Customs Service, U.S. Department of Treasury summarized her testimony. She said that there is tremendous growth in trade and particularly in the small package delivery industry. There is a blurring of traditional roles between the Postal Service and the express consignment operators. The Customs Service has been approached by traditional passenger carriers expressing interest in expedited clearance of small packages from foreign suppliers. Customs has been concerned that it is not unfair in its treatment of one business entity over another. Because of the requirements to provide automation and to present outbound shipment for examination and to reimburse costs of service to Customs, there has been minimal risk. However, lack of this capability and authority in postal setting has impeded meeting the goals. Customs is constantly pressured to move shipments more swiftly, but is unable to control small parcels. Customs regulation require express consignment operators to present in-transit and export shipments for examination, but the Postal Service is not required to present the same types of shipments to Customs and the packages are not made available for Customs' examination. Customs believes that this exception is an obstacle. Customs provides clearance of international mail at little or no expense to the Postal Service, and the Postal Service is not required to reimburse Customs for examination of inbound mail which include expenses of staffing, rental of offices, x-ray machines, computers, et cetera. Express consignment operators are statutorily required to fully reimburse Customs. Customs acknowledges that there is disparate treatment between the Postal Service and consignment operators and is working to end this scenario, but not to lower the bar.

Ms. Donna E. Patterson, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, testified on the role of competition in the American economy and the importance of the antitrust laws in preserving competition. Competition is one of the most fundamental national policy objectives and must be maintained in America's participation in multinational organizations, such as UPU. The United States has committed itself to protection free and unfettered competition for more than a century. In gen-

eral, this Nation operates a free-market economy subject to the antitrust laws. Free market competition has benefited consumers with more innovation, choice and lower prices. The enactment of the Postal Reorganization Act of 1970, the Department of Justice has advocated a program of competition regarding international postal issues and opposed efforts to restrict competition on international mail services. The fundamental premise is that all who wish to compete in international mail services should have equal opportunity to compete for a customer's business. The rules of the marketplace should not favor one competitor over another without compelling justification. Section 633 of Public Law 105-277 authorizing the Secretary of State to be responsible for the negotiation of international postal agreement on behalf of the United States was a major advance for competition. A low terminal dues rate for outbound international mail may provide a postal administration with competitive advantage over another mailer. However, low terminal dues may not fully compensate the postal administration for its actual cost of delivering inbound international mail and place the postal administration at a competitive disadvantage.

6. *"The U.S. Postal Service and the Postal Inspection Service: Market Competition and Law Enforcement in Conflict?"*

a. *Summary.*—Postal Inspectors of the Postal Inspection Service have enforced Federal statutes protecting the mail for more than 200 years. Because of their low public profile, they have been called the "silent service" even as they play a major role in a wide range of law enforcement activities.

When the Postal Reorganization Act was enacted in 1970, the Postal Service became an independent establishment of the executive branch of the Government of the United States. The Inspection Service remained with the Postal Service and continued its investigation and audits as it had done in the past. The act stipulated that the Chief Postal Inspector be appointed by, and serves at the pleasure of, the Postmaster General who is also the Chief Executive Officer of the Postal Service. Because of the increasingly competitive position of the Postal Service, there is potential for conflict of interest between Postal management's commercial objectives and the Inspection Service's law enforcement mission. Examples include the use of Inspection Service agents for revenue collection, and recent marketing initiatives that tout the Inspection Service as a security advantage unique to the Postal Service's products and services, particularly for its new electronic commerce ventures. Such activities raise the question of whether control of the Inspection Service gives the Postal Service an unfair competitive edge over private delivery companies that do not have the luxury of an in-house Federal law enforcement agency.

The Federal Law Enforcement Officers Association raised concern that Postal management may allocate Inspection Service resources to the investigation of those matters that are most likely to cause the greatest losses for the Postal Service (such as worker's compensation fraud) at the expense of law enforcement efforts targeted at more serious crimes. While such a decision may be entirely reasonable, the fact that the Postal Service has a financial interest in the priorities of the Inspection Service raises the pos-

sible perception that these priorities may not be driven solely by law enforcement concerns. Several solutions to this potential conflict have been proposed such as: (1) Title 39 might be amended to give the Inspection Service independence from postal management in the same manner as the current Office of the Inspector General. Under such a structure, the Chief Postal Inspector would be appointed by, and report to, the Board of Governors instead of the Postmaster General. (2) Congress could enact legislation transferring authority over the Inspection Service from the Postal Service to another executive agency with law enforcement responsibility. Such a transfer would also have to address the issue of transferring the funding of the Inspection Service budget from the Postal Service Fund, to a taxpayer-supported appropriation. (3) Others suggest that in order to address the competition policy problems, it would be appropriate to either greatly expand the jurisdiction of the Inspection Service or to greatly reduce it. Those who advocate expansion note that the Inspection Service was created to ensure the security of private communication and in light of this unique mission, as well as its extensive expertise and proven record, the Service should be permitted to investigate criminal activity conducted through both private carriers and e-mail. Under current law, the only provision of Title 18 that addresses criminal activity conducted through private carriers is Section 1341 (mail fraud). Critics who advocate limiting Inspection Service authority note that it share jurisdiction with several other capable and well-funded Federal law enforcement agencies. They suggest that the role of the Inspection Service should be limited to only internal security and crimes directly related to the postal monopoly. Such a contraction of authority would ease concerns of unfair competition and lighten the financial burden on the Postal Service, and ultimately, the ratepayers.

*b. Benefits.*—The subcommittee focused on issues regarding whether control over the Postal Inspection Service give the Postal Service an unfair advantage over its private competitors; whether it is appropriate for the Postal Service to market the Inspection Service in order to increase the value of its products and services that are unrelated to letter mail; if the Postal Service has effectively and appropriately managed the Postal Inspection Service to best fulfill its law enforcement mission; does the fact that the Inspection Service relies on Postal revenue have the potential to compromise its effectiveness as a law enforcement agency; and whether Congress should take steps to ensure that the Postal Inspection Service remain exclusively focused on its law enforcement mission, and free of competitive business concerns. The airing of these issues benefit the manner in which the Postal Service utilizes the Postal Inspection and allays the fears of many private sector competitors and consumers.

*c. Hearings.*—The subcommittee conducted a hearing on July 25, 2000, entitled, “The U.S. Postal Service and the Postal Inspection Service: Market Competition and Law Enforcement in Conflict.” The witnesses were the Deputy Postmaster General, accompanied by the Chief Postal Inspector, an attorney who is a postal policy scholar, the national president of the Federal Law Enforcement Of-



ficers Association [FLEOA] accompanied by the FLEOA agency president of the U.S. Postal Inspection Service.

John Nolan, Deputy Postmaster General, testified that the Postal Inspection Service is an integral part of the Postal Service that can trace its roots to the first Postmaster General, Benjamin Franklin. The Inspection Service predates postal activities such as free city delivery, street letter boxes and postage stamps. The Service today is made up of approximately 2,000 Postal Inspectors, 1,500 uniformed Postal Police Officers and 900 professional and technical support personnel. It upholds more than 200 Federal criminal and civil statutes that effect the integrity of the U.S. mail and the postal system and benefit postal customers, postal employees, and the American taxpayer. He stated that the growth and development of our mail system is linked with the Postal Inspection Service since colonial times. It has been known, nationally and internationally, as a model among law enforcement agencies because of its effectiveness. Its effectiveness is measured by its professionalism, integrity, efficiency, and the result of successful court actions—90 percent of the cases brought to trial by the Inspection Service are concluded in convictions. The Postal Inspection Service has been used by the U.S. Government in various kinds of sensitive investigations (i.e., Ruby Ridge, Waco, Martin Luther King assassination). Part of its effectiveness is due to its independence and not being affiliated with the Departments of Justice or Treasury. Postal Inspectors have a thorough understanding of the mail system; they are working partners with postmasters, clerks, carriers and all postal employees, ensuring safety, security and integrity of the mail and those who deliver it. Postal Inspectors are the most local of all law enforcement officers and are interlinked with State and local law enforcement agencies. He stated that the Inspection Service does not provide an unfair competitive advantage for the Postal Service in its increasingly commercial operations. The Postal Service introduced parcel service in 1913, Express Mail in 1970 but though they have both grown considerably, the Postal Service market share has been overtaken by private sector competitors, therefore the presence of the Inspection Service has not deterred private sector competitors from dominating the market. However, the USPS has shown competitive strength in its other markets, due to the efforts of its nearly 800,000 career employees. He testified that the major benefit of the Inspection Service lies in its support of congressional oversight of the mail and for universal service. It has been an effective agent in protecting the mail from consumer fraud, child pornography, physical security of property and the mail. Consolidating the Inspection Service under a single agency would dilute the unique perspective and expertise that it now provides. He opined that moving the Inspection Service and its budget to another would transfer current postal obligation to the backs of taxpayers from the ratepayer.

James I. Campbell, Jr., a postal scholar and attorney, testified that it was timely and appropriate to take extra care to ensure that national police authority is not lowered to the status of a commercial chip in increasing competitive game in which the Postal Service finds itself. Enforcement of the postal monopoly has not been the primary function of the Inspection Service; its primary mission

has been to protect the security of the mails and the Inspection Service has upheld this mandate. He believes that the competition issues presented by the activities of the Inspection Service are issues arising from the organization and mandate of the Postal Service, not from administration of the Inspection Service. He stated that he saw no reasonable objection to the Postal Service investigating private competitors for possible violation of law in the same manner as a private entity might investigate whether a competitor is contravening the antitrust law in a manner injurious to its interests. Following the Postal Reorganization Act in 1970, the Inspection Service became more active in defending the postal monopoly by intrusion into the affairs of mailers and customers of private express companies. The legal basis for this increase in activities of the Inspection Service lies in the comprehensive postal monopoly regulation adopted by the Postal Service in 1974. These postal monopoly regulations were different in kind and degree from anything advanced by the Post Office Department. He said that the practical effect of the 1974 regulations was to circumvent normal legal process and place the Inspection Service in the business of enforcing the postal monopoly by intimidation of mailers. The 1974 regulations defined every tangible communication to be a "letter" and fixed the scope of the monopoly by administrative regulations which "suspended" the postal monopoly for specific types of communications or particular classes of mailers or services. The new definition of "letter" became "a message directed to a specific person or address and recorded in or on a tangible object." This definition, then, included all printed matter and commercial papers as well as non-verbal media, such as photographs and blueprints. Then, to counter public opposition, the new regulation announced "suspensions" of the postal monopoly to allow for the private carriage of newspapers, magazines, checks (when sent between banks), and, under certain conditions, data processing materials. In 1979, the Postal Service adopted a suspension of the postal monopoly to allow private carriage of urgent letters. This provision strengthened the role of the Inspection Service by requiring that all records, not merely covers of shipments, be made available to postal inspectors. The Postal Service issued regulation and procedural rules for the adjudication of postal demands for back postage which could become quite expensive for a large company, depending on the length of time over which pack postage was calculated. Postmasters are designated as process servers; the accused has no right to trial by jury and no access to subpoena authority. Failure to cooperate with the postal inspectors created a presumption of guilt, shifting the burden of establishing the fact of compliance to the shipper or carrier. Mr. Campbell questions the authority of the Postal Service, without approval of the Postal Rate Commission, to establish alternate provisions for domestic postage payable on items transmitted by private carrier. Modern express companies were developed in the 1970's. Though the Board of Governors of the Postal Service appreciated the economic benefits of private express companies, the Postal Service used the Inspection Service to thwart their development. The 1974 postal monopoly regulation put mailers on notice that the USPS could impose large fines against companies using private express companies, and deny a mailer the right to use pri-

vate express companies for transmitting vital business documents. In many instances the Postal Service law department issued letters to mailers claiming that the use of private express companies was illegal, and, these law department opinions were generated, in many cases, in response to, or in coordination with, investigation conducted by the Inspection Service. This legal intimidation was supplemented by postal inspectors making calls on customers of private express companies to dissuade them from using private express companies. Mr Campbell concluded that in the past few years, the Postal Service, by means of the Inspection Service, has the ability to offer products which are secured by the police power of the U.S. Government. It is clear that in a commercial market, that Federal police protection may offer a competitive advantage. As a matter of principle, the Inspection Service should not be used to confer competitive advantage for the Postal Service's competitive products. He suggested that the subcommittee may want to consider the following reforms: (1) Simplify the definition of the postal monopoly that does not depend on extensive investigation of mailers or customers of private express companies or on administrative discretion. (2) Transfer responsibility for enforcement of the postal monopoly to an impartial agency, such as the Department of Justice or another Federal agency. (3) Transfer responsibility for administration of the postal monopoly to an impartial Federal agency, such as the Postal Rate Commission. (4) Limit the ability of the Postal Service to use the Inspection Service for competitive advantage by either limiting the jurisdiction of the Inspection Service to non-competitive postal products or to expanding its jurisdiction to include private sector companies.

Gary Eager, member of the National Executive Board of the Federal Law Enforcement Officers Association [FLEOA] provided testimony on the feasibility of having the U.S. Postal Inspection Service separated from the U.S. Postal Service. FLEOA believes that any discussion of this nature must include the current direction of the Inspection Service and also discussion of the Postal Service's move toward reform and/or privatization. FLEOA has great concern on the issue of privacy and sanctity of communications and the future role of the Inspection Service. The Inspection appears to have difficulty obtaining fiscal and personnel resources; it is presenting a "value added" approach to Postal Service management to garner recognition of what the Inspection Service means to the USPS. FLEOA is also concerned about the perception by the private sector that the Postal Service has undue advantage because of the presence of a Federal law enforcement agency. Major commercial and technological changes over the last three decades have surpassed what was envisioned by the Postal Reorganization Act; the Postal Service must adjust to the changing business environment. The Postal Inspection role changed from its traditional roles in 1996 when the Office of the Inspector General for the U.S. Postal Service was created. The priorities for the Inspection Service changed to criminal investigations supporting the concept of sanctity of the mail, security and crime prevention. In the years when the chief of the Inspection Service wore two hats, Inspector General and Chief Postal Inspector, there was an appearance that the Postal Service placed greater value on the audit and revenue protection

programs than on the criminal programs. When the independent Office of the Inspector General was created and there was a transferring of responsibilities, there was a loss of Postal Inspector positions. Mr. Eager testified that the Inspection Service has not been allocated an increase in personnel resources for more than 20 years, even though there is an increase in demands for its public service commitment. During these years, the Postal Service experienced a significant growth in the complement of employees and the volume of mail being handled. In a survey conducted by FLEOA in 1997 among its Postal Inspector membership, it was found that 61 percent of that membership thought the public was not receiving the proper level of service; 75 percent said there was not enough personnel resources assigned to the criminal programs; 74 percent indicated that the workload was not fairly distributed, and 76 percent believed that the Inspection Service's position among the Federal law enforcement community had weakened. Only 25 percent of the Postal Inspectors belong to FLEOA. Mr. Eager expanded on areas where there financial allocations have been reduced to various programs, including the Mail Fraud Program and to provide adequate pay for lab personnel. Crime labs are an integral part of the Inspection Service and denying pay comparability with other Federal labs is a bad law enforcement decision as well as a bad business decision. Presently, the future of the Inspection Service is tied to the fiscal viability of the U.S. Postal Service, in addition to the value placed on its public service obligations. The need for the Inspection Service is as valid and necessary as when the Service was started. FLEOA is concerned that there is a perception by some that having a law enforcement agency tied to the Postal Service is an unfair business advantage. This perception is stronger since the Postal Service in venturing into the area of e-commerce and the presence of the Inspection Service is viewed as a marketing tool. Mr. Eager said that what competitors view as unfair competition is seen by FLEOA as crime prevention. The Inspection Service is the only major Federal law enforcement agency affiliated with a quasi-government, quasi-business agency. FLEOA suggests that should consideration be given to placing the Inspection Service under the executive branch of government with other law enforcement agencies, that the issue be debated to ensure the Inspection Service remains the primary agency to conduct investigation of violation of the sanctity and fraudulent use of communications as originally intended.

#### *7. General Oversight Hearing for the U.S. Postal Service.*

*a. Summary.*—The Postal Service is facing uncertain times and formidable challenges. It has encountered financial difficulties as mail volumes have declined, falling below anticipated projections. The cost of delivery has also risen. In an effort to reign in these obstacles, the Postal Service is seeking innovative approaches and solutions. The Postal Service is facing a \$300 million loss for fiscal year 2000, due in part to significant electronic diversion. The challenge for the Postal Service is to at least maintain, if not improve, its mail delivery service and continue to provide affordable postal rates. It must also try to remain self-supporting through postal revenues. With growing cost pressures and a shrinking revenue base,

postal reform is urgently needed. The subcommittee has considered a comprehensive, well-refined, reform measures over the past 5 years but the support for passage has not been clear. The concern is that if left too long without an enacted reform measure, a crisis situation may overtake sensible and thoughtful change. The legislation under which the Postal Service is now functioning is 30 years old; the Service must meet the challenges and restrictions of that legislation as it works to gain revenues and compete in a changing marketplace.

*b. Benefits.*—Periodic oversight hearings of the Postal Service with suggestions from the General Accounting Office encourage the Postal Service to fine-tune its operations. Hearings such as this one helps to focus the Postal Service on how to maintain affordability, improve the workplace climate, enhance productivity and meet its new challenges. The GAO and the Office of the Inspector General presented initiatives that would help the Postal Service to improve its own performance. In the latest Performance Report (1999) the Postal Service reported that it wholly fulfilled or exceeded 26 of the 37 performance targets planned and undertaken in 1999. From fiscal year 1998 to 1999, local first-class mail service improved 94 percent from 93 percent delivered overnight, while 2 to 3 day mail service improved to 88 percent from 87 percent. On January 12, the Postal Service filed for another rate increase averaging about 6.4 percent. The case, Docket No. R2000–1 was decided in November 2000. Rates are expected to increase in January 2001, only 2 years after the last increase. A number of controversial issues emerged in the case including: the cost of processing flats and the attendant double-digit increases for periodicals, the cost of non-profit mail and the required increases under current law, the quality of costing and revenue data, the late inclusion of fiscal year 1999 data into the record, and the revenue requirement, particularly wage level assumptions in the forecast model. However, due to the current legal framework, the Postal Rate Commission had little discretion to significantly modify the Postal Service's request.

In compliance with the Results Act, the Postal Service has issued its Annual Performance Plan which outlines how the Service will implement its strategic plan on an annual basis. The USPS plans a \$4 billion capital commitment to improve automation, facilities, vehicles, and retail and support equipment. The plan sets forth most goals for improving first-class mail service in 2000: a 1 percent increase or maintenance of the current 87 percent on-time service for 2 to 3 day mail, and 93 percent for overnight mail—1 percent lower than what was attained in 1999.

*c. Hearings.*—A general oversight hearing on the U.S. Postal Service was conducted in September 2000. The witnesses included the Postmaster General and Chief Executive Officer of the U.S. Postal Service, the Inspector General of the U.S. Postal Service, and the Director, Government Business Operations Issues of the General Government Division of the U.S. General Accounting Office.

William J. Henderson, Postmaster General and Chief Executive Officer of the U.S. Postal Service testified that the Postal Service is at a critical point. Traditional competition is intense and technology has created alternatives that are challenging to the Postal

Service. Foreign postal administration, empowered by their governments, realize that a contemporary postal model is needed for the fast-paced, rapidly evolving communication of this century. He recognized the exceptional work done by Chairman McHugh in formulating H.R. 22 after consultation with every stakeholder and conveyed disappointment that the prospect for postal reform was dimming and uncertain. He stressed that the need for reform will continue to grow. He said that clearly, special interests and lack of a crisis have made the task of postal reform difficult. There are sweeping changes through the mailing industry but the American public appears to be immune to the changes and continue to find great value in the mail. A study by the International Communication Research group found 42 percent of Americans strongly look forward to reading their daily mail; this was a higher percentage than recorded for personal phone calls, the daily newspaper, e-mail, and television. The study also showed that 66 percent of the people believe that mail is the most private and secure form of communication; 87 percent said mail is more secure than e-mail. By a huge majority, Americans prefer that their confidential documents and personal messages come through the Postal Service and not the Internet. The Postal Service is the gateway to the American household. No other organization has the reach of the Postal Service. He credited the Postal employees for their dedication and professionalism. They are also aware that the future is difficult and fragile. The U.S. Postal Service delivers more than 40 percent of the world's mail with an unsurpassed combination of low price and quality service. The Postal Service has made an effort to promote growth by increasing the value of the mail, introducing new services, and strengthening customer outreach. System improvements have raised service to its highest levels, while the real price of postage has declined over the past 6 years due to rate increases which are below the rate of inflation. New services such as delivery confirmation, signature capture, on-demand pick-up and customized packaging have been implemented. New partnerships and alliances with the private sector has enabled expanded customer access and new, cost-effective mailing solutions. Partnerships are critical in the demand for eBusiness service. These partnerships have enabled customers to obtain postage by Internet and Internet bill payment and message certification. The Internet has become a means to order stamps, confirm package delivery, access ZIP Codes and other mailing information. Major mailer utilize the Internet to schedule their mail shipments and verify the quality of service they are receiving. In spite of these accomplishments, the Postal Service is facing severe competition from traditional competitors, start-up delivery firms, liberalized foreign posts that have opened offices in the United States and purchased American subsidiaries, and the accelerating growth of electronic alternatives to the mail. The Postal Service has experienced less growth than anticipated. This has resulted in relentless cost cutting to meet its financial goals and deferment of beneficial improvements that could not be afforded under the present fiscal situation. Revenue growth was \$750 million less than forecasted for the year; record fuel and workers compensation costs have added \$500 million to the expenses. Though increased productivity resulted in saving of more than \$1 billion,

increased labor costs and rising inflation will add to financial costs. The Postal Service intends to deal with these matters by maintaining cost controls directly related to the affordability of the mail; a multi-year breakthrough productivity initiative designed to take billions of dollars out of the cost structure; in the areas of transportation, purchasing, administration, and operations, they are re-engineering work process and employing technology to achieve savings and lower workforce needs. Furthermore, it will increase revenues by helping the industry grow, which is not a simple solution as there is so much competition and first-class mail is growing more slowly. A report by the American Bankers Association shows that banks have reduced their mailing by 18 percent since 1996, not including electronic banking. Also, there are 30 percent fewer banks than there were 10 years ago. Also, the Postal Service remains vulnerable to electronic bill presentment and payment. Many of the costs associated with the Postal Service are not volume variable, and costs associated with universal service continues to rise and the American population increases. Each delivery day is increased by 5,600 deliveries or 1.7 deliveries per year. The Postal Service is searching for a legislative alternative to help keep the USPS in its leadership position among all the posts.

The Inspector General of the U.S. Postal Service, Ms. Karla W. Corcoran testified that the establishment of an independent Office of Inspector General [OIG] 4 years ago has resulted in a more effective Postal Service today. Though the Postal Service has encountered numerous, it has made many accomplishments: it had smooth delivery over the universal year 2000 concern, showing that it is capable of overcoming technological hurdles; its traditional deliveries were expanded to include new products and services; the Postal Service successfully delivered 120 million pieces of misaddressed Census mail; it cut billions of dollars in operating costs; it was named one of the top employers for minorities by Fortune magazine; and its service performances were appreciated by 9 out of 10 customers. The OIG worked with the Postal Service to ensure that it met the challenges of the new electronic era while maintaining its reputation. This partnership helped to highlight postal processes and systems in need of improvements, uncovered illegal activities that affect postal operations, identified ways to save costs and increase revenues; and helped to uncover issues that affected the workplace environment, improving the morale of Postal employees. The OIG has grown from 400 to 660 employees. There are five additional offices throughout the Nation, thereby enabling the OIG to increase its visibility with stakeholders, extend coverage of postal operations, and provide Congress, the Governors of the Postal Service and postal management with independent and objective analyses. The OIG has issued more than 500 reports with recommendation that could benefit the Service by \$1.4 million. Their investigations have yielded 42 arrests, 13 indictments and 11 convictions. Additionally, they have recovered \$13 million, suspended and debarred 36 contractors and brought in about \$160,000 in fines and restitution.

The major management challenge facing the Postal Service are growing revenues and competing in a rapidly changing market; maintaining affordability by controlling costs; improving the work-

place climate and labor relations; leveraging technology to enhance productivity. Electronic commerce threatens to reduce first-class mail by as much as \$33 billion over the next 9 years. Outbound international mail has been siphoned away from the U.S. Postal Service by foreign postal services. This has caused the Postal Service to find new revenue sources simultaneously with the challenge the Postal Service is facing to fulfill its core mission of delivering mail in a timely manner and improve customer service. A GAO audit showed that the Postal Service paid approximately \$250,000 to two senior Postal Service executives who moved 20 miles with no change of duty station, and without sufficient documentation explaining why the payments were in the best interest of the Postal Service. The OIG questioned whether the relocation benefits were used to augment the salary of the executives above the statutory pay cap. The Board of Governors, as a result of the report, adopted a resolution requiring their approval of each component of compensation and benefits for postal executives, including relocation benefits. The resolution also stated that the Board shall, as appropriate, establish standards for deviation from the benefits program. A subsequent audit was conducted which found that the Postal Service paid its executives miscellaneous relocation expenses of \$10,000 or \$25,000 without requiring proof of expenses incurred. Through benchmarking it was found that the amount paid to Postal Service executives was up to five times higher than those paid by comparable private companies. Yet a third audit is being conducted regarding equity loss payments, shared equity appreciation, and incentive packages.

Based on its revenues, the Postal Service would rank in the top 10 of the Fortune 500 companies. The size and the complexity of the postal operation there are teams of strategically located at three accounting service centers and headquarters to validate the accuracy and reliability of the financial information maintained in postal systems. As a part of the process, the OIG is also reviewing the controls over software and data security to ensure the confidentiality and integrity of the data maintained on these systems. The OIG finds that there are irregularities by some Postal Service executives in the use of chauffeur driven vehicles. Daily logs were either inadequate or nonexistent, so the misuse continued for an extended time. These matters have the potential for violations of Federal law. The matter of revenue deficiencies were studied at the request of the chairman. The OIG ascertained that revenue deficiency assessments were not done at times, mailers did not receive advance notice of deficiencies, and deficiencies assessed were sometimes due to incorrect information given by Postal Service personnel to mailers. The OIG conducted a review of the Postal Service's Economic Value Added Variable Pay Program. On the basis of the Postal Service projection as of March 24, 2000, the program payment has increased annually from 16 percent of net income in fiscal year 1996 to an estimated 325 percent of projected net income in fiscal year 2000. The Postal Service management defends the program because they believe it forces improved productivity. According to management, productivity in the Postal Service is the highest it has been since 1992. The issue is whether when the Postal Service may face negative net income, when it has requested



a rate increase and is reducing its workforce, such a payout may be viewed negatively by postal stakeholders.

In reviewing the Breast Cancer Research Stamp program, the OIG found that the Postal Service did not follow its own policy in recovering costs for this program. Money that should have been used to offset costs of the program was contributed to BCR funds. As a result, ratepayers who purchased other postal products contributed in a small way to the Breast Cancer Research funds. The OIG is concerned that without proper controls, the Postal Service will continue to pass associated costs of additional semipostal stamps, unwittingly, to ratepayers.

Each day Americans send more than 650 million pieces of mail through the Postal Service expecting it to be processed accurately and in a timely manner and the Postal Service must accomplish this to ensure that customer service does not suffer. The chairman requested the OIG to conduct a review of certified mail delays in California, Connecticut, Delaware, Illinois, and New York. Preliminary findings confirmed that certified mail was delayed in four of the five locations and exceeded delivery standards by at least 10 days during the tax season. It was found that the delay in mail was attributable to inadequate planning, staffing and supervision of mail processing operations. OIG believes that there was inadequate staffing because managers tried to keep overtime to a minimum to meet Economic Value Added goals that drive cash awards for managers. In some instances, mail arrived late due to transportation delays. These delivery delays went undetected because of the lack of a standard system to report certified mail. Another review was conducted to verify allegations that mail service had deteriorated. In a Mid-Atlantic area, it was found that approximately 1.2 million pieces of standard mail was up to a week late. In another location in the Pacific area, 200,000 pieces of delayed and unprocessed international mail was found—some were over 3 weeks old. Approximately 75,000 pieces of unprocessed mail including time sensitive material, such as tax documents and medical information, were discovered in the Southwest area. The Postal Service could not identify the causes of late mail or the timeliness of mail movement because the air carrier performance system was inadequate. The OIG discovered that the Postal Service had accepted more than 21,00 delivery vehicles under a \$441 million contract, even though the fuel pumps on the vehicles failed within 100 hours when used with ethanol fuel.

The independent status of the OIG enables the office to continue to add value to the Postal Service.

Mr. Bernard L. Ungar, Director, Government Business Operation Issues, General Government Division, U.S. General Accounting Office testified that the Postal Service has slightly improved its delivery performance, productivity and cost cutting measures this year. But, it has faced financial difficulties because mail volumes are declining faster than anticipated and postal costs have risen. There is concern that the Postal Service is heading for financial shortfalls that could impede its mission of providing universal, affordable services that bind the Nation. The Postal Service's 5-Year Strategic Plan for Fiscal Years 2001 through 2005 raised their concern about these public service obligations. The chairman of the Postal Rate

Commission [PRC] raised the question whether the nature of universal postal service delivery to every address 6 days each week may need to be reconsidered if there is a large decline in mail due to competition. Federal governmental obligations have also affected postal mail volumes. Government is mandated to move information, billing and payment as quickly as possible and to reduce paperwork, hence, the adoption of electronic billing and payment. 68 percent of the 880 million Social Security checks, tax refunds and other payments sent by the Department of the Treasury in 1999 were sent electronically, which cost the USPS \$180 million in first-class revenue. The effect from new technologies on the Service's mail volume will have significant negative impact on the categories of mail which the Postal Service handles most efficiently, first-class bills and payments. Though it is difficult to predict the timing and extent of further diversion, the Postal Service has begun to plan how to address such situations. The basic strategy is aggressive cost-cutting and new revenue generation. Also, a number of issues must be addressed: the definition of universal postal service; the potential realignment of service standards, and the configuration of current operations and infrastructure. It is anticipated that if there is a drastic change in volume, particularly in those categories that carry the bulk of the contribution to institutional overhead, postal rates will likely increase dramatically for other mail categories. Long-term increase in productivity is key to the future success of the Postal Service. Though productivity rose during the past fiscal year, the net result is low due to productivity decline during 5 of the last 6 fiscal years. In this regard, and because the Service recognizes the difficulty in achieving cost reduction in fiscal year 2001, the first year of the breakthrough productivity initiative, oversight attention should be given to what, how and when the Service expects to achieve breakthrough productivity. Mr. Ungar said that GAO continues to believe that the Postal Service and its major postal labor unions and management associations must focus on common approaches to address labor-management problems that persist. This would improve the work environment and help maintain a competitive position. The Report of the Postal Service Commission On A Safe and Secure Workplace stated that in order to contain the number of grievances, it is vital to establish an environment of trust; there must be a change of attitude by all parties. The annual cost of postal grievances is about \$217 million a year. A new program at the Postal Service, Resolving Employee Disputes, Reaching Equitable Solutions Swiftly [REDRESS] has helped to reduce Equal Employment Opportunity [EEO] complaints. However, the GAO continues to be concerned that continuing disagreement in labor-managements may impede improvements in achieving postal productivity. GAO suggested that another area of congressional oversight is the need for complete and reliable information on Postal performance which is essential for the USPS, Congress and stakeholders to monitor whether the Service is meeting its goals. The Service plans to spend about \$2 billion on information systems over the next 5 years. The quality and transparency of the information is vital. This includes issues such as data quality used in ratemaking. Data for e-commerce initiatives were found to be inaccurate, inconsistent and incomplete. The GAO

also has concerns regarding the manner in which information is presented, for instance, not using data for the full fiscal year, but using data only from peak periods. GAO recommended that the Postmaster General (1) take appropriate steps to ensure that e-commerce and other initiatives are appropriately identified and maintain accurate and complete information related to the status of these initiatives; (2) follow processes and controls that have been established for developing and approving e-commerce initiatives; and (3) provide complete and accurate information on costs and revenues for the financial data on e-commerce initiatives.

In GAO reports issued to Mr. Chaka Fattah, ranking minority member, Subcommittee on the Postal Service concerning diversity it was stated that women and minorities represented about 35 percent of the Postal Career Executive Service [PCES] where as their representation was 58 percent of the overall workforce of the USPS. The Service reported that various efforts were planned in an effort to increase diversity among PCES executives, including management training programs and a diversity oversight group to oversee corporate diversity initiatives. In another product, the GAO reported that in a study of diversity in 83 postal districts throughout the Nation, GAO found that representation of women and minorities varied from 22 percent to 95 percent. In districts where the representation in EAS positions almost mirrored the overall workforce, it was found that the districts were utilizing the REDRESS program as well as their individual initiatives.

Regarding the Breast Cancer Research Stamp [BCRS], the GAO was concerned that the Postal Service had not formalized its criteria for determining what costs would be recovered from the surcharge revenue generated by the BCRS. Upon GAO's concern that all costs were not being tracked, even informally, GAO recommended to the PMG (and the PMG obliged) that issue regulations that clearly state the criteria to determine costs that would be recouped from the BCRS surcharge revenue and ensure that the criteria be applied in the same manner to all costs.

Mr. Ungar stated that the GAO is continuing to work on supervisory pay differentials in reference the Service's policy that certain postmasters and supervisory personnel be paid at a higher salary rate under certain circumstances. Due to the USPS complex payroll system and the lack of documentation, the work for this project is taking longer than anticipated.



### III. Legislation

#### A. NEW MEASURES

##### SUBCOMMITTEE ON THE CENSUS

Hon. Dan Miller, *Chairman*

1. *H.R. 929, the 2000 Census Language Barrier Removal Act.*

*a. Report number and date.*—House Report No. 106–96, April 19, 1999.

*b. Summary of measure.*—H.R. 929 amends Title 13, U.S.C., to require the short form questionnaire used in taking the 2000 decennial census be made available in 33 languages, including Braille and in addition to English. The bill was introduced by the Honorable Dan Miller to address concerns that the Census Bureau plans to print census forms in only 5 languages other than English. Given that the United States is home to immigrants from nearly 100 countries around the world, providing the census questionnaires in more languages would enable immigrants to correctly complete and return a census form. The bill also gave the Secretary of Commerce the authority to determine the method in which the additional forms would be made available to the public to best enhance response rates.

*c. Legislative status.*—The Honorable Dan Miller (R–FL) introduced H.R. 929 on March 2, 1999. The bill was referred to the Committee on Government Reform on March 2, 1999, and it was referred to the Subcommittee on the Census on March 10, 1999. The subcommittee held a mark-up on March 11, 1999. No amendments were offered, and the measure was ordered favorably reported to the full committee by the yeas and nays 6–4 in a roll call vote. On March 17, 1999, the Committee on Government Reform met to consider the bill. The committee marked-up and subsequently approved the bill by the yeas and nays 23–21 in a roll call vote. The bill was then favorably reported to the House. H.R. 929 was placed on the Union Calendar on April 19, 1999, and House Report No. 106–96 was issued. No further action.

*d. Hearings.*—A hearing on H.R. 929 was held on March 2, 1999 as part of “Oversight of the 2000 Census: Examining the America Counts Today [ACT] Initiatives to Enhance Traditional Enumeration Methods.” Dr. Kenneth Prewitt, Director, Bureau of the Census, testified that the Census Bureau opposed this bill because designing, testing, printing, and preparing to scan additional forms in other languages would not be practical. In addition, he noted that the Bureau planned to offer telephone questionnaire assistance in five languages and to staff 15,000 questionnaire assistance centers in local communities to ensure that assistance in languages other than English would be provided to those who need it. Dr. Prewitt

contended that their planned program would be more effective than one that includes printing questionnaires in 33 languages.

2. *H.R. 1058, the Census in the Schools Promotion Act.*

a. *Report number and date.*—House Report No. 106–105, April 26, 1999.

b. *Summary of measure.*—H.R. 1058, the “Census in the Schools Promotion Act,” promotes greater participation in decennial censuses by providing for the expansion of the Census Bureau’s “Census in the Schools Project.” Under the current program design, the Bureau will be sending invitations to all principals, but to teachers in only 40 percent of schools nationwide. H.R. 1058 would simply require that the Census Bureau send an invitation-to-participate to elementary teachers and secondary math and social studies teachers in all communities, rather than only in the targeted areas.

c. *Legislative status.*—H.R. 1058 was introduced on March 10, 1999 by the Honorable Dan Miller (R–FL). The bill was referred to the Committee on Government Reform on March 10, 1999. On March 17, 1999 the Committee on Government Reform met to consider the bill. Mrs. Norton (D–DC) offered an amendment to require the Secretary of Commerce to provide a written invitation to participate in the program to the head of each elementary school and secondary school. The amendment offered by Mrs. Norton (D–DC) failed by recorded vote, 20 ayes, 21 noes. The committee approved the bill by voice vote. The committee then favorably reported the bill to the House by voice vote.

d. *Hearings.*—The committee held no hearings and received no written testimony on H.R. 1058. The Subcommittee on the Census held a hearing on March 2, 1999, entitled, “Examining the America Counts Today [ACT] Initiatives to Enhance Traditional Enumeration Methods,” where Dr. Kenneth Prewitt, Director of the Census Bureau supported an effort to reach 100 percent of schools.

3. *H.R. 1010, to improve participation in the 2000 decennial census by increasing the amounts available to the Census Bureau for marketing, promotion, and outreach.*

a. *Report number and date.*—House Report No. 106–97, April 19, 1999.

b. *Summary of measure.*—H.R. 1010 authorizes \$300 million for fiscal year 2000 to be appropriated to the Census Bureau to carry out promotional, outreach, and marketing activities in connection with the 2000 decennial census.

c. *Legislative status.*—H.R. 1010 was introduced on March 4, 1999 by the Honorable Dan Miller (R–FL), chairman of the Subcommittee on the Census, Government Reform Committee. The bill was referred to the Committee on Government Reform on March 4, 1999 and then referred to the Subcommittee on the Census on March 11, 1999. The subcommittee held a legislative hearing on March 2, 1999. A markup was held by the subcommittee on March 11, 1999. Mr. Davis (D–IL) offered an amendment to the bill which would have required the Census Bureau to make every effort to utilize funds to contract with entities that represent undercounted communities of color with income less than the poverty-line or who have limited proficiency in English. Mr. Souder (R–IN) offered and

withdrew an amendment to the amendment offered by Mr. Davis (D-IL). The amendment offered by Mr. Davis (D-IL) was defeated by voice vote. The measure was ordered favorably reported to the full committee by a voice vote.

On March 17, 1999, the full committee met to consider the bill. Mr. Davis (D-IL) offered an amendment to the bill which would require the Bureau of the Census to make every effort to utilize funds to contract with entities that have a demonstrated record of making an impact on undercounted communities with significant numbers of individuals of color, with incomes less than the poverty-line, or who have limited proficiency in English. The amendment offered by Mr. Davis (D-IL) passed by voice vote. The committee approved the bill, as amended, by voice vote. The committee then favorably reported the bill, as amended, to the House by voice vote.

*d. Hearings.*—The committee held no hearings and received no written testimony on H.R. 1010. The Subcommittee on the Census held a hearing on March 2, 1999, entitled, “Examining the America Counts Today [ACT] Initiatives to Enhance Traditional Enumeration Methods,” where Kenneth Prewitt, Director of the Census Bureau supported a more extensive advertising campaign.

#### *4. H.R. 928, 2000 Census Mail Outreach Improvement Act.*

*a. Report number and date.*—House Report No. 106–88, April 13, 1999.

*b. Summary of measure.*—H.R. 928 requires the 2000 decennial census to include a second mailing of census questionnaires, either targeted (to those households who have not yet responded by mail) or general (to each household included in the original mailing). Data from the census 2000 dress rehearsals and reports from the National Academy of Sciences suggested strongly that a second mailing would result in increased mail response rates. The legislation granted the Secretary of Commerce the authority to determine which method (targeted or general mailing) would achieve the highest number of responses possible, and simultaneously be the most feasible for the Census Bureau to implement.

*c. Legislative status.*—H.R. 928 was introduced by the Honorable Dan Miller (R-FL) on March 2, 1999. The bill was referred to the Committee on Government Reform on March 2, 1999, and was referred to the Subcommittee on the Census on March 10, 1999. The subcommittee held a mark-up on March 11, 1999. No amendments were offered and the measure was ordered favorably reported to the full committee by the yeas and nays 5–2 in a roll call vote. On March 17, 1999, the Committee on Government Reform met to consider the bill. The committee marked-up and subsequently approved the bill by the yeas and nays 23–20 in a roll call vote. The bill was then favorably reported to the House. H.R. 928 was placed on the Union Calendar on April 13, 1999, and House Report No. 106–88 was issued. No further action.

*d. Hearings.*—A hearing on H.R. 928 was held on March 2, 1999 as part of “Oversight of the 2000 Census: Examining the America Counts Today [ACT] Initiatives to Enhance Traditional Enumeration Methods.” Dr. Kenneth Prewitt, Director, Bureau of the Census testified that the Census Bureau opposed this bill. He cited increased costs, delays in the nonresponse follow-up operation, and

increased duplication as reasons why passage of H.R. 928 would result in a lower quality census.

5. *H.R. 472, Local Census Quality Check Act of 1999.*

a. *Report number and date.*—House Report No. 106–71, March 19, 1999.

b. *Summary of measure.*—H.R. 472 amends Title 13, United States Code, to require the use of a “Post Census Local Review” [PCLR] as part of each decennial census. A similar post census local review program was utilized by the Census Bureau as part of plans for the 1990 census with encouraging results. PCLR affords local officials the opportunity to pinpoint mistakes the Census Bureau may have made in their respective jurisdictions before the final census housing counts are released. These may include clusters of missed housing units, geographic misallocations (housing units listed in the wrong location), or incorrectly displayed political boundaries. Specifically, this legislation allows local governmental units and tribal leaders, or their designees, to review household counts, boundary maps, and other data the Secretary of Commerce considers appropriate in order to identify discrepancies in housing unit counts before the release of apportionment data on December 31, 2000. The bill also establishes a timeframe that provides both the Census Bureau and the local governmental units the time necessary to complete this review process and develop a challenge, and it ensures that the local challenges are responded to in a timely manner.

c. *Legislative status.*—H.R. 472 was introduced on February 2, 1999, by Subcommittee Chairman Miller (R–FL) and referred to the Committee on Government Reform and then to the Subcommittee on the Census. Subsequently, the subcommittee held a hearing and mark-up on February 11, 1999, and favorably forwarded the bill to the full committee for consideration. On March 17, 1999 the Committee on Government Reform marked-up the bill and Chairman Dan Burton (R–IN) ordered the yeas and nays for passage. H.R. 472 passed the full committee 23–21, and the committee then favorably forwarded the bill to the House by voice vote. H.R. 472 was placed on the Union Calendar on March 19, 1999, and House Report No. 106–71 was issued. H.R. 472 was brought to the full House for consideration on April 14, 1999 under Rules Committee Resolution H. Res. 138. An amendment by ranking Minority Member Carolyn Maloney (D–NY) failed by the yeas and nays 202–226, Roll Call Vote No. 88. H.R. 472 passed the House by the yeas and nays 223–206, Roll Call Vote No. 89. H.R. 472 was received in the Senate on April 15, 1999, and read twice then referred to the Committee on Governmental Affairs. No further action.

d. *Hearings.*—A hearing on H.R. 472, “The Local Census Quality Check Act of 1999,” was held on February 11, 1999 as part of “Oversight of the 2000 Census: Examining the Benefits of Post Census Local Review.”

6. *H.R. 1009, the 2000 Census Community Participation Enhancement Act.*

a. *Report number and date.*—House Report No. 106–89, April 13, 1999.



*b. Summary of measure.*—H.R. 1009 authorizes the Secretary of Commerce to administer grants to units of local government, tribal organizations, and nonprofit organizations to promote the census within their communities. The bill requires the Secretary of Commerce to prescribe regulations to carry out the act within 60 days. Applicants are required to submit their applications to the Census Bureau regional centers. The Secretary then would have 60 days to notify the applicant whether the application has been approved or disapproved. The grant program would match \$2 in Federal funds for every \$1 of non-Federal contribution. Non-Federal contributions could be made in-kind. The total amount of Federal funds available would be \$26 million.

*c. Legislative status.*—H.R. 1009 was introduced on March 4, 1999 by the Honorable Dan Miller (R-FL), chairman of the Subcommittee on the Census, Government Reform Committee. The bill was referred to the Committee on Government Reform on March 4, 1999 and then to the Subcommittee on the Census on March 11, 1999. The subcommittee held a legislative hearing on March 2, 1999. A markup was held by the subcommittee on March 11, 1999. Mrs. Maloney (D-NY) offered an amendment to the bill to restrict grants to communities with a population undercount of 2 percent or greater. The amendment made available sums as may be necessary and required the Secretary of Commerce to select a nonprofit organization(s) to administer the grants program. Mrs. Maloney's amendment failed on voice vote. The measure was ordered favorably reported to the full committee by a voice vote.

On March 17, 1999, the full committee met to consider the bill. Mrs. Maloney offered an amendment to the bill to restrict grants to communities with a population undercount of 2 percent or greater. This amendment made available sums as may be necessary and requires the Secretary of Commerce to select a nonprofit organization(s) to administer the grants program. Mrs. Maloney's amendment failed on voice vote. Mr. Miller offered a technical amendment which passed by voice vote. The committee approved bill, as amended, by voice vote. The committee then favorably reported the bill, as amended, to the House by voice vote.

*d. Hearings.*—The committee held no hearings and received no written testimony on H.R. 1009.

#### 7. *H.R. 683, the Decennial Census Improvement Act of 1999.*

*a. Report number and date.*—House Report No. 106-104, April 26, 1999.

*b. Summary of measure.*—H.R. 683 allows individuals working on a temporary basis in a position related to the 2000 decennial census to remain eligible for public assistance at the Federal, State, and local level in those programs that are at least partially funded by the Federal government.

*c. Legislative status.*—The Honorable Carrie Meek (D-FL) introduced H.R. 683 on February 10, 1999. The bill was referred to the House Committee on Government Reform on February 10, 1999, and it was referred to the Subcommittee on the Census on February 22, 1999. The subcommittee met to consider the bill on March 4, 1999. The Honorable Dan Miller (R-FL) offered an amendment, which was approved by a voice vote. The amendment

prevents a reduction in benefits but does not prevent recipients from receiving an increase in benefits. Individuals are only eligible for services performed during calendar year 2000, and the waiver does not apply if the individual was appointed before January 1, 2000. The waiver of compensation for benefits has no effect on the Internal Revenue Code of 1986. The measure, as amended, was ordered favorably reported to the full committee by a voice vote. On March 17, 1999, the Committee on Government Reform met to consider the bill. The committee approved the bill (as amended) by yeas and nays 31–1 in a roll call vote. The bill was then favorably reported to the House.

*d. Hearings.*—On March 2, 1999, the Subcommittee on the Census held a hearing on the America Counts Today [ACT] initiative. Two witnesses at the hearing addressed the legislation: Dr. Kenneth Prewitt, Director, U.S. Bureau of the Census and the Honorable Carrie Meek (D–FL). Dr. Prewitt indicated that the Census Bureau readily embraced the waiver initiative. Mrs. Meek supported the legislation and indicated that granting waivers for those on Federal assistance should both encourage those on assistance to work for the census, and result in an improved count in the decennial census.

8. *H. Con. Res. 193, expressing the support of Congress for activities to increase public participation in the decennial census.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Con. Res. 193 recognizes the importance of achieving a successful census, encourages partners to continue to work toward this goal, reaffirms a spirit of cooperation between Congress and the Census Bureau, and asserts a partnership between Congress and the Census Bureau to promote the 2000 decennial census.

*c. Legislative status.*—H. Con. Res. 193 was introduced on October 6, 1999 by the Honorable Dan Miller (R–FL) and the Honorable Carolyn Maloney (D–NY). The bill was referred to the Committee on Government Reform on October 6, 1999. On November 2, 1999 the bill was taken up by the House under suspension of the rules. The resolution was agreed to by voice vote.

*d. Hearings.*—The committee held no hearings and received no written testimony on H. Con. Res. 193.

9. *H.R. 1632, to provide that certain attribution rules be applied with respect to the counting of certain prisoners in a decennial census of population.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 1632 directs the Secretary of Commerce to direct the Census Bureau to make changes in tabulating the total population of the United States in a decennial census. H.R. 1632 provides that any prisoner who is convicted in one State but incarcerated in another shall be counted as a resident of the State from which more than half the costs associated with such a prisoner's incarceration are recoverable.

*c. Legislative status.*—H.R. 1632 was introduced by the Honorable Mark Green (R–WI) on April 29, 1999 and referred to the Committee on Government Reform. Subsequently, H.R. 1632 was

referred to the Subcommittee on the Census on May 10, 1999. No further action.

*d. Hearings.*—A hearing on H.R. 1632 was held on June 9, 1999 as part of “Oversight of the 2000 Census: Examining the Bureau’s Policy to Count Prisoners, Military Personnel, and Americans Residing Overseas.”

*10. H.R. 2067, The Military Personnel Home of Record Act of 1999.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2067, the Military Personnel Home of Record Act of 1999—for purposes of the 2000 decennial census, this bill requires the Secretary of Commerce to ensure that the Census Bureau make changes to the way they allocate active duty members of the armed services back to the States. The Census Bureau must first allocate members of the armed forces on active duty to their home of record, legal residence, or last permanent duty station in the United States, in that order of priority. Second, the Census Bureau must allocate any dependents of such a member assigned to a permanent duty station outside of the United States who are residing with such a member to their last State or U.S. territory of residence. The exception being if such a dependent never resided in the United States (or a U.S. territory) and is a U.S. citizen, such dependent shall be allocated in the same manner as applies to such member.

*c. Legislative status.*—H.R. 2067 was introduced by Census Subcommittee Member Paul Ryan (R-WI) on June 8, 1999 and referred to the Committee on Government Reform. Subsequently, H.R. 2067 was referred to the Subcommittee on the Census on June 16, 1999. No further action.

*d. Hearings.*—A hearing on H.R. 2067 was held on June 9, 1999 as part of “Oversight of the 2000 Census: Examining the Bureau’s Policy to Count Prisoners, Military Personnel, and Americans Residing Overseas.”

*11. H.R. 3581, to make additional funds available to the Secretary of Commerce for purposes of the 2000 decennial census, and for other purposes.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 3581 appropriates additional funds for fiscal year 2000 for necessary expenses to conduct the 2000 decennial census, in order to obtain an accurate and timely census should sufficient funds not otherwise be available. The bill additionally permits members of the armed services to work in decennial census operations regardless of their status and allows those receiving Federal, State or local benefits financed with Federal funds to remain eligible to work regardless of the compensation received for service performed in a 2000 census position.

*c. Legislative history/status.*—H.R. 3581 was introduced February 7, 2000 by the Honorable Carolyn Maloney (D-NY), ranking member of the Subcommittee on the Census. The bill was referred to the Committee on Government Reform on February 7, 2000 and subsequently referred to the Subcommittee on the Census on February 11, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H.R. 3581.

12. *H.R. 3649, the Census of Americans Abroad Act.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 3649, the “Census of American Abroad Act,” directs the Secretary of Commerce to provide for an interim census of all Americans residing abroad, and to require that such individuals be included in the 2010 decennial census.

*c. Legislative history/status.*—H.R. 3649 was introduced February 14, 2000 by the Honorable Carolyn Maloney (D-NY), ranking member of the Subcommittee on the Census. The bill was referred to the Committee on Government Reform on February 14, 2000 and subsequently referred to the Subcommittee on the Census on February 17, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H.R. 3649.

13. *H. Con. Res. 263, expressing support for a National Teach Census Week.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Con. Res. 263 expresses the sense of Congress that: (1) a National Teach Census Week should be established to recognize the importance of participating in the 2000 decennial census; and (2) the President should issue a proclamation calling on elementary, secondary, and high school teachers across the Nation, particularly those involved in teaching American history and government, to instruct their students on the importance of participating in such census.

*c. Legislative history/status.*—H. Con. Res. 263 was introduced March 2, 2000, by the Honorable Dan Miller (R-FL), chairman of the Subcommittee on the Census. The bill was referred to the Committee on Government Reform on March 2, 2000, and subsequently referred to the Subcommittee on the Census on March 7, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H. Con. Res. 263.

14. *H.R. 4085, to provide that decennial census questionnaires be limited to requesting only the information required by the Constitution.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4085 amends title 13, United States Code, to limit decennial census questions to those requesting only the information required by the Constitution, specifically, only the number of individuals residing or staying at a particular address or location, and the names of those individuals.

*c. Legislative history/status.*—H.R. 4085 was introduced March 23, 2000 by the Honorable Ron Paul (R-TX). The bill was referred to the Committee on Government Reform on March 23, 2000, and subsequently referred to the Subcommittee on the Census on April 3, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H.R. 4085.

15. *H.R. 4154, the Common Sense Census Act of 2000.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4154, the “Common Sense Census Act of 2000,” amends title 13, United States Code, to provide that the penalty for refusing or neglecting to answer decennial census questions shall apply only to the extent necessary to allow the Government to obtain the information needed for its enumeration of the population. The provisions of the Common Sense Census Act of 2000 shall apply to the 2000 decennial census.

*c. Legislative history/status.*—H.R. 4154 was introduced April 3, 2000 by the Honorable Duncan Hunter (R-CA). The bill was referred to the Government Reform Committee on April 3, 2000 and subsequently referred to the Subcommittee on the Census on April 7, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H.R. 4154.

16. *H.R. 4158, to limit the penalty that may be assessed for not answering decennial census questions beyond those necessary for an enumeration of the population.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4158 amends title 13, United States Code, to decrease the penalty that may be assessed for not answering decennial census questions beyond those necessary for an enumeration of the population, from \$100 to \$10. The provisions of the bill shall apply to a decennial census taken in 2000 or later.

*c. Legislative history/status.*—H.R. 4158 was introduced April 3, 2000 by the Honorable Nick Smith (R-MI). The bill was referred to the Committee on Government Reform on April 3, 2000, and subsequently referred to the Subcommittee on the Census on April 7, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony on H.R. 4158.

17. *H.R. 4188, the Common Sense Census Enforcement Act of 2000.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4188, the “Common Sense Census Enforcement Act of 2000” amends title 13, United States Code, to provide that the penalty for refusing or neglecting to answer one or more of the questions on a decennial census shall not apply, so long as all of the short form questions on such schedule have been answered.

*c. Legislative history/status.*—H.R. 4188 was introduced April 5, 2000 by the Honorable Mac Collins (R-GA). The bill was referred to the Committee on Government Reform on April 5, 2000 and subsequently referred to the Subcommittee on the Census on April 13, 2000. No further action.

*d. Hearings.*—On July 20, 2000 the Subcommittee on the Census held a hearing entitled, “The American Community Survey: A Replacement for the Census Long Form.” Representative Collins testified in support of his bill before the subcommittee at the hearing.

18. *H.R. 4198, to declare U.S. policy with regard to the constitutional requirement of a decennial census for purposes of the apportionment of Representatives in Congress among the several States.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4198 declares that it is the policy of the United States that the sole purpose of the decennial enumeration of the population is to allow for the apportionment of Representatives in Congress among the several States. The only information needed in order to carry out that purpose are the names, ages, and the number of individuals residing in a household, and the address or location of such household. Additionally, the penalty for refusing or neglecting to answer decennial census questions shall be imposed only on individuals failing to provide that information needed to carry out that purpose.

*c. Legislative history/status.*—H.R. 4198 was introduced April 6, 2000 by the Honorable Helen Chenoweth-Hage (R-ID). The bill was referred to the Committee on Government Reform, and in addition to the Committee on the Judiciary, on April 6, 2000. The Government Reform Committee subsequently referred the bill to the Subcommittee on the Census on April 13, 2000. No further action.

*d. Hearings.*—The subcommittee held no hearings and received no written testimony regarding H.R. 4198.

19. *H.R. 4291, to limit the decennial census questionnaires to basic questions needed for an enumeration of the population.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4291 amends title 13, United States Code, to authorize the Secretary of Commerce to request no information apart from that needed to allow for an enumeration of the population. The only questions needed to allow for such an enumeration are those asking for an individual's name or the number of individuals in a household. The provisions in H.R. 4291 will be effective in the 2010 decennial census and each thereafter.

*c. Legislative history/status.*—H.R. 4291 was introduced April 13, 2000 by the Honorable Tom Campbell (R-CA). The bill was referred to the Committee on Government Reform on April 13, 2000 and subsequently referred to the Subcommittee on the Census on April 27, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H.R. 4291.

20. *H.R. 4458, to limit the information that may be requested on decennial census questionnaires.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4458 amends title 13, United States Code, to authorize the Secretary of Commerce to request no information apart from what is asked on the short form questionnaire in the decennial census.

*c. Legislative history/status.*—H.R. 4458 was introduced May 15, 2000 by the Honorable Lee Terry (R-NE). The bill was referred to the Committee on Government Reform on May 15, 2000 and subse-

quently referred to the Subcommittee on the Census on May 17, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H.R. 4458.

21. *H.R. 4568, to provide funds for the planning of a special census of Americans residing abroad.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4568 expresses the sense of Congress that the Bureau of the Census should: (1) carry out a special census of all Americans living abroad in 2003; (2) review the means by which Americans may be included in the 2010 decennial census; and (3) provide for the inclusion of such Americans in such censuses thereafter.

*c. Legislative history/status.*—H.R. 4568 was introduced May 25, 2000 by the Honorable Carolyn Maloney (D-NY), ranking member of the Subcommittee on the Census. The bill was referred to the Committee on Government Reform on May 25, 2000 and subsequently referred to the Subcommittee on the Census on June 6, 2000. No further action.

*d. Hearings.*—The committee held no hearings and received no written testimony regarding H.R. 4568.

#### SUBCOMMITTEE ON THE CIVIL SERVICE

Hon. Joe Scarborough, *Chairman*

1. *H.R. 206, a bill to provide for greater access to child care services for Federal employees.*

*a. Report number and date.*—H. Rept. 106–169, June 7, 1999.

*b. Summary of measure.*—This legislation would authorize Federal agencies to use funds appropriated for Federal employees' salaries and expenses to help make child care at Federal facilities more affordable for lower-income Federal employees.

*c. Legislative status.*—H.R. 206 has not been considered by the House. However, substantially similar language was included in section 643 of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this measure.

2. *H.R. 208, a bill to amend title 5, United States Code, to allow for the contribution of certain rollover distributions to accounts in the Thrift Savings Plan, to eliminate certain waiting-period requirements for participating in the Thrift Savings Plan, and for other purposes.*

*a. Report number and date.*—H. Rept. 106–87, April 13, 1999.

*b. Summary of measure.*—H.R. 208 authorizes Federal employees to begin participation in the Thrift Savings Plan immediately upon being hired rather than waiting 6 months to a year as is required by current law. This legislation also authorizes new Federal hires to contribute eligible rollover distributions from qualified trusts, including private sector 401(k) accounts, to the Thrift Savings Fund.

*c. Legislative status.*—Passed the House under suspension of the rules on April 20, 1999. On July 21, 2000, the legislation passed the Senate with amendments by Unanimous Consent. The House concurred with the Senate action on October 10, 2000 by recorded vote, 382–0. It is now Public Law 106–361.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

*3. H.R. 416, the Federal Retirement Coverage Corrections Act.*

*a. Report number and date.*—H. Rept. 106–29, Parts I and II (February 23, 1999, March 23, 1999).

*b. Summary of measure.*—Through no fault of their own, thousands of Federal employees have been erroneously placed in the wrong Federal retirement system. The vast majority of these errors involve misclassifications in either the Federal Employees Retirement System [FERS] or the Civil Service Retirement System [CSRS]. When these errors are discovered, the Office of Personnel Management [OPM] and other Federal agencies must correct the mistake by automatically enrolling misclassified employees in the correct system. Because corrections do not currently include make-whole relief, their effects are often devastating for the employees involved.

The Federal Retirement Coverage Corrections Act addresses this problem and accomplishes a number of objectives. It provides comprehensive coverage of retirement coverage errors. Employees affected by an error are provided a status quo option, and employees' Thrift Savings Plan [TSP] accounts are made whole. Agencies are held accountable for their mistakes. Unfair tax consequences of corrections are prevented. To ensure fairness and accuracy, the bill requires centralized oversight of the corrections process and provides affected employees with administrative and judicial review. The bill protects the integrity of the Social Security trust funds, and it protects all employees from reductions in force [RIFs] to pay for the required remedies.

The bill provides a consistent framework to correct all retirement coverage errors for employees with accounts in the Civil Service Retirement and Disabilities Fund [CSRDF] and also covers former employees, annuitants, and survivors. It extends the same correction options to employees in retirement systems for the Foreign Service and the Central Intelligence Agency.

With two exceptions, employees may choose between the retirement system they were mistakenly placed in or the system they should have been placed in retroactively to the date of the error. One exception prevents employees who were erroneously placed in the CSRS from electing that system; they may, however, choose to be enrolled in the CSRS-Offset system. The other exception affects employees who should have been in Social Security only, without retirement participation, but who were erroneously enrolled in one of the Federal retirement systems. These employees may not remain in a Federal retirement system unless they had already vested.

The bill adapts an Internal Revenue Service [IRS] Revenue Procedure that applies to similar mistakes in the private sector as a model for make whole contributions to employees' TSP accounts.



The agencies responsible for retirement coverage errors bear the cost of making up lost earnings on employees' TSP accounts. Agencies, not employees, make all necessary contributions to the Civil Service Retirement and Disability Fund [CSRDF], Social Security trust funds, as well as the TSP. They also pay the reasonable costs of financial and legal advice employees need to make informed decisions under the act. In some cases, agencies may collect from employees an amount equal to the refund of Social Security contributions due the employees.

OPM will be required to issue regulations to ensure uniform implementation of the bill's provisions and to ensure that employees are properly informed as to the status of their various retirement accounts in order to make an informed election. Corrections under the bill are not final until approved by OPM. Employees may appeal corrections to the Merit Systems Protection Board [MSPB], and seek judicial review by the U.S. Court of Appeals for the Federal Circuit. The bill does not impair any right employees may have to sue for other damages under the Federal Tort Claims Act.

*c. Legislative status.*—Passed the House under suspension of the rules on March 23, 1999; referred to the Senate Committee on Governmental Affairs. Congress included language addressing this issue in a different bill, H.R. 4040, which is now Public Law 106–265. See Part III.A.20 [Subcommittee on the Civil Service].

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter during the 106th Congress. It did hold several hearings during the previous Congress.

#### 4. *H.R. 457, the Organ Donor Leave Act.*

*a. Report number and date.*—H. Rept. 106–174, June 8, 1999.

*b. Summary of measure.*—Permits a Federal employee to use paid leave not exceeding 7 days in any calendar year to serve as a bone marrow donor, and paid leave not exceeding 30 days to serve as an organ donor.

*c. Legislative status.*—Public Law 106–56.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

#### 5. *H.R. 807, the Federal Reserve Board Retirement Portability Act.*

*a. Report number and date.*—H. Rept. 106–53, March 16, 1999.

*b. Summary of measure.*—H.R. 807 authorizes Federal Reserve Board employees who transfer to other Federal agencies to receive credit under the Federal Employees Retirement System [FERS] for post-1988 Board employment. This legislation also permits employees who have transferred or will transfer to the Board to move the funds in their Thrift Savings Plan [TSP] accounts to the Board's Thrift Plan. The legislation also provides veterans hired under Public Law 105–339 with the same civil service protections and job opportunities as their co-workers.

*c. Legislative status.*—Passed the House under suspension of the rules on March 16, 1999; referred to the Senate Committee on Governmental Affairs. The language from H.R. 807 was also included in S. 335, which is now Public Law 106–168.

*d. Hearings.*—The subcommittee's hearing on this matter is summarized in Section II.B.(1)(c) [Subcommittee on the Civil Service].

6. *H.R. 915, a bill to authorize a cost of living adjustment in the pay of administrative law judges.*

*a. Report number and date.*—H. Rept. 106–387, October 18, 1999.

*b. Summary of measure.*—H.R. 915 amended 5 U.S.C. § 5372 to change the method for adjusting the basic pay of the more than 1,300 administrative law judges [ALJ] employed by the Federal Government. It gives the President the same authority to provide annual pay adjustments to ALJs that he now has with respect to the Senior Executive Service [SES].

*c. Legislative status.*—Public Law 106–97.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this measure. However, the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary, to which this measure was originally referred in error, held a hearing on May 27, 1999.

7. *H.R. 1451, the Abraham Lincoln Bicentennial Commission Act.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 1451 would establish a 15-member commission to study and recommend various activities that would be fitting and proper to honor Abraham Lincoln on the occasion of the bicentennial anniversary of his birth in 2009.

*c. Legislative status.*—Public Law 106–73.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this measure.

8. *H.R. 2904, a bill to amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics, and to clarify the definition of a “special Government employee” under title 18, United States Code.*

*a. Report number and date.*—H. Rept. 106–433, Part I, November 2, 1999.

*b. Summary of measure.*—H.R. 2904 reauthorizes appropriations for the Office of Government Ethics for fiscal years 2000 through 2003. It also revises and clarifies the definition of the term “special government employee” to make unofficial advisers more accountable to the American people.

*c. Legislative status.*—Passed the House under suspension of the rules on November 8, 1999.

*d. Hearings.*—The subcommittee’s hearing on this issue is summarized in Part II.B.7(c) [Subcommittee on the Civil Service].

9. *H. Res. 105, to recognize and honor Joe DiMaggio.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 105 recognizes and honors Joe DiMaggio for his storied baseball career, for his many contributions to the Nation throughout his lifetime, and for transcending baseball and becoming a symbol for the ages of talent, commitment, and achievement.

*c. Legislative status.*—Passed the House under suspension of the rules on March 16, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

10. *H. Res. 244, a resolution expressing the sense of the House of Representatives with regard to the U.S. Women's Soccer Team and its winning performance in the 1999 Women's World Cup tournament.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 244 congratulates the U.S. Women's Soccer Team on its winning championship performance in the World Cup tournament; recognizes the important contribution each individual team member has made to the United States and to the advancement of women's sports; and invites the members of the U.S. Women's Soccer Team to the U.S. Capitol to be honored and recognized by the House of Representatives for their achievements.

*c. Legislative status.*—Passed the House under suspension of the rules on July 13, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

11. *H. Res. 264, a resolution expressing the sense of the House of Representatives honoring Lance Armstrong, America's premier cyclist, and his winning performance in the 1999 Tour de France.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 264 congratulates Lance Armstrong on his spectacular performance, winning the 1999 Tour de France; and recognizes the contribution Lance Armstrong's perseverance has made to inspire those fighting cancer and survivors of cancer around the world.

*c. Legislative status.*—Passed the House under suspension of the rules on July 30, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

12. *H. Res. 269, a resolution expressing the sense of the House of Representatives that Joseph Jefferson "Shoeless Joe" Jackson should be appropriately honored for his outstanding baseball accomplishments.*

*a. Report number and date.*—None.

*b. Summary of measure.*—Expresses the sense of the House of Representatives that Joseph Jefferson "Shoeless Joe" Jackson should be appropriately honored for his outstanding baseball accomplishments.

*c. Legislative status.*—Passed the House under suspension of the rules on November 8, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

13. *H. Res. 279, a resolution congratulating Henry "Hank" Aaron on the 25th anniversary of breaking the Major League Baseball career home run record established by Babe Ruth and recognizing him as one of the greatest baseball players of all time.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 279 congratulates Henry "Hank" Aaron on his great achievements in baseball, recognizes

him as one of the greatest professional baseball players of all time, and commends him for his commitment to young people, which have earned him a permanent place in both sports history and American society.

*c. Legislative status.*—Passed the House under suspension of the rules on October 19, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

14. *H. Res. 293, a resolution expressing the sense of the House of Representatives in support of “National Historically Black Colleges and Universities Week.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 293 supports the goals and ideas of “National Historically Black Colleges and Universities Week”; and it requests that the President issue a proclamation calling on the people of the United States and interested groups to conduct appropriate ceremonies, activities, and programs to demonstrate support for historically black colleges and universities in the United States.

*c. Legislative status.*—Passed the House under suspension of the rules on September 22, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

15. *H. Res. 324, a resolution supporting National Civility Week, Inc. in its efforts to restore civility, honesty, integrity, and respectful consideration in the United States.*

*a. Report number and date.*—None.

*b. Summary of measure.*—The House of Representatives supports the efforts of National Civility Week, Inc. to restore civility, honesty, integrity, and respectful consideration in the United States.

*c. Legislative status.*—Passed the House under suspension of the rules on November 2, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

16. *H. Res. 344, a resolution recognizing and honoring Payne Stewart and expressing the condolences of the House of Representatives to his family on his death and to the families of those who died with him.*

*a. Report number and date.*—None.

*b. Summary of measure.*—The House of Representatives recognizes and honors Payne Stewart as one of the greatest golfers; for his many contributions to the Nation throughout his lifetime; and for transcending the game of golf and becoming a timeless symbol of athletic talent, spirited competition, and a role model as a Christian gentleman and a loving father and husband; and extends its deepest condolences to the families of Payne Stewart and the other victims in the plane crash, Van Arden, Stephanie Bellegarrigue, Bruce Borland, Robert Fraley, and Michael Kling, on their tragic loss. The Clerk of the House of Representatives is instructed to transmit an enrolled copy of this resolution to the family of each of the victims.

*c. Legislative status.*—Passed the House under suspension of the rules on November 2, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

17. *H. Res. 363, a resolution recognizing and honoring Sacramento, CA, Mayor Joe Serna, Jr., and expressing the condolences of the House of Representatives to his family and the people of Sacramento on his death.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 363 recognizes and honors Sacramento Mayor Joe Serna, Jr., as a profoundly successful leader whose drive and energy inspired thousands, for his many lifetime contributions to Sacramento, the State of California, and the Nation, and for selflessly devoting his life to the advancement of others through activism, public service, education, and dedication; and extends the deepest condolences to Mayor Joe Serna's wife and family, as well the citizens of Sacramento, CA, for the loss of their dedicated mayor.

*c. Legislative status.*—Passed the House under suspension of the rules on November 16, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

18. *H. Res. 370, a resolution recognizing and honoring Walter Payton and expressing the condolences of the House of Representatives to his family on his death.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 370 recognizes and honors Walter Payton as one of the greatest professional football players; for his many contributions to Mississippi and the Nation throughout his lifetime; and for transcending the game of football and becoming a timeless symbol of athletic talent, spirited competition, and a role model as a Christian gentleman and a loving father and husband; and extends the House's deepest condolences to Walter Payton's wife Connie and his family on their tragic loss. The Clerk of the House of Representatives is instructed to transmit an enrolled copy of this resolution to the family of Walter Payton.

*c. Legislative status.*—Passed the House under suspension of the rules on November 16, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

19. *H. Con. Res. 94, a concurrent resolution recognizing the public need for reconciliation and healing, urging the United States to unite in seeking God, and recommending that the Nation's leaders call for days of prayer.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Con. Res. 94 recognized the unique opportunity that the dawn of a millennium presents to a people in a nation under God to humble and reconcile themselves with God and with one another; urged all Americans to unite in seeking the face of God through humble prayer and fasting, persistently asking God to send spiritual strength and a renewed sense of humility to

the Nation so that hate and indifference may be replaced with love and compassion, and so that the suffering in the Nation and the world may be healed by the hand of God; and recommended that the leaders in national, State, and local governments, in business, and in the clergy appoint, and call the people they serve to observe a day of solemn prayer, fasting, and humiliation before God.

*c. Legislative status.*—Defeated under suspension of the rules on June 29, 1999.

*d. Hearings.*—The Civil Service Subcommittee held no hearings on this matter.

20. *H.R. 4040, the Long-Term Care Security Act.*

*a. Report number and date.*—House Report No. 106–610, May 8, 2000.

*b. Summary of measure.*—H.R. 4040, as amended, establishes a program under which Federal civilian employees, members of the uniformed services, as well as civilian and military retirees can purchase private group long-term care insurance for themselves and certain qualified relatives at a discount. A Senate amendment to the bill also provides for redress of Federal employees misclassified in the wrong retirement system.

*c. Legislative status.*—Public Law 106–265.

*d. Hearings.*—The subcommittee held no legislative hearings on H.R. 4040. However, three hearings were held to examine various aspects of the long-term care insurance issue. (See Part II.B.2(c) [Subcommittee on the Civil Service].)

21. *H.R. 2842, the Federal Employees Health Benefits Children's Equity Act of 1999.*

*a. Report number and date.*—House Report No. 106–779, July 24, 2000.

*b. Summary of measure.*—H.R. 2842, as amended, enables the Federal Government to enroll an employee and his or her family in the Federal Employees Health Benefits Program when a State court orders the employee to provide health insurance coverage for a child of the employee but the employee fails to provide the coverage. Moreover, if such an employee fails to enroll and cannot show that the child is covered by other health insurance, this amendment would require the employing agency to enroll the employee for self and family under the low-option Service Benefit Plan (currently Blue Cross/Blue Shield). The bill also delays the adjustment of annuity supplements received by certain FERS retirees. The delay permits more accurate calculation of the adjustments.

*c. Legislative status.*—Public Law 106–394.

*d. Hearings.*—There were no hearings held on H.R. 2842.

22. *H. Con. Res. 302, Calling on the people of the United States to observe a National Moment of Remembrance to honor the men and women of the United States who died in the pursuit of freedom and peace.*

*a. Report number and date.*—There was no report filed.

*b. Summary of measure.*—This resolution calls on the people of the United States to observe a National Moment of Remembrance

to honor the men and women of the United States who died in the pursuit of freedom and peace.

*c. Legislative status.*—The resolution passed the House by recorded vote, 362–0, on May 22, 2000. On May 25, 2000, the resolution was agreed to in Senate without amendment and with a preamble by Unanimous Consent.

*d. Hearings.*—There were no hearings held on H. Con. Res. 302.

23. *H. Con. Res. 376, Expressing the sense of the Congress regarding support for the recognition of a Liberty Day.*

*a. Report number and date.*—There was no report filed.

*b. Summary of measure.*—This legislation expresses the sense of the Congress regarding support for the recognition of a Liberty Day.

*c. Legislative status.*—This resolution passed the House under suspension of the rules on October 10, 2000. On October 19, 2000, this resolution was agreed to in the Senate without amendment and with a preamble by Unanimous Consent.

*d. Hearings.*—There were no hearings held on H. Con. Res. 376.

24. *H. Con. Res. 396, Celebrating the birth of James Madison and his contributions to the Nation.*

*a. Report number and date.*—There was no report filed.

*b. Summary of measure.*—This legislation celebrates the birth of James Madison and his contributions to the Nation.

*c. Legislative status.*—This legislation passed the House under suspension of the rules on October 2, 2000. On October 25, 2000, the measure was agreed to in the Senate without amendment and with a preamble by Unanimous Consent.

*d. Hearings.*—There were no hearings held on H. Con. Res. 36.

25. *H.R. 3312, Merit Systems Protection Board Administrative Dispute Resolution Act of 1999.*

*a. Report number and date.*—H. Report 106–994.

*b. Summary of measure.*—This legislation amends Federal civil service law to authorize the Merit Systems Protection Board to establish a 3-year pilot program to provide Federal employees and agencies with voluntary early intervention alternative dispute resolution [ADR] processes to apply to workplace disputes involving removals, suspension for more than 14 days, and other adverse actions under Federal civil service law. Directs the Board to test and evaluate a variety of ADR techniques. Authorizes any Federal agency or employee to request such ADR. The legislation also requires the Board's Office of Policy and Evaluation to establish criteria for evaluating such ADR program, prepare a report, and submit it to the President and Congress.

*c. Legislative status.*—H.R. 3312 passed under suspension of the rules on October 24, 2000.

*d. Hearings.*—There were no hearings held on H.R. 3312.

26. *H. Res. 347, Expressing the sense of the House of Representatives in support of "Italian-American Heritage Month" and recognizing the contributions of Italian Americans to the United States.*

*a. Report number and date.*—There was no report filed.

*b. Summary of measure.*—This measure expresses support for the goals and ideas of Italian-American Heritage Month and recognizes the significant contributions that Italian Americans have made to the United States.

*c. Legislative status.*—H. Res. 347 passed the House under suspension of the rules on October 24, 2000.

*d. Hearings.*—There were no hearings held on H. Res. 347.

27. *H.R. 460, To amend title 5, United States Code, to provide that the mandatory separation age for Federal firefighters be made the same as the age that applies with respect to Federal law enforcement officers.*

*a. Report number and date.*—There was no report filed.

*b. Summary of measure.*—This legislation amends Federal civil service law relating to the Civil Service Retirement System and the Federal Employees' Retirement System to provide that the mandatory separation age for Federal firefighters, currently, 55, be made the same as the age that applies with respect to Federal law enforcement officers, currently, 57.

*c. Legislative status.*—H.R. 460 passed the House under suspension of the rules on October 17, 2000.

*d. Hearings.*—There were no hearings held on H.R. 460.

28. *H. Con. Res. 317, Expressing the sense of the Congress on the death of John Cardinal O'Connor, Archbishop of New York.*

*a. Report number and date.*—No report was filed.

*b. Summary of measure.*—This resolution expresses the sense of the Congress on the death of John Cardinal O'Connor, Archbishop of New York.

*c. Legislative status.*—H. Con. Res. 317 passed the House by voice vote on May 4, 2000. On May 8, 2000, the resolution was agreed to by the Senate under unanimous consent.

*d. Hearings.*—There were no hearings held on H. Con. Res. 317.

29. *H. Con. Res. 381, Expressing the sense of the Congress that there should be established a National Health Center Week to raise awareness of health services provided by community, migrant, and homeless health centers.*

*a. Report number and date.*—No report was filed.

*b. Summary of measure.*—This resolution expresses the sense of the Congress that there should be established a National Community Health Center Week to raise awareness of health services provided by community, migrant, and homeless health centers and that the President should issue a proclamation calling on the people of the United States and interested organizations to observe such a week with appropriate programs and activities.

*c. Legislative status.*—H. Con. Res. 381 passed the House by unanimous consent on July 27, 2000.

*d. Hearings.*—There were no hearings held on H. Con. Res. 381.



30. *H.R. 4519, Baylee's Law.*

*a. Report number and date.*—House Report 106–869.

*b. Summary of measure.*—This legislation amends the Public Buildings Act of 1959 concerning the safety and security of children enrolled in childcare facilities located in public buildings under the control of the General Services Administration. It also directs OPM to study the pay and benefits of the various Federal police forces.

*c. Legislative status.*—The legislation passed the House by voice vote under suspension of the rules on September 26, 2000.

*d. Hearings.*—The subcommittee held no hearings on H.R. 4519.

31. *H.R. 4404, To permit the payment of medical expenses incurred by the U.S. Park Police in the performance of duty to be made directly by the National Park Service, to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision when required by State law, and for other purposes.*

*a. Report number and date.*—House Report 106–854.

*b. Summary of measure.*—This measure permits the payment of medical expenses incurred by the U.S. Park Police in the performance of duty to be made directly by the National Park Service, to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision when required by State law, and for other purposes.

*c. Legislative status.*—The legislation passed the House by voice vote under suspension of the rules on October 17, 2000.

*d. Hearings.*—House Resources Subcommittee on National Parks and Public Lands held a hearing on May 12, 2000.

32. *H.R. 4907, Jamestown 400th Commemoration Commission Act of 2000.*

*a. Report number and date.*—There was no report filed.

*b. Summary of measure.*—This measure establishes the Jamestown 400th Commemoration Commission.

*c. Legislative status.*—This measure passed the House under suspension of the rules on October 30, 2000.

*d. Hearings.*—There were no hearings held on this legislation.

33. *S. 3137, James Madison Commemoration Commission Act.*

*a. Report number and date.*—None.

*b. Summary.*—This measure establishes the James Madison Commemoration Commission.

*c. Legislative status.*—This measure passed the Senate by unanimous consent on October 25, 2000 and passed the House under suspension of the rules on December 4, 2000.

*d. Hearings.*—None.

## SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

Hon. Thomas M. Davis, *Chairman*1. *H.R. 3995, the District of Columbia Receivership Accountability Act of 2000.*

*a. Report number and date.*—House Report No. 106–63, June 12, 2000.

*b. Summary of measure.*—H.R. 3995, the District of Columbia Receivership Accountability Act of 2000, establishes procedures governing the responsibilities of court-appointed receivers who administer departments, offices, and agencies of the District of Columbia government.

*c. Legislative status.*—The bill was introduced by Delegate Eleanor Holmes Norton on March 15, 2000. It was referred to the Committee on Government Reform and subsequently referred to the Subcommittee on the District of Columbia on March 28, 2000. The subcommittee forwarded the bill, amended, to the full committee on May 5, 2000. On June 12, 2000 the Committee on Government Reform ordered the bill, as amended, reported to the House by voice vote. The House passed the bill on June 12, 2000, as amended, under suspension of the rules. The measure was passed by the Senate on October 12, 2000, and the President signed the bill on October 30, 2000.

*d. Hearings.*—None were held.

2. *H.R. 4387, to provide that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such act is ratified by the voters of the District of Columbia.*

*a. Report number and date.*—House Report 106–664, June 12, 2000.

*b. Summary of measure.*—H.R. 4387 provides that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such act is ratified by the voters of the District of Columbia voting in a referendum held to ratify such act.

*c. Legislative status.*—The bill was introduced by Delegate Eleanor Holmes Norton on May 4, 2000. It was referred to the Committee on Government Reform and subsequently reported by the committee on June 12, 2000 to the House, by voice vote. The House passed the legislation on June 12, 2000, under suspension of the rules. The measure was passed by the Senate on June 14, 2000, and signed by the President on June 27, 2000, becoming Public Law No. 106–226.

*d. Hearings.*—None were held.

3. *H.R. 5537, to waive the period of congressional review of the Child in Need of Protection Amendment Act of 2000.*

*a. Report number and date.*—Does not apply.

*b. Summary of measure.*—H.R. 5537 waives the period of congressional review of legislation enacted by the District of Columbia government cited as the “Child in Need of Protection Amendment Act of 2000.”

*c. Legislative status.*—The bill was introduced by Subcommittee Chairman Tom Davis on October 25, 2000. It was referred to the

House Committee on Government Reform. On October 3, 2000 Mr. Davis moved to suspend the rules and pass the bill, which was agreed to by voice vote. On October 31, 2000 the bill was received in the Senate.

*d. Hearings.*—None were held.

4. *H.R. 1198, District of Columbia Home Rule Act to eliminate congressional review of newly passed District laws.*

*a. Report number and date.*—None.

*b. Summary of measure.*—The bill amends the District of Columbia Home Rule Act to repeal the mandate of congressional review of newly-passed District laws.

*c. Legislative status.*—Bill did not pass.

*d. Hearings.*—No hearings were held.

5. *H.R. 433, District of Columbia Management Restoration Act of 1999.*

*a. Report number and date.*—None.

*b. Summary of measure.*—A bill to restore the management and personnel authority of the Mayor of the District of Columbia.

*c. Legislative status.*Became Public Law 106-1.

*d. Hearings.*—None.

6. *H.R. 974, the District of Columbia College Access Act.*

*a. Report number and date.*—House Report No. 106-158, May 24, 1999.

*b. Summary of measure.*—H.R. 974, the District of Columbia Access Act, directs the Mayor of the District of Columbia to award grants to eligible public institutions of higher education in Maryland or Virginia (or outside such States if specified conditions are met) that enroll eligible District of Columbia students to pay the difference between in-State and out-of-State tuition and fees on behalf of such students. A student is limited to an award of not more than \$10,000 per year, and a total of not more than \$50,000. The bill also requires the Mayor to prorate award payments for eligible part-time students.

*c. Legislative status.*—The bill was introduced by Subcommittee Chairman Tom Davis on March 4, 1999. It was referred to the Subcommittee on the District of Columbia and the Committee on Ways and Means. The subcommittee marked up the bill by voice vote on April 15, 1999. It was forwarded to the full committee in the nature of a substitute. On May 19, 1999, the Committee on Government Reform ordered the bill to be reported by voice vote. The Committee on Ways and Means discharged the bill on May 24, 1999. It was then passed by the House under suspension of the rules. The bill was referred to the Senate Committee on Governmental Affairs. The Senate Committee on Governmental Affairs ordered the bill to be reported to the Senate with an amendment in the nature of a substitute. It passed the Senate with an amendment under unanimous consent on October 19, 1999. Subcommittee Chairman Davis moved that the House suspend the rules and agree to the Senate amendment. It passed the House on November 1, 1999. The bill was signed by the President on November 12, 1999, becoming Public Law No. 106-98.

*d. Hearings.*—None.

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND  
TECHNOLOGY

Hon. Stephen Horn, *Chairman*

1. *H.R. 437, placing a Chief Financial Officer in the Executive Office of the President, becoming part of Public Law 106–58.*

*a. Report number and date.*—House Report No. 106–7, February 5, 1999.

*b. Summary of measure.*—This measure brings the agencies of the Executive Office of the President [EOP], to the fullest extent practicable, within the framework of the Chief Financial Officers Act (CFO Act). H.R. 437 authorizes the President to appoint a Chief Financial Officer in a unit or office within the Executive Office of the President and, to the fullest extent practicable, mandates adherence to most provisions of the CFO Act. In recognition of the decentralized structure of the EOP and the unique functions its agencies perform for the President, the legislation provides considerable discretion for the President to exempt the new CFO from a number of responsibilities stipulated by the CFO Act.

Notwithstanding such possible exemptions, the legislation establishes that the CFO for the EOP shall perform, to the extent practicable, the general functions and duties established under the CFO Act in order to implement needed financial management improvements. The intent of this legislation is to foster improved systems of accounting, financial management and internal controls throughout the component entities of the Executive Office of the President. This should facilitate prevention, or at least early detection, of waste, fraud, and abuse within the Executive Office of the President, as well as in the other executive branch agencies already covered by the CFO Act. Implementation of these provisions will promote accountability and proper fiscal management, which should lead to greater efficiency and operational cost reductions.

*c. Legislative status.*—H.R. 437 is identical to H.R. 1962, which was approved by the House of Representatives in the 105th Congress by a vote of 413 to 3.

H.R. 437 was introduced on February 2, 1999, by Representative Stephen Horn of California, chairman of the Subcommittee on Government Management, Information, and Technology. The legislation was considered by the Committee on Government Reform on February 3, 1999, and passed unanimously by voice vote.

The measure was considered by the full House of Representatives on February 11, 1999, and approved by a vote of 413 to 2. The measure was subsequently attached to the Fiscal Year 2000 Treasury, Postal Service and General Government Appropriations bill and agreed upon in conference. On September 15, 1999, the House passed its conference report, and on September 16, 1999, the Senate passed its conference report. On September 29, 1999, President Clinton signed the measure into law, becoming Public Law 106–58.

*d. Hearings.*—“Presidential and Executive Office Financial Accountability Act of 1997 and the Special Employee Act of 1997,” May 1, 1997.

The Subcommittee on Government Management, Information, and Technology held this hearing to solicit comments from interested parties on the Presidential and Executive Office Accountability Act proposal. Witnesses testified about the need for the legislation and suggested various modifications. Chairman Horn opened the hearing with a discussion of the Presidential and Executive Office Accountability Act of 1996, which passed the House by an overwhelming margin of 410 to 5 on September 24, 1996. Unfortunately, time was short and the Senate removed several provisions of the House-approved legislation, including the provision to apply the CFO Act to the White House, prior to passage.

2. *S. 468/H.R. 409, the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107.*

a. *Report number and date.*—Senate Report No. 106-103, July 1, 1999.

b. *Summary of measure.*—H.R. 409 requires Federal agencies to coordinate and streamline the process by which applicants apply for assistance programs, particularly where similar programs are administered by different Federal agencies. The purpose of the legislation is to facilitate better coordination among Federal, State, local and tribal governments, and nonprofit organizations; to simplify Federal financial assistance application and reporting requirements; and ultimately to improve the delivery of services to the public.

More than 600 Federal programs provide assistance to State, local and tribal governments and nonprofit organizations. Funds provided under these programs are intended to meet a variety of domestic policy needs and objectives. Many of the programs serve similar purposes but are administered by different agencies. The result is a maze of overlapping programs that is difficult to navigate. Among other problems, this maze results in varied and different applications for similar programs; duplicative information collection requirements; unnecessary separate and distinct reporting requirements; and, inefficiently timed dispersal of funds. These problems cause frustration and inefficiency, which reduces the effectiveness of these programs at all levels.

The legislation also attempts to simplify the process by which States, localities and nonprofits apply for and report on the use of the funds that are available under these programs. It requires relevant Federal agencies, with oversight from the Office of Management and Budget [OMB], to develop and implement plans within a specific timeframe that will do the following: streamline application, administrative, and reporting requirements; demonstrate active participation in an interagency process to achieve the legislation's objectives; develop a uniform application (or set of applications) for related programs; designate a lead agency official to carry out the responsibilities of the act; allow applicants to electronically apply for, and report on the use of funds; ensure that recipients of Federal financial assistance provide timely, complete, and high-quality information in response to Federal reporting requirements; establish specific annual goals and objectives to further the purposes of this legislation, and measure annual performance in achieving those goals and objectives.

*c. Legislative status.*—H.R. 409 passed the House under an open rule on February 24, 1999, by a unanimous vote of 426 to 0. S. 468, a companion bill in the Senate, passed the Senate on November 5, 1999. The House passed S. 468 under suspension of the rules with an amendment on November 2, 1999. The Senate passed the amended House version by unanimous consent on November 4, 1999. S. 468 was signed by the President on November 20, 1999, becoming Public Law 106–107.

*d. Hearings.*—The substance of H.R. 409 was introduced in the 105th Congress in the form of H.R. 3921. The Subcommittee on Government Management, Information, and Technology held a legislative hearing on “H.R. 3921, the Federal Financial Assistance Management Improvement Act of 1998,” on July 30, 1998. That bill was marked-up, and referred to the Committee on Government Reform and Oversight on August 6, 1998. Unfortunately, the committee did not act on the legislation before the close of the 105th Congress. The bill’s counterpart legislation in the Senate, S. 1642, passed on October 12, 1998, by unanimous consent.

3. *H.R. 1219, the Construction Industry Payment Protection Act of 1999, becoming Public Law 106–49.*

*a. Report number and date.*—Report No. 106–277, Part 1, July 30, 1999.

*b. Summary of measure.*—H.R. 1219, the Construction Industry Payment Protection Act of 1999, amends and updates the 1935 Miller Act (40 U.S.C. 270a et seq.). Under the Miller Act, contractors performing work on any Federal Government public works project costing in excess of \$100,000 are required to provide a payment bond. The payment bond is intended to protect subcontractors and suppliers of materials against the risk of nonpayment when working on Federal construction projects. The Miller Act also requires the prime contractor to provide a performance bond for the protection of the Government.

The purpose of H.R. 1219 is to improve payment bond protections for persons who furnish labor or material for use on Federal construction projects. The legislation would achieve this objective in a manner that does not unreasonably increase the financial exposure or other burdens placed on the prime contractor, usually a general contractor, or on the surety bond producers and corporate sureties that provide the Miller Act payment bonds.

The legislation makes a number of targeted amendments to the Miller Act. First, the legislation increases the amount of the payment bond from a level that has remained unchanged since the law was enacted in 1935. The legislation requires that the amount of the payment bond be equal to the contract price. Second, the legislation modernizes the methods by which notices required under the act may be transmitted, but with the safeguard of requiring that the methods of notice generate a written third-party confirmation of receipt. Third, the legislation would void waivers of Miller Act payment bond protections prior to commencing the work.

*c. Legislative status.*—H.R. 1219, the “Construction Industry Payment Protection Act of 1999,” was introduced on March 23, 1999, by Representative Carolyn Maloney, D-NY, and was co-sponsored by Representative Stephen Horn, R-CA, chairman of the Sub-

committee on Government Management, Information, and Technology and Representative George Gekas, R-PA, chairman of the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary. The legislation was referred to the Committee on the Judiciary and the Committee on Government Reform. On May 13, 1999, the legislation was considered by the Subcommittee on Government Management, Information, and Technology and passed unanimously, as amended, by voice vote. The legislation was considered by the Committee on Government Reform on May 19, 1999, and passed by a voice vote. The Committee on the Judiciary waived its jurisdiction to consider the legislation, and on August 2, 1999, the legislation passed the House under suspension of the rules by a unanimous vote of 416 to 0. The legislation passed the Senate without amendment by unanimous consent on August 5, 1999, and signed by the President on August 17, 1999, becoming Public Law 106-49.

*d. Hearings.*—No hearings were held on H.R. 1219 during the 106th Congress. The committee relied on the extensive record generated during the second session of the 105th Congress on the legislation's predecessor, H.R. 3032, the "Construction Subcontractors Payment Protection Enhancement Act of 1998." The committee had the benefit of the administration's views on the legislation, provided in the form of a letter from the Administrator for Federal Procurement Policy, Office of Management and Budget, on May 17, 1999. On September 11, 1998, the Subcommittee on Government Management, Information, and Technology and the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary held a joint hearing on H.R. 3032, the "Construction Subcontractors Payment Protection Enhancement Act of 1999." Testimony was received from representatives of the American Subcontractors Association, the Associated General Contractors of America, and the Surety Association of America. The subcommittees also heard from subcontractors with direct experiences relating to the need to modernize the Miller Act.

4. *H.R. 1442, the Law Enforcement and Public Safety Enhancement Act of 1999, inserted as a provision of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that passed both the House and Senate, becoming Public Law 106-398.*

*a. Report number and date.*—H.R. 1442, Report No. 106-275, July 30, 1999.

*b. Summary of measure.*—H.R. 1442, the "Law Enforcement and Public Safety Enhancement Act of 1999," introduced by Representative Ken Calvert, R-CA, on April 15, 1999, would make permanent the General Services Administration's authority to transfer surplus real and related property at no cost to State governments for law enforcement or emergency management response purposes. Public Law 105-119 authorized such transfers through December 31, 1999. H.R. 1442 eliminates the sunset date, allowing the program to continue.

*c. Legislative status.*—H.R. 1442 was introduced by Representative Calvert on April 15, 1999, and was referred to the Committee on Government Reform and its Subcommittee on Government Man-

agement, Information, and Technology. On May 13, 1999, the subcommittee held a mark-up session for H.R. 1442. On May 19, 1999, the Committee on Government Reform considered H.R. 1442, as amended, by voice vote, and favorably ordered the legislation to be reported. The legislation, as amended with the language from H.R. 436, was passed by the House under suspension of the rules on August 2, 1999. At the end of the first session of the 106th Congress, H.R. 1442 was pending in the Senate. As a short-term remedy to the December 31, 1999, sunset date, Representative Calvert introduced H.R. 3187. This legislation extended the termination date by 7 months until July 31, 2000. This legislation was added to S. 335 that passed the House and the Senate, and was signed into law. Permanent authorization for these public benefits discount conveyances was included in the Fiscal Year 2001 National Defense Authorization Act that passed both the House and the Senate and was signed into law by the President, becoming Public Law 106-398.

*d. Hearings.*—Although there were no hearings held on H.R. 1442 during the 106th Congress, on July 3, 1997, the Subcommittee on Government Management, Information, and Technology held a legislative hearing to consider the base legislation, H.R. 404, entitled, “H.R. 404, Authorizing the Transfer to State and Local Governments of Certain Surplus Property for Use for Law Enforcement or Public Safety Purposes.”

5. *H.R. 3137/H.R. 4931, the Presidential Transition Act Amendments, becoming Public Law 106-293.*

*a. Report number and date.*—House Report No. 106-432, November 1, 1999.

*b. Summary of measure.*—The amendments to the Presidential Transition Act of 1963 authorize the use of transition funds for the purpose of providing orientations for individuals the President-elect plans to nominate and appoint to top White House positions, including Cabinet positions. This legislation only affects the top political appointments in executive branch agencies and in the Executive Office of the President, and it gives greater assurance that the orientation process takes place before or shortly after the incoming President assumes office. It is the committee’s expectation that this will also lead to a larger orientation process for lower level political appointments.

*c. Legislative status.*—H.R. 3137, the “Presidential Transition Act Amendments of 1999,” was introduced on October 25, 1999, by Subcommittee Chairman Stephen Horn. On October 13, 1999, the Subcommittee on Government Management, Information, and Technology held a legislative hearing on the proposal, which was still in draft form. H.R. 3137 passed the subcommittee by a voice vote on October 26, 1999, and passed the full committee on Government Reform unanimously by voice vote on October 28, 1999. The bill passed the House of Representatives under suspension of the rules on November 2, 1999. The “Presidential Transition Act Amendments,” reintroduced as H.R. 4931 by Chairman Horn on July 24, 2000, contained a number of amendments resulting from negotiations between the House and the Senate. H.R. 4931 passed the House by unanimous consent on September 13, 2000, and passed



the Senate on September 28, 2000. H.R. 4931 was signed into law on October 12, 2000, becoming Public Law 106-293.

*d. Hearings.*—(1) On October 13, 1999, the Subcommittee on Government Management, Information, and Technology conducted a legislative hearing entitled, “H.R. 3137, an Amendment to the Presidential Transition Act.” The hearing examined various issues involving presidential transitions. Witnesses testified regarding the intent of the legislation, its objectives and provisions, and suggested changes.

A number of distinguished witnesses testified in support of the legislation, including the Honorable Elliot Richardson, former Attorney General to President Nixon, and the Honorable Lee White, former Assistant Counsel to President Kennedy and Counsel to President Lyndon Johnson. These witnesses presented a unique perspective of the Presidency and the transition period. Both said that the legislation is an important step toward preventing future missteps by political appointees.

In addition, the subcommittee heard from three other witnesses who supported the legislation: Dwight Ink, former Acting Director of the Office of Management and Budget; Paul Light, director of the Center for Public Service at the Brookings Institution; and Norman J. Ornstein, resident scholar at the American Enterprise Institute for Policy Research.

Additional written testimony supporting the legislation was submitted for the record by General Andrew Goodpastor, former Staff Secretary to President Eisenhower; the Honorable John Gardner, former Secretary of Health, Education, and Welfare for President Lyndon Johnson; and the Honorable Pendleton James, former Director of Presidential Personnel for President Reagan.

(2) “Transitioning to a New Administration: Can the Next President Be Ready?,” December 4, 2000.

Because of the uniquely close Presidential race and ensuing litigation following the November 2000 election, the Administrator of the General Services Administration elected not to relinquish Presidential transition funds or offices to either candidate, saying that there was no apparent winner. On December 4, 2000, nearly 4 weeks after the election, the subcommittee convened a hearing to examine the administrator’s decision, and to look for ways to expedite the transition process. The Presidential Transition Act requires the Administrator to determine the “apparent” winner before releasing transition money or relinquishing the keys to the transition offices. The Administrator, however, said that the ongoing legal challenges to the election by both candidates prevented him from such a determination.

The first panel of witnesses at this hearing included former officials who were closely involved in the Presidential transitions of Presidents Johnson, Nixon, Ford, Carter, Bush and Clinton. The second panel included David Barram, Administrator of the General Services Administration, Sally Katzen, Deputy Director for Management of the Office of Management and Budget, and several legal and other experts familiar with the Presidential Transition Act.

Witnesses generally agreed that the act, as written, did not provide adequate guidance to the Administrator in determining the

winning candidate. Most witnesses also acknowledged that the Administrator's decision, based on the available legislative history, was probably correct. However, they stated, the law needed to be clarified for future elections. Witness Dwight Ink, president emeritus of the Institute of Public Administration and former Assistant Director for executive management of the Office of Management and Budget, suggested amending the law by requiring that if there is no clear winner 10 days after an election, transition funds should be released to both candidates. Witnesses, including Administrator Barram, agreed with Mr. Ink's suggestion.

Subcommittee Chairman Stephen Horn, R-CA, and Ranking Minority Member Jim Turner, D-TX, agreed to pursue one-time legislation to address the November 2000 election, and to examine other legislative changes needed to clarify the Act for future elections.

6. *H.R. 3582, the Federal Contractor Flexibility Act of 2000, inserted as a provision of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that passed both the House and Senate and became Public Law 106-398.*

a. *Report number and date.*—None.

b. *Summary of measure.*—H.R. 3582, the "Federal Contractor Flexibility Act," introduced by Representative Tom Davis, R-VA, would preclude Federal departments and agencies from including minimum education and experience requirements in Federal information technology contracts unless the use of such provisions are justified by the contracting agency. H.R. 3582, with modifications, was inserted into the Fiscal Year 2001 National Defense Authorization Act. The modified version would preclude the use of minimum education and experience requirements in bid solicitations for information technology service contracts, unless the contracting officer determines that the needs of the agency cannot be met without such requirements, or that the needs of the agency require the use of a contract other than a performance-based contract.

c. *Legislative status.*—The subcommittee reported H.R. 3582 by a voice vote on April 5, 2000. The bill passed the House of Representatives under suspension of the rules by a voice vote on May 2, 2000. H.R. 3582, with modifications, was included in the National Defense Authorization Act for Fiscal Year 2001, which passed the House on October 11, 2000, the Senate on October 12, 2000, and was signed into law, becoming Public Law 106-398.

d. *Hearings.*—The subject matter of H.R. 3582 was discussed at a subcommittee hearing entitled, "Federal Acquisition: Why Are Billions of Dollars Being Wasted?" on March 16, 2000 (section II.B.7).

7. *H.R. 4110, a bill to amend title 44, U.S. Code, to authorize appropriations for the National Historical Publications and Records Commission for fiscal years 2002 through 2005, passed both the House and Senate, becoming Public Law 106-410.*

a. *Report number and date.*—House Report No. 106-768, July 20, 2000; Senate Report No. 106-466, October 3, 2000.

b. *Summary of measure.*—H.R. 4110, introduced by Subcommittee Chairman Stephen Horn, R-CA, authorizes appropriations for the National Historical Publications and Records Commission for

fiscal years 2002 through 2005. The National Historical Publications and Records Commission [NHPRC] works to identify and preserve documents of historical significance for public use. The program provides grants for non-Federal documentation to non-Federal organizations such as historical societies, institutions, non-profit organizations, universities, and local and State governments. NHPRC is affiliated with the National Archives and Records Administration [NARA]. The work of NHPRC with non-Federal records complements NARA's work with Federal documents and agencies.

*c. Legislative status.*—H.R. 4110 introduced on March 29, 2000, was passed by the subcommittee by a voice vote on April 5, 2000. The Subcommittee on Government, Management, Information, and Technology reported the bill by a voice vote on April 5, 2000. The Committee on Government Reform reported the bill by a voice vote on July 20, 2000, and the House of Representatives, under suspension of the rules, approved the bill by a voice vote on July 24, 2000. The legislation passed the Senate Committee on Governmental Affairs on October 3, 2000, and the Senate on October 19, 2000, becoming Public Law 106-410.

*d. Hearings.*—On April 4, 2000, the Subcommittee on Government Management, Information, and Technology held a hearing entitled, "Reauthorization of the National Historical Publications and Records Commission," to consider H.R. 4110 (see section II.B.9).

8. *Legislation to increase the salary of the President of the United States was inserted as a provision of H.R. 2490, the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies Appropriations Act for the fiscal year ending September 30, 2000. The act was signed into law on September 29, 1999, becoming Public Law 106-58.*

*a. Report number and date.*—None.

*b. Summary of measure.*—The salary of the President has not been increased since 30 years ago. Pursuant to the Constitution, the salary of the President may not be adjusted while the person is serving. The only opportunity to change the salary is before the start of a new administration. Under current law, the salary of the Vice President and other senior Federal officials are given cost of living adjustments. If the salary of the President is not changed (or the COLAs of the senior officials not eliminated) before the end of the next administration, the Vice President and the Chief Justice of the U.S. Supreme Court will be paid more than the President.

*c. Legislative status.*—Legislative language to increase the salary of the President of the United States to \$400,000 was included as a provision of H.R. 4985, the Fiscal Year 2000 Appropriations Act for the Department of the Treasury, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies. H.R. 4985 was signed into law on September 29, 1999, becoming Public Law 106-58.

*d. Hearings.*—On May 24, 1999, the Subcommittee on Government Management, Information, and Technology held a hearing entitled, "Salary of the President of the United States," to examine the issue of increasing the President's salary. The subcommittee

heard the views from a distinguished panel of witnesses that included former Chiefs of Staff and Counsels to past President's dating back to the administration of President Lyndon Johnson. These witnesses generally supported the need to increase the President's salary to keep up with inflation, to prevent the salaries of other Federal officials from eclipsing that of the President, and to attract viable candidates for Federal office.

9. *H.R. 3218, the Social Security Number Confidentiality Act of 1999, passed both the House and Senate, becoming Public Law 106-433.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 3218, introduced by Representative Ken Calvert, R-CA, directs the Secretary of the Treasury to take necessary action to ensure that Social Security account numbers (including derivatives of such numbers) are not visible on or through unopened mailings of Government checks or other drafts.

*c. Legislative status.*—H.R. 3218, introduced on November 4, 1999, passed the House under suspension of the rules by a vote of 385 to 0 on October 18, 2000. The bill passed the Senate by unanimous consent on October 25, 2000, and was signed into law on November 6, 2000, becoming Public Law 106-433.

*d. Hearings.*—No hearings were held on this legislation during the 106th Congress.

10. *H.R. 5157, the Freedmen's Bureau Records Preservation Act of 2000, passed the House and Senate, becoming Public Law 106-444.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5157, the "Freedmen's Bureau Records Preservation Act of 2000," introduced by Representatives Juanita Millender-McDonald, D-CA, and Representative J.C. Watts, Jr., R-OK, requires the Archivist of the United States to take steps to help preserve the records of the Bureau of Refugees, Freedman, and Abandoned Lands, commonly known as the Freedmen's Bureau. The bill authorizes the Archivist to use all available technology for the restoration and indexing of the documents.

*c. Legislative status.*—H.R. 5157, introduced on September 12, 2000, passed the House of Representatives by unanimous consent with an amendment in the nature of a substitute offered by Subcommittee Chairman Stephen Horn, R-CA, on October 19, 2000. The bill passed the Senate by unanimous consent on October 26, 2000. The President signed the bill on November 6, 2000, becoming Public Law 106-444.

*d. Hearings.*—On October 18, 2000, the Subcommittee on Government Management, Information, and Technology held a hearing entitled, "Freedmen's Bureau Preservation Act: Are These Reconstruction Era Records Being Protected?," to examine the merits of H.R. 5157 (see section II.B.9.c).

11. *S. 1707, a bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to provide that certain designated Federal entities shall be establishments under such act and for other purposes, passed both the House and Senate becoming Public Law 106-422.*

*a. Report number and date.*—Senate Report No. 106-218, November 8, 1999.

*b. Summary of measure.*—S. 1707 introduced by Senator Fred Thompson, R-TN, amends the Inspector General Act of 1978 (the act) to include the Inspector General [IG] of the Tennessee Valley Authority [TVA] among the ranks of Inspectors General who are appointed by the President and confirmed by the Senate. Previously, the IG at TVA was appointed and could be removed by the TVA's board of directors. The bill also establishes, within the Department of the Treasury, a Criminal Investigator Academy to perform investigator training services for offices of Inspectors General and a General Forensic Laboratory for performing forensic services for such offices.

*c. Legislative status.*—S. 1707, introduced on October 7, 1999, and was reported by the Senate Committee on Governmental Affairs with an amendment on November 3, 1999. The bill passed the Senate with an amendment by unanimous consent on November 19, 1999. The bill passed the House under suspension of the rules on October 17, 2000, and was signed by the President on November 1, 2000, becoming Public Law 106-422.

*d. Hearings.*—No congressional hearings were held on S. 1707. However, the independence of the Tennessee Valley Authority's Inspector General as an entity appointed by the TVA board of directors was the subject of a report issued by the General Accounting Office in September 1999.

12. *S. 1993, the Government Information Security Act, inserted as a provision of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 that passed both the House and Senate, becoming Public Law 106-398.*

*a. Report number and date.*—Senate Report No. 106-259, April 10, 2000.

*b. Summary of measure.*—S. 1993, introduced by Senator Fred Thompson, R-TN, requires the Director of the Office of Management and Budget [OMB] to establish governmentwide policies for the management of programs that: (1) support the cost-effective security of Federal information systems by promoting security as an integral part of each agency's business operations; and (2) include information technology architectures as defined under the Clinger-Cohen Act of 1996. The measure requires such policies to: (1) be founded on a continuous risk-management cycle; (2) implement controls that adequately address the risk; (3) promote continuing awareness of information security risks; (4) continually monitor and evaluate information security policy; and (5) control effectiveness of information security practices. The act outlines the information security responsibilities of each agency, including the development and implementation of an agencywide security plan for the operations and assets of such agency. The act makes each program subject to Director approval (with the approval of the Secretary of

Defense and the Director of Central Intelligence in respect to mission critical national security systems or intelligence information) and annual review by agency program officials. Each Federal agency is required to undergo an annual independent evaluation of its information security program and practices. The Department of Commerce is required to develop, issue, review, and update standards and guidance for the security of information in Federal computer systems. The Department of Defense [DOD] and the Central Intelligence Agency [CIA] are required to develop and issue information security policies for mission critical systems of such entities and ensure the implementation of such policies. The Department of Justice is required to review and update its guidance to agencies on legal remedies regarding security incidents and coordination with law enforcement agencies concerning such incidents. The General Services Administration is required to review and update guidance on addressing security considerations relating to the acquisition of information technology. The Office of Personnel Management is required to review and update regulations concerning computer security training for Federal civilian employees. Mission critical information security policies developed by the DOD and the CIA to be adopted by the OMB Director and heads of other Federal agencies with respect to the mission critical systems of such agencies. The legislation allows agencies to develop and implement more stringent information security policies than those required by the act.

*c. Legislative status.*—S. 1993, introduced on November 19, 1999, and was reported by the Senate Committee on Governmental Affairs on April 10, 2000, with an amendment in the nature of a substitute. The bill was inserted as a provision of the Fiscal Year 2001 National Defense Authorization Act that passed the House and the Senate, and was signed into law on October 30, 2000, becoming Public Law 106–398.

*d. Hearings.*—On September 11, 2000, the Subcommittee on Government Management, Information, and Technology held a hearing entitled, “Computer Security: How Vulnerable are Federal Computers?” at which the subcommittee released its first report card grading Federal departments and agencies on computer security (see section II.B.12). In addition, the subcommittee held a hearing entitled, “Establishing a Federal CIO: Information Technology Management and Assurance within the Federal Government,” on September 12, 2000 (see section II.B.12).

S. 1993 and a related bill, H.R. 5024, the “Information Policy Act of 2000,” introduced by Representative Tom Davis, R–VA, were also the subjects of congressional hearings in both the House and the Senate, revealing numerous deficiencies in information assurance policies and practices at Federal departments and agencies.

*13. S. 2712, the Reports Consolidation Act of 2000, passed both the House and Senate, becoming Public Law 106–531.*

*a. Report number and date.*—Senate Report No. 106–337, July 11, 2000.

*b. Summary of measure.*—S. 2712 authorizes executive branch departments and agencies to consolidate statutorily mandated financial and performance management reports, into a single annual

report. The consolidated reports present in one document an integrated picture of an agency's performance. The bill also includes provisions that make the annual reports more useful. The bill requires that the reports include an assessment by the agency head on the reliability of the agency's performance data, and an assessment by the agency Inspector General of the agency's progress in addressing its most serious management challenges. The bill also moves up the deadline for submission of the performance reports required under the Government Performance and Results Act from March 31st to March 1st. The earlier deadline would provide more timely information for the budget cycle. Another important part of this legislation is that it requires agencies to submit their annual, audited financial statements to Congress, in addition to the President.

*c. Legislative status.*—S. 2712, introduced on June 12, 2000, by Senator Fred Thompson, R-TN, was reported by the Senate Committee on Governmental Affairs on June 14, 2000, and passed the Senate without amendment by unanimous consent on July 19, 2000. The bill passed the House of Representatives under suspension of the rules on October 27, 2000, by a vote of 385 to 0, and was signed into law on November 22, 2000, becoming Public Law 106-531.

*d. Hearings.*—No legislative hearings were held during the 106th Congress.

14. *H. Con. Res. 300, recognizing and commending the Nation's Federal workforce for successfully preparing the Nation to withstand any catastrophic year 2000 computer problem disruptions, passed the House of Representatives under suspension of the rules by a vote 409 to 0.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Con. Res. 300 recognizes and commends the meritorious service of the Federal workforce and all those who assisted in the efforts to successfully address the year 2000 computer challenge.

*c. Legislative status.*—H. Con. Res. 300 introduced on April 6, 2000 passed the House of Representatives under suspension of the rules by a vote of 409 to 0 on May 2, 2000.

*d. Hearings.*—(See section II.B.1.)

15. *H.R. 436, the Government Waste, Fraud and Error Reduction Act, passed the House of Representatives on February 24, 1999, by a vote of 419 to 1.*

*a. Report number and date.*—H.R. 436, the Government Waste, Fraud, and Error Reduction Act of 1999, Report No. 106-9, Part 1, February 5, 1999.

*b. Summary of measure.*—H.R. 436, the "Government Waste, Fraud, and Error Reduction Act of 1999," amends title 31 of the United States Code and builds upon earlier debt-collection authorities to improve the collection of non-tax, delinquent debts owed the Federal Government. The legislation was drafted in response to concerns about the implementation of the Debt Collection Improvement Act [DCIA] raised at a number of hearings held by the Subcommittee on Government Management, Information, and Tech-

nology. Shortcomings in financial management at Federal agencies, including the screening of Federal benefit applicants, and timely referrals of delinquent debt to the Department of the Treasury for offset and cross-servicing also prompted the introduction of H.R. 436. The legislation provides for improved reporting of delinquent debt, enhanced loan sales authority, and additional offset authority.

The legislation authorizes the offset of Social Security, Black Lung and Railroad Retirement benefits to satisfy past-due child support owed to a State in the same manner and under the same conditions as those benefits can be offset for debts owed the United States. The Congressional Budget Office estimates that adding past-due child support to the list of debts that can be administratively offset from those payments would result in \$10 million more in annual child support collections, of which the Federal Government would, on average, retain \$4 million.

The legislation contains several provisions related to the use and evaluation of Private Collection Contractors [PCA] in the collection of non-tax delinquent debts owed the Federal Government. A PCA, attempting to collect a debt owed the United States would be authorized to verify the employment information of a debtor. The legislation also includes a provision mandating the Secretary of the Treasury or the head of an executive, legislative, or judicial agency, to consider the collection performance of PCAs in evaluating their overall performance for the purpose of allocating accounts or awarding bonuses. Also, when evaluating the performance and awarding contracts to PCAs, the legislation requires that the frequency of valid debtor complaints should be taken into consideration.

H.R. 436 builds upon the provisions of the DCIA that bar delinquent debtors from obtaining loans, loan insurance, or loan guarantees. Under this legislation, a delinquent debtor may not obtain financial assistance in the form of a loan (other than a disaster loan), loan insurance, loan guarantee, or Federal permit or license. The legislation requires the Secretary of the Treasury to maintain a schedule of eligible PCAs and debt collection centers and to refer delinquent non-tax debts promptly in order to maximize collections. It also requires PCAs to be responsible for any administrative costs associated with a collection contract.

The legislation prohibits agencies from writing off or discharging debts prior to the initiation of collection activity, and specifically requires that prior to discharging a debt, a Federal agency must attempt one of a number of debt-collection activities, including referring the debt to a PCA or debt collection center, referring the debt to the Attorney General for litigation, selling the debt, or administratively garnishing the debtor.

The legislation contains a provision that seeks to improve travel management by requiring that Federal employees use travel management centers, authorized travel agents, and electronic reservation and payment systems. It requires the Administrator of General Services to develop a mechanism to ensure that Federal employees are not charged State and local taxes during official travel.

The legislation promotes the sale of non-tax debts owed the Federal Government. Loan sale programs would benefit the Federal



Government in a number of ways. The sale of loans in a competitive market could yield substantial proceeds. Loan sales would also reduce Federal agencies' administrative costs and permit them to focus limited resources on other programs. The legislation authorizes Federal agencies to exempt specific loan programs or classes of debt from the sales requirement if the sale would interfere with the mission of the agency.

In an effort to expose debtors who are delinquent on non-tax debt exceeding \$1 million, H.R. 436 requires agencies to submit annual reports to Congress, listing the name of the debtor, the amount of the debt, collection actions taken by the Federal agency, specification of any portion of the debt written-down, and an assessment of why the borrower defaulted. Where appropriate, Federal agencies are also authorized to seize assets pledged to secure the delinquent high-value, non-tax debt.

To promote the use of electronic payments by the Federal Government, the legislation authorizes Federal agencies to provide for early payment of vendors if they use electronic payment technology that improves their cash management and business practices. Federal agencies are also authorized to accept payment electronically, including debit and credit cards, to satisfy a non-tax debt owed to the Federal agency.

*c. Legislative status.*—H.R. 436, the “Government Waste, Fraud and Error Reduction Act of 1999,” was introduced by Subcommittee Chairman Stephen Horn, R-CA, on February 2, 1999. The legislation was reported by the Committee on Government Reform to the House of Representatives on February 5, 1999 (Report No. 106–9). The legislation passed the House under an open rule on February 24, 1999, by a vote of 419 to 1.

*d. Hearings.*—“What is the Federal Government Doing to Collect the Billions of Dollars in Delinquent Debts It is Owed?,” on June 15, 1999, and “Oversight of the Implementation of the Debt Collection Improvement Act,” on June 8, 2000 (see section II.B.4).

16. *H.R. 1827, the Government Waste Corrections Act of 1999, passed the House of Representatives by a vote of 375 to 0 on March 8, 2000.*

*a. Report number and date.*—Report No. 106–474, November 17, 1999.

*b. Summary of measure.*—H.R. 1827, the “Government Waste Corrections Act of 1999,” amends chapter 35 of title 31, United States Code, to require Federal agencies to perform recovery audits if their direct purchases for goods and services total \$500 million or more per fiscal year. Agencies that must undertake recovery auditing would also be required to institute a management improvement program to address underlying problems with their payment systems.

*c. Legislative status.*—H.R. 1827 was introduced by Committee on Government Reform Chairman Dan Burton, R-IN, on May 17, 1999. The legislation was referred to the Committee on Government Reform and, subsequently, to the Subcommittee on Government Management, Information, and Technology. On June 29, 1999, the subcommittee held a hearing on the legislation, and on July 21, 1999, marked-up the legislation and reported it to the

Committee on Government Reform, as amended, by voice vote. The committee marked-up the legislation on November 10, 1999, and reported it to the House of Representatives, as amended, by voice vote. The bill passed the House of Representatives by a vote of 375 to 0 on March 8, 2000.

*d. Hearings.*—On June 29, 1999, the Subcommittee on Government Management, Information, and Technology held a hearing entitled, “H.R. 1827, the Government Waste Corrections Act of 1999,” to examine the merits of the bill (see section II.B.4).

17. *H.R. 2513, a bill directing the General Services Administration to acquire a building in Terre Haute, IN, passed the House of Representatives under suspension of the rules on November 2, 1999.*

*a. Report number and date.*—None filed.

*b. Summary of measure.*—H.R. 2513 would require the Administrator of General Services to acquire the U.S. Postal Service building located in downtown Terre Haute, IN, at no charge. The General Services Administration would be required to provide the Postal Service an option to occupy 8,000 square feet of the building at no cost for a 20-year term. The legislation would authorize the appropriation of \$5 million to the General Services Administration to renovate the building and acquire parking spaces.

*c. Legislative status.*—H.R. 2513 was marked-up by the Subcommittee on Government Management, Information, and Technology on September 22, 1999, and reported to the full committee by voice vote. The Committee on Government Reform waived its jurisdiction over this legislation and the legislation passed the House of Representatives by voice vote under suspension of the rules on November 2, 1999.

*d. Hearings.*—On September 29, 1999, the Subcommittee on Government Management, Information, and Technology held a legislative hearing entitled, “H.R. 2513, Regarding the Transfer of Terre Haute Postal Service Building to GSA,” to examine the merits of H.R. 2513, introduced by Representative Edward Pease, R-IN. H.R. 2513 would direct the General Services Administration to acquire a Postal Service building in Terre Haute, IN’s ninth largest city with a population of 61,125. The three-story Federal building, which was opened in 1935, was constructed through a public works project during the Depression. The building is of Art Deco design using marble and Indiana limestone and is listed on the National Register of Historic places.

Pursuant to the Postal Reorganization Act of 1970, the building was transferred to the inventory of the U.S. Postal Service. According to the General Services Administration, the building requires between \$4 million and \$5 million of renovations.

At one time, the Postal Service operated its main distribution center for Terre Haute in the Federal building. However, due to the deteriorating condition of the building, the Postal Service relocated its distribution center to a newly constructed facility outside of the downtown area.

18. *H.R. 2885, the Statistical Efficiency Act of 1999, passed the House of Representatives under suspension of the rules by a voice vote on October 26, 2000.*

*a. Report number and date.*—Report No. 106–413, October 25, 1999.

*b. Summary of measure.*—H.R. 2885, the “Statistical Efficiency Act of 1999,” would provide uniform standards for safeguarding the confidentiality of information acquired for exclusively statistical purposes and would permit the limited sharing of records among designated agencies for statistical purposes.

Federal statistical agencies operate under a number of laws, policies, or regulations that govern the collection, use, and confidentiality of statistical information. Some of these laws, policies, and regulations apply only to a specific agency, prohibiting it from sharing this data with other agencies. For example, the Bureau of the Census and the Bureau of Labor Statistics each compile and maintain their own lists of businesses, in large part because they cannot share this information.

This inability to share statistical data is one of the most significant issues facing the statistical system. It affects the quality of Government statistical data, the efficiency of the system, and increases the burden placed on those who provide information to statistical agencies. One important opportunity created by this legislation would be to improve the efficiency of statistical surveys in the Federal Government. H.R. 2885 would make it possible for statistical agencies to access the Census Bureau master address file for drawing samples for surveys. This access would improve the efficiency of those surveys, reduce the cost to agencies, and reduce the burden on the public.

H.R. 2885 addresses these concerns. In addition, the legislation would enhance the confidentiality protections for those who provide statistical data. Data or information collected or acquired by a designated Statistical Data Center for statistical purposes could only be used for statistical purposes. In addition, information acquired for statistical purposes could not be disclosed in identifiable form, for a purpose other than a statistical purpose, unless the person or entity supplying the information consents to the disclosure of such information in identifiable form. Disclosure of information to a Statistical Data Center must not be inconsistent with any law and must be made under the terms of a written agreement that identifies the data to be disclosed, the purpose for the disclosure, and the procedures to be used to safeguard the confidentiality of the information.

The legislation establishes uniform privacy protections to those agencies with weaker or, in some cases non-existent, privacy provisions. Additionally, any designated Statistical Data Center receiving statistical information from another agency would be required to comply with the providing agency’s data’s disclosure laws or policies. An agent of a Statistical Data Center would also be subject to criminal penalties for the unauthorized disclosure of statistical data or information.

*c. Legislative status.*—Subcommittee Chairman Stephen Horn, R-CA, introduced H.R. 2885 on September 21, 1999. The legislation was referred to the Committee on Government Reform and

was subsequently referred to the Subcommittee on Government Management, Information, and Technology. On September 22, 1999, the subcommittee reported the legislation, as amended, by voice vote to the Committee on Government Reform. The Committee on Government Reform met on September 30, 1999, and favorably reported the legislation, as amended, by voice vote to the House of Representatives. On October 26, 1999, the legislation passed the House under suspension of the rules by a voice vote.

*d. Hearings.*—Although there were no committee hearings in the 106th Congress on H.R. 2885, the Subcommittee on Government Management, Information, and Technology has held three hearings since the 104th Congress on proposals to improve the efficiency of the Federal statistical system. In the 104th Congress, the subcommittee held a hearing on March 22, 1996, on H.R. 2521, the “Statistical Consolidation Act of 1995.” In the 105th Congress, the subcommittee held a hearing on July 29, 1997, entitled, “Oversight of Statistical Proposals,” and another hearing on March 26, 1998, on two similar bills, the “Statistical Consolidation Act of 1998,” and S. 1404, the “Federal Statistical System Act of 1997.”

19. *H.R. 4519, Baylee’s Law, to amend the Public Buildings Act of 1959 concerning the safety and security of children enrolled in childcare facilities located in public buildings under the control of the General Services Administration, passed the House of Representatives on September 26, 2000.*

*a. Report number and date.*—Report No. 106–869, Part 1, September 19, 2000.

*b. Summary of measure.*—H.R. 4519 would amend the Public Buildings Act of 1959 to require the General Services Administration [GSA] to provide certain information regarding the safety and security of childcare facilities operated in buildings under its administrative control. H.R. 4519 would require the GSA to provide a list of a building’s tenants and its designated level of security to any parent or guardian who is considering enrolling a child in a childcare facility that is operated in a GSA building. In addition, the bill would direct the GSA to notify parents or guardians of any new Federal tenants and of any serious threat that it determines may exist to the safety and security of the children. Finally, H.R. 4519 would require the agency to identify and describe each childcare facility that is located in one of its buildings and assess the facility’s level of safety and security, and recommend methods for enhancing such safety and security. GSA would have 1 year from enactment to submit that report to Congress.

*c. Legislative status.*—H.R. 4519, introduced on May 23, 2000, was referred to the Committees on Transportation and Government Reform. The bill was reported by the Committee on Transportation on September 19, 2000, and was discharged by the Committee on Government Reform on September 19, 2000. The bill passed the House of Representatives under suspension of the rules by a voice vote on September 26, 2000.

*d. Hearings.*—On March 23, 2000, the Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation of the Committee on Transportation and Infrastructure held a hearing on the General Services Administra-

tion Fiscal Year 2001 Capital Investment Program. Testimony was given by Aren Almon-Kok, founder of the Protecting People First Foundation, the Commissioner of the Public Buildings Service of the General Services Administration, Members of Congress and Federal judges. The hearing did not specifically address H.R. 4519, but addressed weaknesses in current policies regarding Federal childcare centers in GSA-controlled buildings. H.R. 4519 corrects many concerns that were raised at the hearing.

20. *H. Res. 15, expressing the sense of the House of Representatives regarding Government procurement access for women-owned businesses.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H. Res. 15 expresses the sense of the House of Representatives that all Federal agencies would benefit from reviewing specified recommendations for improving equitable access for women-owned businesses to the Federal procurement market.

*c. Legislative status.*—H. Res. 15, introduced on January 6, 1999, was reported by the Subcommittee on Government Management, Information, and Technology on April 5, 2000.

*d. Hearings.*—On March 16, 2000, the Subcommittee on Government Management, Information, and Technology held a hearing entitled, “Federal Acquisitions: Why are Billions of Dollars Being Wasted?,” to consider a variety of acquisition challenges facing the Federal Government (see section II.B.7).

21. *H.R. 28, the Quality Child Care for Federal Employees Act.*

*a. Report number and date.*—House Report No. 106–323, Part 1, September 15, 1999.

*b. Summary of measure.*—H.R. 28 builds upon Public Law 100–202, passed in 1987, which allowed child-care centers to be based in Federal buildings for the convenience of Federal employees and their agencies. The purpose of H.R. 28 is to provide for enhanced standards for Federal child-care centers, with the goal of improving the quality and accountability of Federal child-care facilities throughout the country. The legislation would require the Administrator of the General Services Administration to: (1) establish and enforce child care health, safety and facility standards; and (2) require child-care centers to comply with accreditation standards issued by a nationally recognized accreditation organization approved by the Administrator, and prescribe enforcement procedures.

The legislation would allow the GSA to offer child-care services to more children by expanding the definition of Federal employee children to include all children in the custody of Federal employees, such as grandparents and legal guardians, and children of on-site Government contractors. It would also modify the existing requirement that 50 percent of the children enrolled at each center must belong to Federal families. Instead, the 50 percent requirement would be based on a national average, giving priority to children of Federal workers. If enrollment at a facility falls below this goal, the provider would be required to develop and implement a busi-

ness plan with the sponsoring Federal agency to achieve the goal within a reasonable timeframe.

In addition, H.R. 28 would authorize an agency or the Administrator of the General Services Administration to enter into an agreement to provide care with an existing non-Federal, licensed and accredited child-care facility, or a planned facility that will become licensed and accredited. In addition, upon approval of the agency head, a pilot program for up to 2 years could be developed to test innovative approaches to providing more cost-effective alternative forms of child-care assistance for Federal employees. The Administrator is designated to serve as an information clearing-house for such pilot programs. The legislation would require all existing and newly hired workers in any child-care center located in federally owned or leased facilities to undergo a criminal background check. In addition, 1 year after enactment of this act, each agency head is directed to require that each new child-care facility the agency operates or contracts with must provide reasonable accommodations for nursing mothers and their infants.

The legislation provides for technical assistance, studies, and reviews in order to assist child-care center operators in complying with this act. It instructs the Administrator of the GSA to establish an interagency council to facilitate cooperation and coordinate policies regarding the provision of child-care centers in the Federal Government.

*c. Legislative status.*—H.R. 28, the “Quality Child Care for Federal Employees Act,” is similar to H.R. 9282, passed in the 105th Congress. On February 11 and 12, 1998, the Subcommittee on Government Management, Information, and Technology held a legislative hearing on H.R. 282, also introduced by Representative Benjamin A. Gilman, R-NY. After consultation with minority members and the administration, the subcommittee marked up the legislation and reported it to the Committee on Government Reform and Oversight on February 12, 1998. The committee passed the measure in the form of an amendment to H.R. 4280, introduced by Representative Constance Morella, R-MD. H.R. 4280 passed the House of Representatives by voice vote on July 8, 1998, however, it no longer contained the Gilman language.

H.R. 28 was introduced January 6, 1999, by Representative Gilman and was again considered by the Subcommittee on Government Management, Information, and Technology and unanimously approved on May 13, 1999 by voice vote. On May 19, 1999, the Committee on Government Reform considered H.R. 28 and passed the measure unanimously by voice vote.

*d. Hearings.*—On February 11, 1998, the Subcommittee on Government Management, Information, and Technology conducted legislative hearings on H.R. 282, the “Quality Child Care for Federal Employees Act,” which was similar to H.R. 28. The hearing examined various issues involving child-care programs at Federal facilities. Witnesses testified concerning the intent of the legislation; the proposal’s objectives; and the reason for various provisions and suggested changes.

Representative Gilman testified in support of the legislation, stressing the need for improved Federal childcare nationwide. He described instances in which his constituents have suffered the

tragic deaths of their children, which resulted from inadequate day care. Representative Gilman said that such tragedies occur when child-care facilities have deplorable conditions, unqualified personnel, and a blatant disrespect for the laws intended to protect children in their care. Mr. Gilman added that H.R. 2982 was needed to ensure that tragedies such as he described would not take place in Federal facilities.

Susan Clampitt, the Associate Administrator for Management and Workplace Programs at the GSA testified in support of H.R. 2982. She stated that H.R. 2982 would strengthen the Federal Government's ability to provide the two most critical concerns involving child-care programs' quality care and affordability.

Ms. Clampitt said that, despite the size of the GSA program, there are vast differences in the quality of child-care centers. She supported the legislation's requirement for an interagency council to coordinate policy and share best practices, saying that it would increase accountability by requiring child-care centers to adhere to a uniform set of regulations. H.R. 28, similar to H.R. 2982, requires the GSA to develop uniform regulations with assistance from representatives of the legislative branch of the Government. She suggested that the legislation would set national health, safety and facility standards and require centers to meet State and local licensing and national accreditation requirements.

Ms. Clampitt also testified in favor of the administration's proposed amendment that would modify the requirement that 50 percent of each center's enrollment be children of Federal workers.

*22. H.R. 1625, the Human Rights Information Act.*

*a. Report number and date.*—None filed.

*b. Summary of measure.*—H.R. 1625, the "Human Rights Information Act" would require certain Federal agencies to identify and organize all human rights records regarding activities occurring in Guatemala and Honduras after 1944 for declassification and disclosure purposes, and to make them available to the public. The bill would instruct the President to report to Congress regarding agency compliance. The bill would prescribe guidelines under which the Interagency Security Classification Appeals Panel shall review agency determinations to postpone public disclosure of any human rights record. H.R. 1625 would authorize postponement of such public disclosures on specified grounds. The bill required any U.S. agency, upon request by an entity created by the United Nations, the Organization of American States (or similar entity), a national truth commission (or similar entity), or from the principal justice or human rights official of a country that is investigating a pattern of gross violations of internationally recognized human rights, to review, declassify, and publicly disclose any human pertinent rights records. The bill would direct the Information Security Policy Advisory Council to report to Congress on declassification of human rights records relating to other countries and to make such report available to the public.

The bill would add two additional positions in the panel in order to implement the act.

*c. Legislative status.*—H.R. 1625, introduced on April 29, 1999, was reported by the Subcommittee on Government Management, Information, and Technology on April 5, 2000.

*d. Hearings.*—Although there were no hearing to consider H.R. 1625 during the 106th Congress, the Government Management Subcommittee considered similar legislation, H.R. 2635 at a hearing during the 105th Congress.

At a hearing held on May 11, 1998, the subcommittee held a hearing to consider H.R. 2635, the “Human Rights Information Act.” At the hearing, the subcommittee focused on information policy, including classification and declassification as well as the process of requesting documents from the Federal Government. The subcommittee also examined the merits of H.R. 2635, including the need for this measure given current compliance with related requests and the soundness of the targeted approach to declassification taken by the bill.

*23. H.R. 1788, the Nazi Benefits Termination Act of 1999.*

*a. Report number and date.*—Report No. 106–321, Part 2, October 6, 1999.

*b. Summary of measure.*—H.R. 1788, the “Nazi Benefits Termination Act of 1999,” would authorize the termination of Federal public benefits to a Nazi persecutor apart from the deportation or denaturalization process. The legislation would establish a procedure to determine whether a Federal benefit recipient is also a Nazi persecutor. If an individual were found in a benefits revocation proceeding to have been a Nazi persecutor, an immigration judge (or the Attorney General) would be required to issue an order prohibiting that individual from either applying for or receiving Federal public benefits.

*c. Legislative status.*—H.R. 1788 was introduced by Representative Bob Franks, R–NJ, on May 13, 1999, and was referred to the Committee on the Judiciary, and to the Committee on Government Reform. On July 21, 1999, the Subcommittee on Government Management, Information, and Technology ordered H.R. 1788 favorably reported by voice vote. On September 30, 1999, the Committee on Government Reform considered the legislation and ordered it favorably reported by voice vote, as amended.

*d. Hearings.*—No hearings were held during the 106th Congress.

*24. H.R. 2376, a bill providing for a procedure for expedited reviews of State grant waiver requests.*

*a. Report number and date.*—None filed.

*b. Summary of measure.*—H.R. 2376, legislation introduced by Representative Mark Green, R–WI, would require Federal agencies to establish expedited review procedures for State-requested waivers if the agency previously authorized a similar waiver under the same program to another State.

*c. Legislative status.*—The Subcommittee on Government Management, Information, and Technology marked-up H.R. 2376 on November 4, 1999, and reported it to the Committee on Government Reform, with an amendment in the nature of a substitute, by a voice vote.



*d. Hearings.*—On September 30, 1999, the Subcommittee on Government Management, Information, and Technology held a joint hearing with the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs entitled, “Grant Waivers: H.R. 2376, Streamline the Process,” to consider H.R. 2376.

Currently, Federal departments and agencies award grants to State and local governments through nearly 600 categorical, block grant, and open-ended entitlement programs. In 1998, these awards totaled \$267.3 billion. Although 23 Federal department and agencies award these grants, six departments account for 96 percent of all Federal grant dollars. They include the Departments of Health and Human Services (58 percent), Transportation (11 percent), Housing and Urban Development (9 percent), Education (8 percent), Agriculture (7 percent), and Labor (3 percent).

The top 27 Federal grant programs (each over \$1 billion) account for 87 percent of all grant award dollars. Several of these programs allow States to waive key statutory or regulatory requirements of the programs, including Medicaid, which accounts for 39 percent of the total grant dollars; welfare (now called “Temporary Assistance for Needy Families), 6 percent of the total grant dollars; and Food Stamps, which covers only the cost of State administration of the program. States apply for these waivers largely to allow them to experiment with alternative ways to achieve more effective or efficient program results.

*25. H.R. 4049, the Privacy Commission Act.*

*a. Report number and date.*—House Report No. 106–919, September 29, 2000.

*b. Summary of measure.*—The Privacy Commission Act establishes the Commission for the Comprehensive Study of Privacy Protection to study and report to Congress and the President on issues relating to protection of individual privacy and the appropriate balance to be achieved between protecting such privacy and allowing appropriate uses of information. The bill requires the Commission to conduct at least four hearings in each of the five geographical regions of the United States, and authorizes appropriations.

*c. Legislative status.*—H.R. 4049, introduced on March 21, 2000, was reported by the Subcommittee on Government Management, Information, and Technology on June 14, 2000, and was reported by the Committee on Government Reform with amendments on June 29, 2000. The bill, as amended, failed under suspension of the rules on October 2, 2000, by a vote of 250 to 146.

*d. Hearings.*—During the second session of the 106th Congress, the subcommittee held legislative hearings on H.R. 4049, the “Privacy Commission Act,” on April 12, May 15, and May 16, 2000 (see section II.B.10).

*26. H.R. 4181, the Debt Payment Incentive Act of 2000.*

*a. Report number and date.*—None filed.

*b. Summary of measure.*—H.R. 4181, the “Debt Payment Incentive Act of 2000,” introduced by the subcommittee’s ranking member Jim Turner, D-TX, would prohibit delinquent Federal tax and non-tax debtors from receiving Federal loans, loan guarantees or receiving Federal contracts, until the delinquency is resolved. The

bill would amend the Debt Collection Improvement Act of 1996, to broaden a current provision in the law that bars delinquent non-tax debtors from obtaining loans or loan guarantees.

*c. Legislative status.*—H.R. 4181, introduced on April 5, 2000, was reported by the Subcommittee on Government Management, Information, and Technology on May 9, 2000, and was reported by the Committee on Government Reform on October 4, 2000.

*d. Hearings.*—On May 9, 2000, the subcommittee held a legislative hearing on H.R. 4181, the “Debt Pay Incentive Act of 2000” (see section II.B.4).

*27. H.R. 1599, the Year 2000 Compliance Assistance Act.*

*a. Report number and date.*—None filed.

*b. Summary of measure.*—The legislation was the subject of a hearing held by the Subcommittee on Government Management, Information, and Technology on June 18, 1999. H.R. 1599 was introduced in order to assist State and local governments to address the year 2000 computer problem. The legislation specifically would authorize State and local governments to use the General Services Administration’s [GSA] Federal supply schedules to procure automated data processing equipment, software, supplies, support equipment, and services related to the year 2000 computer problem; would make participation by a firm listed on the Federal supply schedules voluntary with respect to sales to State or local governments; would require the GSA Administrator to establish procedures to implement the provisions of this legislation no later than 30 days after its enactment; would sunset the authorities provided in the legislation on December 31, 2002; and would require the GSA Administrator to report to Congress on the implementation and the impact of the provisions of the legislation no later than December 31, 2003.

*c. Legislative status.*—H.R. 1599 was the subject of a legislative hearing held by the Subcommittee on Government Management, Information, and Technology on June 18, 1999.

*d. Hearings.*—The purpose of this hearing was to examine H.R. 1599, the “Year 2000 Compliance Assistance Act,” introduced by Representative Tom Davis, R-VA, on April 28, 1999. The legislation would amend the Federal Property and Administrative Services Act of 1949 to authorize State and local governments to purchase information technology [IT] products and services related to the year 2000 computer problem through the Federal supply schedules.

The year 2000 technology problem was the most significant problem to arise within the IT industry. Although the Federal Government had made significant progress toward fixing the year 2000 problem, State and local government progress has been mixed. The year 2000 readiness of State and local government systems is essential to the seamless delivery of governmental services affecting the lives of millions of Americans on a daily basis.

The Federal Government depends on the States to deliver services for key domestic programs including Medicaid, child nutrition aid and welfare assistance. If State and local governments had not finished their year 2000 repairs, the Federal Government would be unable to fully test the readiness of these critical programs. In es-

sence, this legislation would provide State and local governments an additional resource to fix their systems.

28. *H.R. 88, legislation to amend the Treasury and General Government Appropriations Act of 1999, to repeal the requirement regarding data produced under Federal grants and agreements awarded to institutions of higher education, hospitals, and other nonprofit organizations.*

*a. Report number and date.*—No report was issued.

*b. Summary of measure.*—H.R. 88, introduced by Representative George Brown, D-CA, would amend the Treasury and General Government Appropriations Act of 1999. The bill would repeal the requirement that all data produced under Federal grants and agreements awarded to institutions of higher education, hospitals, and other nonprofit organizations become available under the Freedom of Information Act [FOIA]. Senator Richard C. Shelby, R-AL, introduced this requirement as a provision in the Treasury, Postal Service, and General Government Omnibus Appropriations Act for Fiscal Year 1999, known as the “Shelby Amendment.”

H.R. 88 would repeal the Shelby Amendment due to concerns that the amendment’s language is overly broad and could lead to unintended consequences.

*c. Legislative status.*—On January 6, 1999, H.R. 88 was introduced by Representative Brown, R-CA. On July 15, 1999, the Subcommittee on Government Management, Information, and Technology held a legislative hearing on H.R. 88.

*d. Hearings.*—On July 15, 1999, the subcommittee examined H.R. 88 during a hearing entitled, “H.R. 88, Research Data Available under the Freedom of Information Act” (see section II.A.1).

29. *H.R. 4670, “Chief Information Officer of the United States Act of 2000.”*

*a. Report number and date.*—None filed.

*b. Summary of measure.*—H.R. 4670, introduced by Representative Jim Turner, D-TX, finds that new leadership is needed to improve coordination among agencies and create opportunities for the innovative use of information technology [IT] to improve Government operations and the delivery of services to the public. The bill creates an Office of Information Technology in the Executive Office of the President. The office shall provide analyses, leadership, and advice for the President and executive branch agencies regarding the Government use of information technology. The Office of Information Technology would be headed by the Chief Information Officer [CIO] of the United States, who would also be a special assistant to the President. The CIO would serve as the principal adviser to the President on matters relating to the use of IT by the Federal Government. The CIO would be an Executive Level I position, appointed by the President and confirmed by the Senate. The CIO would submit an annual report to the President and to Congress, describing major accomplishments and the results of activities of the CIO Council. The bill provides a 5-year authorization of appropriations, which ensures congressional oversight. Support can also be provided by other executive branch agencies, and the CIO can direct the use of the Information Technology Fund, administered by

GSA, to support IT initiatives. The bill establishes a CIO Council, chaired by the Federal CIO. The bill does not apply to national security systems, but national security agencies are to consult with the Federal CIO regarding IT best practices.

*c. Legislative status.*—On June 15, 2000, H.R. 4670 was introduced by Representative Jim Turner, D-TX.

*d. Hearings.*—On September 12, 2000, the subcommittee examined H.R. 4670 during a hearing entitled, “Establishing a Federal CIO: Information Technology Management and Assurance within the Federal Government.”

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL  
RESOURCES, AND REGULATORY AFFAIRS

Hon. David McIntosh, *Chairman*

*1. H.R. 391, the Small Business Paperwork Reduction Act Amendments of 1999.*

*a. Report number and date.*—House Report 106–8, February 5, 1999, Together with Minority Views.

*b. Summary of measure.*—The purpose of the “Small Business Paperwork Reduction Act Amendments of 1999” is to reduce the burden of Federal paperwork on small businesses by: requiring the Office of Management and Budget [OMB] to publish a list of all Federal paperwork requirements on small businesses; requiring each Federal agency to establish one point of contact for small businesses on paperwork issues; requiring the agencies to allow small businesses to correct first-time paperwork violations before civil fines are assessed, except when doing so would potentially harm or threaten public health and safety, impede criminal detection, or involve an internal revenue law; requiring the agencies to further reduce paperwork for small businesses with fewer than 25 employees; and, forming a task force of agency representatives to study the feasibility of streamlining Federal reporting requirements on small businesses. The bill amends Chapter 35, Title 44, otherwise known as the “Paperwork Reduction Act of 1995” [PRA].

In brief, the Small Business Paperwork Reduction Act Amendments of 1999 are intended to do the following:

A. Require OMB’s Office of Information and Regulatory Affairs [OIRA] to publish a list annually on the Internet and in the Federal Register of all the Federal paperwork requirements for small business. Section 2(a) requires the Director of OMB to authorize the Administrator of OIRA to publish this list. The definition for “small business” in this section and throughout the bill is the one used in the Small Business Act (15 U.S.C. § 631 et seq.). Small business is defined as an enterprise which is “independently owned and operated and which is not dominant in its field of operation.” It is further defined by the Small Business Size Regulations (13 CFR § 121), which set the size standards businesses must meet to qualify as a small business. “Collection of information” is the term used throughout the PRA to define paperwork. It includes requirements for reporting to the government and disclosure to third parties, as well as recordkeeping.

B. Require each agency to establish one point of contact to act as a liaison with small businesses. Section 2(b) requires each agency to establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork.

C. Suspend civil fines on small businesses for first-time paperwork violations so that the small businesses may correct the violations. Section 2(b) provides that civil fines may be suspended for 6 months unless the agency head determines that the violation could potentially cause serious harm; that waiving the fine would impede the detection of criminal activity; that the violation is a violation of the internal revenue laws or any law concerning the assessment or collection of a tax, debt, revenue or receipt; or that the violation presents an imminent and substantial danger to the public health and safety.

If the agency head determines that the violation presents an imminent and substantial danger to the public health and safety, the agency head may impose a fine or suspend the fine for 24 hours to allow the small business to correct the violation. In making this determination, the agency head shall take into account all the facts and circumstances of the violation, including the following factors: (1) the nature and seriousness of the violation, including whether it is willful or criminal; (2) whether the small business has made a good faith effort to comply and correct the violation; (3) the previous compliance history of the small business, including any past enforcement actions against its owners or principals; and (4) whether the small business has obtained a significant economic benefit from the violation. Only civil fines may be suspended, not criminal fines. Only fines assessed for violations of collection of information (paperwork) requirements may be suspended, not fines for violations of other regulatory requirements. The suspension of fines provisions of this section also apply to States that are administering Federal regulatory requirements.

D. Further reduce paperwork for businesses with fewer than 25 employees. Section 2(c) requires each agency to make further efforts to reduce paperwork for small businesses with fewer than 25 employees, in addition to meeting the current paperwork reduction requirements of the PRA.

E. Establish a task force, convened by OIRA, to study the feasibility of streamlining reporting requirements for small businesses. Section 3 establishes a task force to study the feasibility of streamlining reporting requirements for small businesses. The Director of OMB will authorize the Administrator of OIRA to appoint the members of the task force. The members will include representatives from different agencies. The task force will examine the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system, and on one date. After 1 year, the task force will report its findings to the House Government Reform and Small Business Committees and the Senate Governmental Affairs and Small Business Committees. If the task force finds that consolidating reporting requirements so that small businesses can make annual submissions to

each agency on one form or a single electronic reporting system will not work or reduce the burden in a meaningful way, the task force will make recommendations to the committees on what will work to streamline and reduce the burden of reporting requirements for small businesses.

*c. Legislative status.*—H.R. 391 was approved by the House on February 11, 1999 by a vote of 274 to 151.

*d. Hearings.*—“H.R. 3310, Small Business Paperwork Reduction Act Amendments of 1998,” hearings were held on March 5, 1998, and March 17, 1998. No hearings were held in 1999 on H.R. 391, which is nearly identical to H.R. 3310 in the 105th Congress.

## *2. H.R. 1074, the Regulatory Right-to-Know Act of 1999.*

*a. Report number and date.*—House Report 106–168, June 7, 1999, Together with Minority and Additional Views.

*b. Summary of measure.*—The purposes of the “Regulatory Right-to-Know Act of 1999” are to promote the public right-to-know about the costs and benefits of Federal regulatory programs and rules, to increase Government accountability, and to improve the quality of Federal regulatory programs and rules. The bill requires OMB to prepare an annual accounting statement and an associated report. The accounting statement would provide estimates of the costs and benefits of Federal regulatory programs in the aggregate, by agency, by agency program, and by major rule. The associated report would analyze the impacts of Federal rules and paperwork on various sectors and functional areas. Currently, there is no report that analyzes the cumulative impacts of Federal regulations. Americans have a right to know the cumulative costs, benefits, and impacts of Federal regulations.

In brief, the Regulatory Right-to-Know Act of 1999 is intended to do the following:

A. Require that OMB annually submit to Congress, simultaneously with the Budget of the U.S. Government, an accounting statement and associated report on the annual costs and benefits of Federal regulatory programs.

Section 4(a) requires OMB to identify regulatory costs and benefits: (1) in the aggregate; (2) by agency, agency program, and program component; and (3) by major rule. Section 4(c) requires OMB to identify the net benefits or net costs for: (1) each program components, (2) each major rule, and (3) each regulatory option for which costs and benefits were included in any regulatory impact analysis. Section 4(e) requires that each accounting statement cover the current fiscal year, the 2 preceding fiscal years, and the 4 following fiscal years. This is the identical time series used in the Budget of the U.S. Government.

Section 4(b) requires that the associated report include three parts. First, OMB shall provide an analysis of the impacts of Federal rules and paperwork on State and local government, the private sector, small business, wages, consumer prices, economic growth, public health, public safety, the environment, consumer protection, equal opportunity, and other public policy goals. Second, OMB shall identify and analyze overlaps, duplications, and potential inconsistencies among Federal regulatory programs. Finally, OMB shall provide recommendations to reform inefficient or inef-

fective regulatory programs or program components, including recommendations for addressing market failures. Section 4(f) provides that the various analyses are phased in over a 3-year period.

B. Require that OMB provide a summary table including the number of major rules and the number of nonmajor rules issued by each agency in the preceding fiscal year.

C. Require that OMB, before finalizing the accounting statement, associated report, and OMB guidelines, provide the public with notice and an opportunity to comment, and peer review by two or more experts. Section 5 requires OMB to consult with the Congressional Budget Office [CBO] on the accounting statement, associated report, and OMB guidelines. Section 5 also requires OMB, after consideration of the public and peer review comments, to incorporate an appendix to the report addressing the public and peer review comments. To ensure openness, Section 5 also provides that OMB will make all final peer review comments available in their entirety to the public.

Section 7 requires OMB to arrange for external peer review by individuals or organizations with nationally recognized expertise in regulatory analysis and regulatory accounting. Section 7 also requires that these persons are independent of and external to the Government. Further, Section 7 requires that the peer reviewers be fairly balanced with respect to the points of view represented, that the peer reviewers have no conflict of interest, and that the comments provided are not inappropriately influenced by any special interest and are the result of independent judgment.

D. Require that OMB, after consultation with the Council of Economic Advisors, issue guidelines to the agencies to standardize the most plausible measures of costs and benefits, the means of gathering information used to prepare the accounting statements and impact analyses, and the format of the accounting statements and summary tables. Section 6 requires that OMB review submissions from the agencies to ensure consistency with OMB's guidelines.

*c. Legislative status.*—H.R. 1074 was approved by the House on July 26, 1999 by a vote of 254 to 157.

*d. Hearings.*—A “Should Agencies Be Allowed To Keep Americans in the Dark About Regulatory Costs and Benefits?” hearing was held on March 24, 1999. This hearing addressed the need for legislation due to the limitations of OMB's statutorily-required reports to Congress on regulatory accounting, as required by the Treasury and General Government Appropriations Acts for 1997, 1998, and 1999. Witnesses included House Commerce Committee Chairman Tom Bliley, the vice president of the National Conference of State Legislatures, OMB, and three think tank experts in regulatory accounting.

### 3. *H.R. 2221, Small Business, Family Farms, and Constitutional Protection Act.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2221 is intended to prohibit the use of Federal funds to implement the Kyoto protocol to the United Nations Framework Convention on Climate Change until the Senate gives its advice and consent to ratify the protocol, and to clarify

the authority of Federal agencies with respect to the regulation of emissions of carbon dioxide (CO<sub>2</sub>).

H.R. 2221 prohibits Federal agencies from implementing the Kyoto protocol prior to ratification. In part, the bill is intended to educate and expand the anti-Kyoto coalition by spotlighting the pro-Kyoto strategy behind early action crediting and EPA's claim of authority to regulate CO<sub>2</sub>.

H.R. 2221 has three main legislative provisions. Section 3(a) makes permanent the Knollenberg restriction prohibiting the use of Federal funds to propose or issue regulations for the purpose of implementing, or in preparation for implementing, the Kyoto protocol. Section 3(b) prohibits Federal agencies from promulgating regulations to limit emissions of CO<sub>2</sub> without new and specific statutory authority. Section 3(c) prohibits the use of Federal funds to advocate, implement, or develop a program providing regulatory credits for early greenhouse gas emission reductions until and unless the Senate ratifies the Kyoto protocol.

*c. Legislative status.*—H.R. 2221 has 32 co-sponsors besides Mr. McIntosh, who introduced the bill.

*d. Hearings.*—In 1999, the subcommittee held no hearings on the legislation. However, each of the subcommittee's 1999 hearings on the administration's climate change policies focused on one of the key concerns of the legislation. The May 20th hearing examined the administration's compliance with the Knollenberg funding restriction. The July 15th hearing examined the case for early action crediting. The October 6th hearing examined EPA's claim that the Clean Air Act authorizes EPA to regulate CO<sub>2</sub>.

#### 4. H.R. 2245, *Federalism Act of 1999*.

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2245 is intended to promote and preserve the integrity and effectiveness of our federalist system of government, and to recognize the partnership between the Federal Government and State and local governments in the implementation of certain Federal programs.

H.R. 2245 was developed in response to a request by the seven major organizations representing State and local elected officials and in cooperation with them. It establishes new discipline for the legislative branch and the executive branch before either imposes requirements that preempt State or local authority or have other impacts on State or local governments. Building on the Unfunded Mandates Reform Act [UMRA], H.R. 2245 requires that the report accompanying each bill identify any preemption of State or local authority and the reasons for such preemption. The report must also include a Federalism Impact Assessment [FIA] prepared by the Congressional Budget Office [CBO]. Likewise, H.R. 2245 requires executive branch agencies to include a FIA in proposed, interim final, and final rule publications.

H.R. 2245 establishes new rules of construction for the judicial branch relating to preemption. Additionally, H.R. 2245 includes other provisions to recognize the special competence of and partnership with State and local governments, including deference to State management practices for certain Federal grant programs and co-



operative determination of program performance measures for State-administered Federal grant programs.

*c. Legislative status.*—The subcommittee marked up a substitute bill on July 29, 1999.

*d. Hearings.*—A “H.R. 2245: Legislation to Promote and Preserve Federalism,” hearing was held on June 30, 1999. Witnesses included the executive director of the National Governors’ Association, the president of the National Conference of State Legislatures, the president of the National League of Cities, a vice president of the National Association of Counties, and the General Accounting Office [GAO].

5. *H.R. 2376, A bill to require executive agencies to establish expedited review procedures for granting a waiver to a State under a grant program administered by the agency if another State has already been granted a similar waiver by the agency under such program.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2376 is intended to streamline the processing of State requests for waivers of certain statutory or regulatory requirements, including a similar State request to an already approved waiver for another State. H.R. 2376 would result in a real reduction in paperwork and costs for the States, which are the Federal Government’s partners in program administration, freeing up resources for additional delivery of services to the needy.

Section 1 basically codifies section 7 of President Clinton’s Executive Order No. 13132, issued on August 4, 1999, which directs agencies to act on State waiver requests within 120 days “to the extent practicable and permitted by law.” Section 2 requires agencies to establish expedited procedures under capped grant programs (where there is no budget neutrality issue) for waiver requests similar to a waiver already approved for another State, with a 2-year exemption for new grant programs and a 1-year lag to see if an approved waiver is workable. Section 3 would provide increased accountability since it requires quarterly publication of each agency’s actions on State requests for flexibility in program administration and of the amount of processing time taken by the agency before making a decision on these requests. Section 4 requires OMB, and the Departments of Agriculture and Health and Human Services [HHS], working cooperatively with the National Governors’ Association and the National Conference of State Legislatures, to develop a Memorandum of Understanding: specifying a common approach and common requirements for budget neutrality across the open-ended entitlement programs and other Agriculture and HHS programs, and providing a multi-year analysis of costs.

*c. Legislative status.*—The Government Reform Subcommittee on Government Management, Information, and Technology marked up a substitute bill on November 4, 1999.

*d. Hearings.*—A “H.R. 2376, Grant Waivers and Streamlining the Process,” hearing was held jointly with the Government Reform Subcommittee on Government Management, Information, and Technology on September 30, 1999. Witnesses included the executive directors of the National Governors’ Association and the Na-

tional Conference of State Legislatures, and the Departments of Agriculture, HHS, and Labor.

6. *H.R. 3521, Congressional Accountability for Regulatory Information Act of 2000, and H.R. 4744, H.R. 4924 and S. 1198, Truth in Regulating Act of 2000.*

*a. Report number and date.*—House Report 106–772, July 20, 2000, Together with Minority and Additional Views, on H.R. 4744.

*b. Summary of measure.*—All three House bills (H.R. 3521, H.R. 4744, and H.R. 4924) and S. 1198, the “Truth in Regulating Act of 2000,” establish a regulatory analysis function within the General Accounting Office [GAO]. This function is intended to enhance congressional responsibility for regulatory decisions developed under the laws Congress enacts and to help check and balance the executive branch in the regulatory process. GAO was a logical location since it already has some regulatory review responsibilities under the Congressional Review Act [CRA].

Under S. 1198, the last bill approved by the House, the chairman or ranking member of a committee of jurisdiction may request that GAO submit an “independent evaluation” to the committee of a major proposed or final rule within 180 days. GAO’s analysis shall include an evaluation of the potential benefits of the rule, the potential costs of the rule, alternative approaches in the rulemaking record, and the various impact analyses.

Congress currently has two opportunities to review agency regulatory actions. Under the Administrative Procedure Act [APA], Congress can comment on agency proposed and interim rules during the public comment period. The APA’s fairness provisions require that all members of the public, including Congress, be given an equal opportunity to comment. Late congressional comments cannot be considered by the agency unless all other late public comments are equally considered. Therefore, since GAO cannot be given more time than other members of the public to comment, GAO should complete its review of agency regulatory proposals during the public comment period, while there is still an opportunity to influence the cost, scope and content of an agency’s regulatory proposal. S. 1198 does not require GAO to submit timely comments but neither does it preclude GAO from doing so.

Under the CRA, Congress can disapprove an agency final rule after it is promulgated but before it is effective. GAO needs to analyze the legislative history to see if there is a non-delegation problem, such as in the Food and Drug Administration’s proposed rule to regulate tobacco products, which was struck down by the Supreme Court in *FDA v. Brown & Williamson*, or backdoor legislating, such as in the Department of Labor’s “Baby UI” rule, which provides paid family leave to small business employees, even though Congress in the Family and Medical Leave Act said no to paid family leave and no to any coverage of small businesses.

Sometimes the best way to find out that an agency has ignored congressional intent or failed to consider less costly or non-regulatory alternatives, is to examine non-agency (i.e., “public”) data and analyses. In preparing its independent evaluation of an agency’s regulatory proposal, GAO needs to examine public data. Although S. 1198 does not require GAO to review public data, neither

does it forbid or preclude GAO from doing so. GAO should comment substantively on an agency's regulatory proposal. S. 1198 does not require GAO to comment on the scope and content of an agency's regulatory proposal but neither does it preclude GAO from doing so.

Under S. 1198, GAO would not retain its traditional role as auditor. Instead, S. 1198 requires GAO to prepare an independent evaluation or analysis of agency regulatory proposals. Evaluation is not equivalent to auditing; evaluation requires a thorough analysis, e.g., consideration of less costly or non-regulatory alternatives not presented in an agency's documents.

S. 1198 does not require or expect GAO to conduct any new Regulatory Impact Analyses [RIAs], cost-benefit analyses, or other impact analyses. However, GAO's independent evaluation should lead the agencies to prepare any missing cost/benefit, small business impact, Federalism impact, or any other missing analysis.

Instructed by GAO's independent evaluations, Congress will be better equipped to review final agency rules under the CRA. More importantly, Congress will be better equipped to submit timely and knowledgeable comments on proposed rules during the public comment period.

*c. Legislative status.*—H.R. 4744 was approved by the Government Reform Committee on June 29, 2000 by voice vote. H.R. 4924 was approved by the House on July 25, 2000 by voice vote. S. 1198, the very similar Senate companion bill to H.R. 4924, was approved by the House on October 3, 2000 by voice vote. On October 17, 2000, the President signed it into law (Public Law 106–312).

*d. Hearings.*—On June 14, 2000, the subcommittee held a hearing entitled, “Does Congress Delegate Too Much Power to Agencies and What Should be Done About It?” Witnesses included: Senator Sam Brownback; Representative J.D. Hayworth; Dr. Wendy Lee Gramm, former Administrator, Office of Information and Regulatory Affairs, OMB; Alan Raul, former OMB general counsel; and David Schoenbrod, professor of law, New York Law School.

#### SUBCOMMITTEE ON THE POSTAL SERVICE

Hon. John M. McHugh, *Chairman*

##### 1. *H.R. 22, The Postal Modernization Act of 1999.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 22 is legislation that would fundamentally modernize and reform the Nation's postal laws for the first time since 1970 in order to give the Postal Service both the tools and the incentive to adapt itself to the demands of the 21st century. At the same time, the legislation establishes new rules to ensure fair competition and protect the public interest. The bill was originally introduced in June 1996, after a year and a half of development through oversight hearings. After five more hearings and taking into account additional extensive public comments on this plan, the Subcommittee on the Postal Service approved the legislation in a bipartisan manner in 1998. After its reintroduction in January 1999, the subcommittee held 2 more days of hearings, in which it received testimony from more than 36 witnesses rep-

representing the varied postal interests in the public and private sectors. After careful evaluation of all the testimony received in these latest hearings, Chairman McHugh proposed a comprehensive amendment in the nature of a substitute which incorporates and responds to many of the comments received. The provisions of the measure are easily available on the subcommittee's Web page in a manner that the public and all postal stakeholders have the opportunity to access and understand the provisions. In total, there have been more than 40 witnesses on the bill over the past 5 years and approximately 60 witness on the issue of the challenges facing the postal system and the need to modernize the laws governing the Postal Service.

The purpose of the legislation is to improve and update the laws that shape the operation of the postal system, a system that not only includes the U.S. Postal Service, but also impacts private express companies, hundreds of regional and local delivery services and small businesses. Each postal patron depends on the efficient and effective operation of the U.S. postal delivery system.

The basic charter for this industry is the Postal Reorganization Act of 1970 codified in title 39, U.S. Code. The 1970 act abolished the Post Office Department, an executive department within the Cabinet of the President, and created the U.S. Postal Service. The Postal Service is an independent agency that is directed by a Board of Governors, an 11-member committee consisting of nine "Governors" chosen by the President for staggered 9-year terms, and a Postmaster General and a Deputy Postmaster General who are selected by the Governors. The Postal Service itself determines the types and level of postal services it will provide and how much total revenue it will need to provide these services. The Postal Service also issues regulations that purport to define what types of services are within the scope of the statutory postal monopoly and what types of services may be offered by private companies.

Before the Postal Service introduces new rates or new types of services, it must request an opinion from a second agency, the Postal Rate Commission [PRC]. The PRC is a five-member agency whose members are appointed by the President. The Commission holds public hearings on the fairness of differences between postage rates and can recommend modification that will reduce unfair or unreasonable discrimination, a concept defined by several statutory criteria. Because even slight changes in rates can involve very large sums of money, the PRC's review of changes in rates or classifications usually involves a complex and contentious administrative litigation lasting up to 10 months. Many aspects of this system have led to calls for modernization of our postal laws.

Since the early 1990's, the Postal Service has argued that it needs more commercial flexibility to respond to increased competition from private express companies, new forms of communication, and changing business practices. The Postal Service would like to be able to change rates without the costs and delays associated with the current practice of PRC review. It would also like to offer rates that are better tailored to the needs of large business customers and to enter the new types of commercial activities that are replacing the business of delivering traditional letters. Many large customers of the Postal Service agree as to the necessity of these

changes, while many smaller customers are more skeptical. However, all agree on the need to maintain a vibrant Postal Service that can provide universal service at a reasonable cost to all areas of the United States.

Meanwhile, captive customers of the Postal Service's monopoly as well as private companies who compete with the Service have also been calling for reform. They suggest that the Postal Service's increasing commercial emphasis on competitive services require clearer statutory guidelines as to what is fair competition for a public monopolist. Many small customers of the Postal Service who have no other practical alternative for the delivery of their letters, due to existing law, emphasize that the Postal Service can compete with the private sector while loading a disproportionate share of its overhead costs onto their postage rates. Likewise, many private companies argue that it is inappropriate for a government agency to compete in a private market while it also 1) adopts regulation (such as the scope of the mail monopoly or postage metering technology) that determine the rules of competition, 2) operates with an exemption from laws that prohibit fraudulent business practices (such as the antitrust and unfair competition laws), and 3) loads its overhead costs in monopoly customers' rates. Some customers, competitors, and economists have suggested that the Postal Service, as a government entity, should be excluded from the competitive market altogether and wound down as changing technology and new business practices reduce the need for a governmental letter delivery establishment. H.R. 22 offers a more moderate course: to allow the Postal Service to compete in all markets, provided it does so on the same terms and conditions as faced by private companies.

A third impetus for postal legislation is the fact that other developed countries, facing the same problems of how to modernize their postal systems in light of changing technologies, have concluded that the time has come to reform their postal laws. After a 10-year debate, the European Union has adopted legislation that will limit the postal monopolies in all 15 member states to services priced at five times the stamp price or less, or when conveying items weighing 12.5 ounces or less. Sweden and Germany have enacted legislation abolishing their postal monopolies; New Zealand is not far behind. The Netherlands has privatized the majority interest in its post office and is considering abolition of the postal monopoly. Australia and the United Kingdom are considering introducing more competition and commercial flexibility into their postal systems. All countries have moved forward with the same commitment to preserving universal postal service in their countries that we demand here in the United States.

There is opposition to H.R. 22 but, in most cases, parties have expressed concern about specific provisions of H.R. 22 rather than its general approach. Those who have expressed the greatest initial concern about the legislation appear to be entities who fear competition from a better, more efficient Postal Service. H.R. 22 is sympathetic to such concerns; it seeks to provide new, stringent safeguards against unfair competition but, simultaneously, tries to give the Postal Service a fair chance to compete.

H.R. 22 is divided into eight titles. Title 1 provides for the redesignation of the Board of Governors to the “Board of Directors of the U.S. Postal Service” to modernize and convey the business responsibility of the Directors for ensuring effective and efficient operations of the Service on behalf of the American public. The change to “Directors” is consistent with other Federal entities including, among others, Amtrak, Tennessee Valley Authority Rural Telephone Bank, Corporation for Public Broadcasting, Federal Deposit Insurance Corporation, Fannie Mae, and Freddie Mac. This section also adds to the title of Postmaster General, the designation “and Chief Executive Officer” which codifies current practice. It also changes the name of the Postal Rate Commission [PRC] to the “Postal Regulatory Commission.” This change is intended to recognize the greater responsibilities, authority, and role for the PRC than exists under its present, more limited mandate. The amendment provides that whenever reference is made in law, regulation, rule, document or other U.S. record to the entities affected by these sections will be considered a reference to the entities as redesignated.

Title II establishes a new system for establishing Postal Rates, Classes, and Services. Section 3701 introduces the term “product” which was amended to underscore that each rate cell is a product and that this definition relates to “postal” products. This definition is critical for the application of the new regulatory regime as the classes of mail and services are regulated as either noncompetitive or competitive products. The term “rate” will encompass both the concepts of rates and fees. That is, any rate or fee that appears on the Postal Service’s published “ratefold” would be subject to the rules regarding a product. Prices of products in the noncompetitive mail category will be indexed to the “CPI,” specifically the Consumer Price Index for all urban consumers as published monthly by the Bureau of Labor Statistics of the Department of Labor.

Any pricing discretion above the CPI-X percentage in a given year could only occur for a rate that had not been set at the maximum amount allowed by rule 2 (thereby permitting use of banked pricing discretion of this title requires the Postal Service to initiate an omnibus rate case before the Postal Rate Commission within 18 months after enactment of the legislation under the recommended decision authorities and criteria in current law and provides for no exceptions. However, the recommended decision is on rates for all products in the noncompetitive category of mail and all products in the competitive category of mail. This would result in the PRC recommending rates for all international mail matter because this mail would now be regulated as either a competitive or noncompetitive product. The Postal Services current authority to set international mail rates would be preserved until the baseline rates are place in effect and then the Service would be permitted to use its new pricing authority for international mail in the competitive category. This provision ensures that the most current rates and fees are in effect for all products before the application of the new formula for rate setting is established. The 18-month timeframe gives the service sufficient time to request and prepare for this important case. This subsection retains the current ratemaking features as well as the 10-month limit for a recommended decision to

be rendered. However, in response to the Postal Service's request to expedite implementation of the legislation, this section was amended by the subcommittee to reduce the time permitted for the Postal Service to file the baseline case from 18 months to 6 months. The current statutory provision for contingencies would be eliminated given that the concept of allowances for recovery of future excess costs would be in direct contradiction to the basic premise of price caps that the regulated entity bears the burden of excess costs as well as realizing the benefits from any profit.

The next sections in this subchapter clarify that while a request is considered by the PRC under the current statutes, the PRC is authorized to disallow unnecessary revenues. It should be noted that current law does not give the PRC specific authority to review the revenue demanded by the Postal Service. PRC has testified to Congress that such authority is necessary to prevent the Postal Service from demanding a large revenue increase in the baseline rate case in order to set a high base figure for future price caps. The "honest, efficient, and economical management" standard used in current law would be the criteria used by the PRC in this case.

Recognizing the potential challenges of mandating minimum rate requirements at the rate cell level, the subcommittee-amended bill permits the PRC to waive the requirements if its application to a particular rate cell, or cells, would be impractical.

Products contained in the competitive mail category will still be priced by the Board according to market conditions, as long as each product is priced to cover its cost, and competitive products collectively make a contribution to the overall overhead of the Postal Service in at least an equal percentage to the contribution made by all noncompetitive and competitive products combined. The legislation mandates certain costs for the PRC's consideration when assessing adjustments to the cost-coverage requirement, and mandates a PRC review of the cost-coverage requirements' operation and continuing need. The criteria for discontinuing loss-making competitive products are made more explicit in the subcommittee-adopted McHugh amendment. Other provisions clarify the PRC's ability to review new competitive products.

The Postal Service will still be required to track revenues and expenditures of competitive products by way of a separate new account, "the Postal Service Competitive Products Fund." Recognizing the complexity of separating the assets and liabilities between competitive and noncompetitive products, as well as the need to reassess the Service's accounting for competitive products' revenues and costs, the legislation requires the Postal Service to develop recommendations to identify and value the assets and liabilities, which would be reviewed in a PRC proceeding, before the PRC promulgates such rules.

For experimental products, the prohibition against "unreasonable market disruption" is more clearly specified as a prohibition that such tests cannot "create an unfair or otherwise inappropriate competitive advantage for the Postal Service, particularly in regard to small business concerns."

The bill currently provides that Postal Service will be annually audited, as well as reviewed upon complaint, by the PRC to ensure that prices are set in accordance with the laws and that delivery

and performance standards are being met. Several clarifying changes are added to these provisions. Additionally, the PRC must still report at least every 6 years on the operation of the rate-making system with recommendations for any legislative or other measures necessary to improve it. However, the amendment specifically adds a review of the operations of the cost-coverage requirement for competitive products, the Competitive Products Fund, and the Private Corporation authorized by Section 204. Hereby, a formal and regular review process is established to consider any necessary modifications.

Section 3702 clarifies that nothing in this chapter will affect the current language regarding free mail. This includes mail for correspondence of members of the diplomatic corps and consuls of the countries of the Postal Union of Americas and Spain, the blind and disabled, and mailing of balloting materials under the Uniformed and Overseas Citizens Absentee Voting Act. Section 3723 recognizes that potential challenges of mandating minimum rate requirement at the that if, upon enactment of this legislation any action is pending related to an on-going or previous rate case, that case is considered null and void. Section 3731 defines the terms that will be used in the noncompetitive category of mail. This section creates four “baskets” of products in order to group the various classes and subclasses of mail and postal services in the non-competitive mail category with similar and like classes and services. All descriptions are as defined in the mail classification schedule as of enactment, and the lists of products in each basket will be revised by the PRC following a product transfer, reclassification, or new products introduction.

The next amendment, Section 3722 mandates that reduced-rate categories of mail will receive the lesser of the rate calculated under current law, or the rate the Postal Service would offer under the price cap regime. The amendment also addresses a problem regarding the fact that current law for reduced rate mailers does not provide sufficient clarity to ensure that their rates are indeed reduced an appropriate amount below the most closely corresponding regular-rate category. The legislation changes current law for reduced-rates by modifying the requirement for an absolute contribution of one-half of the commercial mailers’ contribution to overhead costs, allowing it to be “one-half or less,” as the Postal Service may prescribe. It should be noted that while the amendment maintains an absolute limitation that all rates must cover attributable costs as the floor, this section states that the reduced-rate mailers’ estimated costs attributable (on a per-unit basis) should not exceed the estimated costs attributable for the closely corresponding regular rate category.

One of the most significant modifications to Title II provides authorization for the Postal Service to establish a private, for-profit corporation. Adapted from the organizational provisions of Conrail and Comstat, this corporation would not be an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation; it would not be a part of the Postal Service. The “USPS Corporation,” as provided for in H.R. 22, addresses the current issue of the Postal Service broadening its mission under questionable statutory authority to



engage in nonpostal activities and businesses, such as electronic commerce services. While the proposal rejects the argument that the Postal Service should be confined to its traditional letter mail business and wither as demand for that business declines, H.R. 22's proposed structure for nonpostal activities prevents the Service from leveraging its government status and \$60 billion revenue stream as it does today. The bill clarifies the authority of the Postal Service to continue providing nonpostal services as a means of meeting its public service obligations, but requires it to provide such products only through a private corporation. The independent Postal Regulatory Commission (also known as the PRC), authorized by H.R. 22, would oversee the corporation's activities and relationship with the Postal Service. The Postal Service is required to include the activities of the corporation in the annual reports to the PRC to ensure compliance with the firewall established between the Service and the corporation (such as the requirement that prices charged the corporation by the Postal Service for goods and services reflect fair market value).

The McHugh amendment makes additional changes to this section: (1) the corporation is prohibited from providing any mail preparation, processing, or packaging services that are delivered by means of noncompetitive products offered by the Postal Service, unless the corporation is authorized in a PRC hearing on the record in which it considers various factors the first of which is "the fair and equitable treatment of small business concerns which have invested in the development of such services, if any";

(2) the restrictions on interaction between the Postal Service and the corporation are further clarified (beyond the current requirements on purchase of goods and services from the Postal Service) to explicitly mandate that the Postal Service must treat the corporation in the same manner as it would any other private corporation, and that the goods and services provision cannot be considered to exempt the corporation from the rates established pursuant to the pricing rules for noncompetitive and competitive products;

(3) the corporation and its employees are explicitly subject to the laws of the State in which it is incorporated in the exact same way as any other corporation (and its employees) incorporated in that State;

(4) rather than a blanket waiver of post-government employment restrictions for former Postal Service employees, the waiver is limited to only the first 3 years of the corporation's existence; and

(4) the corporation's specific authorities are clarified to include borrowing money on its own behalf and interactions with other private companies.

The McHugh amendment responds to the testimony received from witnesses as to their suggestion that the noncompetitive product customers more explicitly benefit from the existence, if any, of a corporation created under this title. Under a new provision, if the corporation is created, any excess revenues that occur in a given year from competitive products collectively (which will include any earnings paid by the corporation) must be shared equally with the Postal Service Fund (noncompetitive products) and the Competitive Products Fund. Without placing unfair burdens on the corporation, this section ensures that (2) to the extent that benefits flowing to

the Postal Service from the corporation result in excess revenues, these moneys will be shared with noncompetitive product customers, and (2) such customers share equally in the benefits of the success of competitive postal products before such revenues are available for investment in the corporation.

The subcommittee conducted two hearings on postal modernization. The Postmaster General, the Postal Rate Commissioners, and the Postal Service's employee unions and management associations testified at the hearing held on February 11, 1999 and four panels of witnesses testified at the March 4, 1999 hearing. They included the Deputy Assistant Attorney General of the Antitrust Division of the Department of Justice, the Deputy Assistant Secretary for Government Financial Policy of the Department of Treasury, the chairman and CEO of the FDX Corp., the chairman and CEO of the United Parcel Service, the senior vice-president for government affairs of the Director Marketing Association, Inc. representing the Mailers Coalition for Postal Reform, the executive director for the Alliance of Nonprofit Mailers, the chairman of the Board of ADVO Inc. representing the Saturation Mail Coalition, the executive director of the Main Street Coalition accompanied by representatives of the Newspaper Association of America, the National Federation of Nonprofits, the Associated Church Press, the Greeting Card Association, the American Business Press, the National Newspaper Association, and the Coalition against Unfair USPS Competition.

The purpose of these hearings was to air any other concerns that may exist even after extensive hearings and thorough input from interested parties in previous years.

Postmaster General Henderson, at the February 11 hearing testified on the importance of H.R. 22. He said that the U.S. Postal Service [USPS] is the Nation's largest customer base with the largest civilian labor force of more than 765,00 career employees. The USPS serves all of American with more than 130 million households and businesses addresses, delivering a daily average of 630 million pieces of mail. This represents about 41 percent of all the mail volume in the world. Most American businesses utilize the mail - America's competitive advantage in global economy is based on the mail system. Mr. Henderson elaborated that the next century will require competitively superior methods and results from all postal systems and that Americans have inherited the best postal system in the world. Forward-looking postal administration throughout the world are restructuring and are attempting to prove that they can perform with market-driven standards of efficiency and customer service while still covering the traditional social obligation for universal service. The U.S. Postal Service has a strong revenue base and customer-driven methods such as work sharing. Mr. Henderson underscored that the challenge is to formulate the correct formula of forward-looking reforms in a manner consistent with the values and traditions of our country. He stated that H.R. 22 is the mark to move the postal community toward with an acceptable, modern package of reforms that would match 21st century postal service with modern expectations though there may be some dissension; it offers a framework for providing positive reform. The bill provides a price cap feature. This, along with indexing, productivity offsets and incentive-based compensation,

has the potential for improving efficiency and providing more predictability of postage costs. He stated that some additional modest pricing flexibility should increase opportunities for customers by improving Postal Service responsiveness to market conditions. Transparency in the costs and financing of competitive service offerings should provide reassurances to the public that there are no cross-subsidies and that reasonable contribution is being made to institutional costs. Universal service requirements would be studied and defined and retained, assuring access to good postal service. The Postmaster General acknowledged that the object of price caps would abolish cost-of-service ratemaking and there would be no legal guarantee the Service would meet its costs and pay its bills by raising rates. Financial success will depend on performance and efficiency. He further acknowledged that the Postal Service must learn to be more efficient, more skillful, more customer-focused, and more market-driven. He expressed that a higher level of consensus is required within the postal community to implement the provisions of the competitive and noncompetitive categories provided for in H.R. 22, and offered several possible amendments for consideration. The Postmaster General reiterated that the Postal Service is committed to see reform and that it would work with all stakeholders to complete this endeavor.

The chairman of the Postal Rate Commission commented that though the Postal Service had made operational and financial progress within the past 3 years the future was not promising. A major part of first-class mail appears to be susceptible to electronic diversion. If this should happen, the Postal Service would be forced to raise rates, unless costs are reduced and new profits realized. Mr. Gleiman said that with some adjustment, H.R. 22 could help the process. In reference to the amendments to H.R. 22 recently circulated by the Postal Service, Chairman Gleiman expressed that they appear to be contrary to the underlying principles of H.R. 22. The gist of his extensive testimony indicated that the Commission's review of H.R. 22 shows that with minor adjustments there could be smooth transition from current postal ratemaking to the proposed price cap regime. He suggested that there be a longer transition period whereby the Commission could develop an effective, workable set of regulations under the mandate of their extended functions provided by H.R. 22.

Ted Carrico, national president of the National Association of Postmasters of the United States [NAPUS], an organization representing 45,000 active and retired postmasters, cautioned that deregulation, whether for airlines or the Postal Service, should be attempted with caution. Rural areas and inner city neighborhoods stand to lose in such endeavors. He testified that restrictions imposed on the Postal Service to confine its activities to only delivering single-piece hard-copy mail would result in the demise of universal service at uniform rates concept for which the Postal Service was created. He said that there are critics who would like the Postal Service to be extinct, but they are critical of the innovations that the Postal Service is implementing. NAPUS testified that the Postal Service was making these products available to the public at reasonable rates. The subcommittee was reminded that a recent AP Poll found that 75 percent of the American public thought the Post-

al Service was doing an “excellent” or a “good” job. The PriceWaterhouseCoopers survey found that 93 percent of overnight first-class was being delivered on time. Additionally the Pew Research Center survey found that the Postal Service has a 90 percent approval rating. Mr. Carrico stated that Americans demand a strong Postal Service that will continue to provide valued service, therefore, the Postal Service must be permitted to enhance its revenues. Deregulation would permit other entities to pick off the most lucrative Postal products and leave it out of competitive ventures. The Postal Service is responsible to each citizen and business in the country, whereas for-profit competitors are not accountable to anyone but their Board of Directors and their shareholders; they are not mandated to provide universal service. NAPUS, because postmasters oversee all facets of postal operations, understand the need for the Postal Service to modernize; they recognize the value of H.R. 22 and know that it will enable the Postal Service to continue its core mission and they agree with most of its provisions including the provision for greater pricing and operation flexibility, the new rate setting mechanism and NAPUS agreed to continue to work on other issues. However, NAPUS has concern about the direct appropriation to the Postal Rate Commission. They believe that this would establish a type of congressional micro-management that the Postal Reorganization Act tried to eliminate. NAPUS is concerned about the diminution of the double-postage rule believing that revenues earned by the lucrative “priority mail” would be diverted resulting in this product being left to the Postal Service to deliver in low volume, high cost areas, raising the price for the product.

Joseph Cinadr, president of the National League of Postmasters (League) testified that his membership is very interested in H.R. 22, and would have suggestions once the legislation was finalized. The League’s primary focus is for the USPS to remain the foremost postal system worldwide, providing superior universal service at reasonable prices for all Americans. The League asks for financial flexibility, rate stability, and the authority to offer competitive volume discounts but it opposes Congress’ involvement in postal rates or wage scales and believes that H.R. 22 is reregulating the wrong organization. Since the 1970 reorganization, the Postal Service has become efficient, cost-conscious and competitive. He stated that the American postal service has served this Nation well for more than 224 years and now the achievements have raised envy from competitors.

The National Association of Postal Supervisors [NAPS], an organization of 37,000 active and retired postal supervisors, managers and postmasters, represented by their president, Vincent Palladino, objected to the Presidentially appointed Postal Management Commission whose responsibility would be to review labor-management issues. However they were willing to support an independent study by the National Academy of Public Administration only if the Summit process conducted by the Federal Mediation and Conciliation Service should fail. They were pleased at the exclusion of the Postal Service appeal of the Merit Systems Protection Board decisions against the agency and the mailbox demonstration project from the revised H.R. 22. NAPS continues to oppose the requirement that

the Postal Service forward the mail of former renters received at commercial mail receiving agencies [CMRA] without the appropriate fee being paid to the Service. NAPS offered an amendment to Section 307 of H.R. 22 that requires the Postal Service to comply with all zoning, planning and land use regulations and building codes applicable to State and local public entities. The NAPS' suggested language would require that the Postal Service "shall make every reasonable effort to faithfully comply with all" the above-referenced regulations. Mr. Palladino submitted a question to the subcommittee: what commercial enterprise would remain in business if its officers had to operate under Federal statutes governing the types of products and services it would offer and their pricing as well as the review of a Board of Governors/Directors, a Postal Rate/Regulatory Commission, an Inspector General and congressional oversight?

Moe Biller, president of the American Postal Workers Union [APWU], AFL-CIO, testified on behalf of its 361,000 members. He said that APWU has fundamental problems with H.R. 22 and cannot support the legislation. He stated that the measure has a "prefixed formula specifying a rate cap on 'non competitive' mail." He stated that as a labor-intensive industry, the Postal Service should not subject its workers to concessions should there be unanticipated adverse changes in market demand or competition. Mr. Biller said that it would not be certain whether such concessions would take the form of wage and benefit cuts or harsher working environment to induce more productivity. He maintained that price caps push the risk of adverse changes in price or market conditions on the employees whereas mailers and managers retain the benefits of low inflation and a growing economy. Mr. Biller reported that the APWU and the Postal Service recently reached and ratified a collective-bargaining agreement—the first in 11 years to be reached without interest arbitration. He said that this would not have been possible if there had been a price cap regime. APWU has further concerns with specifications in H.R. 22 which would enable a letter to be carried out of the mail stream when the amount paid for private carriage is at least six times the postage for the first ounce of first-class mail. The witness testified that this proposal is the first step toward postal privatization and the proposed \$4 billion disadvantage to the Postal Service would be borne at the expense of the workers. This would result in cream skimming and jeopardize the Postal Service's ability to provide universal service at uniform rates. APWU also opposed the proposed study of labor-management relations by the National Academy of Public relations, but lauded the ongoing work of the Federal Mediation and Conciliation Service. The APWU, however, indicated that it was interested in the provision authorizing the Postal Service to enter new competitive markets.

Vincent R. Sombrotto, president of the National Association of Letter Carriers, presented testimony for this 310,000-member association. He cited the results of the Pew Research Center for the People and the media that gave the Postal Service an 89 percent positive rating. The NALC believes that any postal reform must fit into the framework of uniform service at reasonable rates with a normal 6-day a week delivery. The NALC was gratified by the

elimination of the mailbox demonstration project and the encouraged the inclusion of Mr. Gilman's proposal to ensure that the Postal Regulatory Commission would not undermine the collective bargaining process. They also appreciated Mr. Fattah's proposal that would create a labor seat on the Postal Board of Directors. Mr. Sombrotto testified that the issue regarding the authority over the Universal Postal Union would have been better served had the topic been broached by using the normal legislative process. Furthermore, he testified that Postal Service competitors are attacking profitable enterprises of the Service; the revenue generated by services such as priority mail help to maintain universal service.

Billy Quinn, president of the National Postal Mail Handlers Union [NPMHU], an organization of more than 50,000 members, testified that any attempts at postal reform must include the protection of the Postal Service to provide universal service at affordable rates; these rates must be sufficient to protect and support universal service and provide postal employees with a decent and fair standard of living. Furthermore, the collective bargaining process should not be adversely affected, including legislative restraints or constraints such as price caps, which translate into wage caps. Mr. Quinn informed the subcommittee that the NPMHU and the Postal Service recently signed a new 2-year collective bargaining agreement, a result of face to face negotiations. Generally, the union supports the legislative efforts to modify the difficult rate-making process and pricing flexibility. It also supports the subcommittee-adopted amendments, which would add a labor representative to the Board of Governors, provide reemployment assistance if any postal employee loses a job because of displacement through automation or privatization. The union, however, opposes anything that would limit pricing flexibility with unfair caps on rates.

Steve Smith, president, represented the 63,000 member National Rural Letter Carriers' Association [NRLCA]. He testified that members of his organization deliver the mail 6 days a week in their own vehicles, which also serves as a post office on wheels. They travel more than 3 million miles each day to 27.4 million delivery points on 63,000 rural routes across this Nation. He reminded postal competitors that the Postal Service is not the cause of their market share decline; the UPS strike was not caused by the Postal Service, and European business mail was lost because of competition by European postal administration—not USPS competition. NRLCA is skeptical of the separate accounting for competitive products because of the manner mail is handled by its membership that uses personal vehicles to carry both competitive and non competitive mail in varying volumes.

The Department of State submitted a written statement at the February 11 hearing welcoming its new duty in overseeing international postal policy concerning the Universal Postal Union [UPU]. The Department of State takes this new position very seriously and is committed to a fair and open process to ensure the views of private providers, postal users, the general public, and other agencies. The Department has looked at various ways to develop a working process with UPU stakeholders and to integrate the views of industry, consumer and government interests. UPU

stakeholders would like to see an open, transparent method wherein their views are considered seriously and incorporated in preparations for the Beijing Postal Congress in August 1999. The first formal public meeting was held in January 1999 with a series of others planned before August. Written comments will be accepted from all parties at any time and made publicly available. All views will be considered in formulating the U.S. position, and adjustments to the process will be considered to achieve the objectives to level the playing field in the U.S. policy toward the UPU. It is the intention of the Department of State that its views on issues of concern to the private sector will be made public.

Four panels of witnesses made up of stakeholders in the postal modernization debate appeared at the March 4, 1999 hearing. Additionally, a number of organizations were invited to submit statements for the hearing record.

Panel I included Donna E. Patterson, Deputy Assistant Attorney General of the Antitrust Division, Department of Justice; and Lewis A. Sachs, Deputy Assistant Secretary, Government Financial Policy, Deputy Assistant Secretary, Government Financial Policy, Department of Treasury.

Panel II included Fred Smith, chairman and chief executive officer, FDX Corp.; and James P. Kelly, president and chief executive officer, United Parcel Service.

Panel III included Jerry Cerasale, senior vice president of government affairs, Direct Marketing Association, Inc. (testifying on behalf of the Mailers Coalition for Postal Reform); Neal Denton, executive director, Alliance of Nonprofit Mailers; and Robert "Kam" Kamerschen, Saturation Mailers Coalition.

Panel IV included John T. Estes, executive director, Main Street Coalition; John F. Sturm, Newspaper Association of America; Lee Cassidy, National Federation of Nonprofits; Joe Roos, the Association Church Press; David Stover, the Greeting Card Association; Guy Wendler, American Business Press; Kenneth B. Allen, National Newspaper Association; and Charmaine Fennie, chairperson, Coalition Against Unfair USPS Competition.

Ms. Donna Patterson, on behalf of the Antitrust Division of the Department of Justice commented on the antitrust application of H.R. 22, and not on the entire bill. For the past century the United States has been committed to protecting free competition and operation of a free-market economy subject to antitrust laws. The fundamentals of those laws are section 1 and section 2 of the Sherman Act of 1890, which prohibits contracts and conspiracies in restraint of trade and prohibits monopolization or attempts to monopolize, respectively. And, section 7 of the Clayton Act, which prohibits mergers or acquisitions that may tend to substantially lessen competitions and provides the antitrust enforcement tools. The Antitrust Division shares civil antitrust enforcement responsibility with the Federal Trade Commission. Since the enactment of the 1970 Postal Reorganization Act, the Department of Justice has engaged in an active program of competition advocacy regarding postal matters. The Department has appeared before the Postal Rate Commission and has challenged Postal Service's efforts to expand the scope of the protections afforded under the Private Express Statutes. The Department has also suggested the need for a com-

prehensive review of competition in domestic and international markets for mail services, noting the USPS's expansion into competitive markets and the ambiguities encompassing the legal status under the Private Express Statutes. Some of the recent issues addressed by the division include the comments critical of the USPS proposal modification to the terminal dues system for delivery of international mail. The Division took an active role in urging support for a legislative amendment transferring responsibility for international postal policy from the USPS to the Department of State. Since the signing of the bill into law, the USPS no longer has direct representation of U.S. interest at meetings of the Universal Postal Union. Over the years, the Department of Justice has not wavered on its stand affecting domestic and international mail. They have criticized USPS attempts to use its regulatory authority to expand the scope of statutory protections provided by the Private Express Statutes. The Department maintains a firm stand that statutory exception to the Federal antitrust laws should be avoided whenever possible. Additionally, their policy is that Federal competition objectives are best served when Federal antitrust laws are applied uniformly, rather than allowing the laws to be distorted to give special protection to certain classes of competitors or to selected industries or economic sectors. Legislative exceptions to antitrust laws should be created only in exceedingly rare instances when the government's strong interest in preserving competition is outweighed by a compelling and irreconcilable social policy objective and should be narrowly drawn. Since the last three decades following postal reorganization the Postal Service is engaging in activities that can be considered competitive, such as express mail. However, at the same time, no other entity has the infrastructure or authority to compete for general first-class mail delivery. The question is then, how can the Postal Service and its competitors be put on the same footing? Competitive products must bear at least an equal proportional mark-up for institutional costs. The rationale being that the Postal Service should not be allowed to subsidize its competitive activities by loading its overhead costs in the non-competitive category of products for which it is guaranteed earnings and return. H.R. 22 provides that as long as the cross-subsidization is avoided, the Postal Service will have the same freedom to price its competitive goods and services as its competitors. This grants greater flexibility to the Postal Service, while subjecting it to the same antitrust laws facing its competitors. Commenting on provisions in H.R. 22 regarding pricing regulations, the Division stated that generally, price-cap regulation tends to have advantages over a purely cost-based system, which lacks incentives for cost control and is not conducive to efficiency. The price-cap system has more of an incentive to attempt to lower the cost. The witness, Ms. Patterson, expressed some concern with section 305 of H.R. 22 because the standard of this section seems to swerve from antitrust laws. The provisions of this section could inhibit procompetitive business practices. American economy, which is based on the principle of competition, should be maximized to the fullest in the legislation.

Lewis A. Sachs, Deputy Assistant Secretary of the Department of the Treasury (Government Financial Policy) testified on the financial provision in Title II of H.R. 22 as it had done earlier by



letter. These provisions would separate the finances and operation of the Postal Service in to three distinct components: (1) non-competitive Postal (2) competitive Postal and (3) non-Postal. The current bill has strengthened the firewalls between the components. In the bill under consideration, the competitive products would no longer be authorized to borrow from the Postal Service Fund. Additionally, in the current bill, the Postal Service would not be authorized to borrow from the Postal Service Fund. Also, it would be required to submit any annual reports to the Secretary of the Treasury and to the Postal Regulatory Commission that address matters such as risk limitations, allocations of moneys, reserve balances, liquidity requirements, and measures to safeguard against losses. The Department of the Treasury continues to have concerns about the provision, even though the bill was altered to take into consideration Treasury's previous uncertainties. Specifically, Treasury objected to permitting the Postal Service to borrow money for its Competitive Products Fund from the market, rather than continuing to borrow from the Federal Financing Bank [FFB] because of the increased borrowing costs to the Postal Service. In accordance with longstanding Federal Financial policies, Federal entities should borrow from the Treasury or the FFB because it is the most efficient method of financing such debt. The bill would permit the Postal Service to borrow on behalf of the Competitive Products Fund from market at preferential rates because of perceived Government backing of the debt. The Postal Service Competitive Fund could then invest any excess moneys to the Non-Postal Corp., which, in turn could reinvest in individual private companies. The Postal Service could, ultimately borrow at preferential rates and invest at potentially higher rates. Any risks in this endeavor would ultimately be borne by the taxpayers because of the financial links between the Competitive Products Fund and the Postal Service. The bill permits the Postal Service to deposit funds from the Competitive Products Fund into entities outside the Treasury without the approval of the Secretary of the Treasury. It would be permitted to move its funds in and out of the Competitive Products Fund at its sole discretion. Current law does not permit the Service to deposit funds outside the Treasury without approval from the Secretary because sound Government fiscal policy, which is necessary to allow centralized management of government cash, would be adversely affected if exceptions were to be made. The Department of the Treasury would consider the Non-Postal Corp. as an on-budget Federal agency, even though H.R. 22 classifies it as a private corporation. The Department said that the Non-Postal Corp. should be viewed as a Federal agency because it would be solely owned by the Competitive Products Fund and therefore would have strong links to the Postal Service, which is a government entity. Due to these concerns, the Department of the Treasury cannot support the financial provisions of H.R. 22 as currently drafted but will work with the subcommittee and the Postal Service to resolve these concerns.

Frederick W. Smith, chairman, president, and chief executive office of the FDX Corp. provided comprehensive and complete testimony on all aspects of H.R. 22. He testified that H.R. 22 is the most "substantial and thoughtful proposal to reform the postal

laws” in 25 years. Mr. Smith said that his corporation would support the bill provided that no amendments undermine the carefully struck balance provided in the legislation. During the course of the past months, major international postal services, including the USPS are competing with private industry. He opined that H.R. 22 provides a rational basis for further decisions otherwise more drastic measures may be necessary. The Postal Service has tremendous competition in mail delivery, however, closing down the Postal Service, should it outlive its usefulness, would be difficult given the practical and political problems which would be apparent—the Nation has long been dependent on the Postal Service, in spite of its decline in usefulness. The alternative is to permit the Postal Service to compete on a level playing field. H.R. 22 creates a structure for the Postal Service to perform in the non-competitive, public service mission as well as giving it the freedom to offer competitive products. Mr. Smith observed that the Postal Service is shifting more of its focus to the competitive side yet it is operating under the 1970 rules which do not address what businesses the Postal Service can participate or how the competitive ventures are to be financed. The Postal Rate Commission [PRC] does not have the tools to enforce rules when the Postal Service makes competitive deals. H.R. 22 would clarify this vague area. Universal service is necessary where needed but a monopoly should not be able to expand its business into all areas to lower the cost for the monopoly product; this would breed inefficiencies. He said that the postal monopoly has probably increased, not decreased, the cost of universal postal service in the United States. No one knows the magnitude of those costs. H.R. 22 puts in place measures that would begin to develop the data and mandates that the Postal Regulatory Commission provide an annual estimate of the costs of universal service. The quality of universal service would also be evaluated and the Postal Service will be required to provide the PRC with regular reports on the quality of noncompetitive services. H.R. 22 would move the Postal Service toward a more efficient, more-effective, universal postal service, better tailored to the needs of the Nation. With the introduction of price caps for baskets of products, the legislation proposes a change in the regulation of noncompetitive products thereby addressing a fundamental flaw in the 1970 act. Mr. Smith favored the negotiated service agreements provided for in this bill, over previous language in the former bill. He stressed the importance of the firewall provision that would separate the non-competitive and the competitive products. These firewalls would provide for reliance on objective factual criteria, administered by the PRC, to define competitive and non-competitive categories; there would be a separation of accounts—both operating and capital assets; the equal cost coverage rule would be in place providing a structural separation for Postal Service participation in joint ventures and non-postal markets; and there would be an end to legal privileges favoring the Postal Service in the provision of competitive products. The FDX Corp. could not support the legislation without the firewall in place or if the bill were to be amended to change the integrity of the provisions. Should H.R. 22 be amended to change this provision, Mr. Smith stated that FDX would join those who believe that the Postal Service should be confined to

noncompetitive markets and dismantled as those markets shrink. He further said that FDX was ready, willing and able to compete with the Postal Service on equal terms, and if H.R. 22 was not weakened, FDX could accept the commercial freedom granted the Service to participate in competitive postal products. However, he said that the language giving the PRC the standard to re-set rates was not sufficiently clear, so he proposed a technical amendment on this issue. He strongly endorsed the provision applying the same laws to the Postal Service in its participation in the competitive market to the same degree as is applicable to the private sector, i.e., antitrust law, tort law, unfair competition law, and zoning law. The witness urged that the mailbox rule be amended to permit equal access to all competitive products. He also urged that the Postal Service pay vehicle license fees based on the overall proportion of competitive products delivered by its vehicular fleet in a given State. He testified that customs laws are the single largest impediment to the development of international trade. Regarding competitive products in foreign trade, H.R. 22 provides that the Postal Service may not take advantage of discriminatory foreign customs procedures designed exclusively for postal shipments. Implementation is thereby deferred for 5 years. Mr. Smith suggested that the provision should be amended to read that the Postal Service should not be allowed to take advantage of the grace period to develop new international products and services that take advantage of these discriminatory procedures. Simply, the grace period provisions should apply to existing international postal services. The witness stressed that there must not only be equal application of the laws to the Postal Service and the private sector, but they must also be equally administered. In this area, H.R. 22 divests the Service's authority to issue regulation administering postal monopoly; this would go far in improving relationship between the Postal Service and the private sector. The legislation provides an important provision prohibiting the Postal Service from competing in areas that it regulates, or regulating areas in which it competes. Mr. Smith proposed that the parameters of postal monopoly be narrowed, as is being done in progressive industrialized countries, to enhance further competition in delivering letter mail, while still protecting much of the Postal Service's monopoly; he submitted some proposals on this issue. Regarding the provision of a private law corporation, FDX supports the provision though other entities are skeptical of the Postal Service entering non-traditional businesses. Mr. Smith observes that the Postal Service has already experimented with non-traditional postal products, joint ventures, and non-postal products. Unless Congress stops this direction, it is important that these activities be under a separate corporate structure. Furthermore, Congress can decide after a period of time if the Postal Service can or should operate like a private company or whether it should be divested of such activities. Mr. Smith cautioned that the corporation should be placed under the restrictions of the Competitive Products Fund and the equal cost coverage rule. By the same token, should the Postal Service place assets in the corporation, these assets must be evaluated independently and the fund should receive payment in the form of stocks or bonds issued by the corporation. The pricing of transaction between the Postal

Service and the corporation should be subject to the scrutiny of the Postal Regulatory Commission. The assets of the corporation do not belong to the Postal Service but are assets of the people of the Nation, Mr. Smith said. He suggested that rules should be made to ensure that the corporation is motivated to act like a profit-oriented company, and barring the Postal Service from shifting monopoly payments/rents to the corporation.

He also suggested that Congress should provide for comprehensive examination of the corporation's operations, including evaluation by the Department of the Treasury, Department of Justice and the Postal Regulatory Commission. H.R. 22 would submit international mail to the same regulatory oversight as domestic mail and would vest authority for international postal policy in the Department of State to set pro-competitive objectives—FDX supports these provisions. FDX agreed with the Postal Service that Postal Service reform should be quick and that most reforms can take effect when baseline rates are effective and the Competitive Products Fund is established. A baseline case is necessary for international rates as these rates have never been reviewed by the PRC, though it may not be necessary for other rates depending on whether realignment cases are allowed.

Mr. James P. Kelly, chairman and CEO of the United Parcel Service [UPS] offered testimony on behalf of this company which was founded in 1907. It is the world's largest express carrier and package delivery company, serving more than 200 nations and territories worldwide. It employs about 330,000 people. Mr. Kelly stated that H.R. 22 would create a greater danger of the Postal Service abusing its monopoly powers. He stated that presently the Postal Service is a hybrid whereby it does not have the same controls as a government agency, nor the same discipline and obligation of a private business. The Postal Service enjoys exemptions from taxes, licensing requirements and zoning. He stated that this has resulted in the Postal Service abandoning its focus of providing superior first class service to the Nation in an effort to accumulate market share from private sector competitors under the guise of protecting universal service in a changing marketplace. The Postal Service has gone into markets not anticipated by Congress at the time of postal reorganization in 1970. The Service has engaged in direct predatory competition by utilizing revenues from its monopoly customers and taking advantage of its government status to underprice its competitors. UPS stated that absent the demise of the monopoly, Congress should strengthen the Postal Rate Commission to increase the Postal Service's accountability. The PRC has no jurisdiction in ratemaking in the international market and should be given that power. The PRC should be enabled to encourage cost efficiency and given authority over the Service's revenue requirement. These reforms would help to simplify and streamline the rate-setting process.

Jerry Cerasale testified on behalf of the Mailers Coalition for Postal Reform. This organization was created to present a uniform voice for business mailers on the issues presented in postal reform. The members are Advertising Mail Marketing Association, American Express, Direct Marketing Association, Magazine Publishers of America, Mail Order Association of America, and Parcel Ship-

pers Association. These members represent mailers who use all classes of mail and also use the services of Postal Service competitors. They all want a financially functional Postal Service in the next century. Though the Nation has experienced a tremendous economic boom, first-class mail has lost its market share due to electronic technology supplanting mail volume. Mr. Cerasale said that though H.R. 22 does not guarantee the survival of the Postal Service well into the 21st century, it does provide the tools to improve and maintain productivity, and provide the products that are needed in the marketplace. The legislation separates classes of mail into competitive and non-competitive categories and provides rate flexibility. The Coalition agrees with the bill's provision to protect those who must use the monopoly products by indexing the rates in the non-competitive category. Mr. Cerasale supported the Postal Service's suggested amendment that it should be able to initiate a request to the Postal Regulatory Commission [PRC] to change a product classification from non-competitive to competitive. However, the Coalition firmly stated that once the change had been made, the Service should not be able to change the product back to non-competitive. The Coalition agrees with the rate baskets proposed for noncompetitive products but suggests that international mail should be competitive and should be removed from the formula. Regarding pricing, the Coalition agrees with the provisions of the bill that the PRC should establish base line rates without provisions for contingency and prior years' losses. But, if the Commission has issued a recommended decision in an omnibus rate case within a year of the effective date of the bill, that decision, as implemented by the Governors, should be the base line rates. The Coalition disagrees with the provisions of H.R. 22 that the minimum mark-up for competitive classes of mail must equal the average mark-up for all postal products because this would be too restrictive and could increase costs as much as 10 percent for competitive classes of mail. The minimum contribution for these classes should be set by the PRC and should be calculated on a revenue-weighted basis for all contributions of the competitive subclasses. The minimum contribution should sunset after 5 years, as this would give the Postal Service and its competitors time to adjust to the new marketplace. The Coalition agreed with the use of indexing to establish rates for non-competitive products. Mr. Cerasale said that the productivity factor should be linked to the CPI; it is needed as an incentive to the Postal Service to contain costs. Failure to improve productivity would compromise the Postal Service's ability to meet its mandates of universal service and reasonable rates. Mr. Cerasale testified that the pricing provisions outlined in the legislation are too rigid. The application of rate bands around the index reduces flexibility needed by the Service. Also, the Coalition objected to the Postal Service amendment to permit "banking" for 5 years any unused percentage increase allowed under the index; at the most it should not be more than 1 year. One of the objectives of postal reform was to have predictability and manageable annual rate increases. The Coalition supports the filing of an exigent rate case with the Postal Regulatory Commission when the Service faces a severe financial crisis. Similarly, if there are circumstances beyond the control of the Postal Service which result

in cost increases, the Service should be able to petition the PRC for a waiver of the index. In the case of a particular subclass which may fail to recover costs, the Postal Service should have the authority to petition the PRC for a waiver of the index for that subclass on a one-time, one-year adjustment. The Postal Service should have the ability to test new products and be allowed to fail if not successful. Unless it is able to do so, the Postal Service will not be able to market new products and will be limited in its adjustment to the information age. Negotiated service agreements [NSA] should be implemented immediately after the Postal Service provides public notice of the agreement and the terms. This would enable any party that believes it can meet the terms of the agreement to be eligible for NSA. Should a party be denied it may complain to the PRC, which will have 90 days to render a final decision subject to judicial review.

Neal Denton testified in his capacity as executive director of the Alliance of Nonprofit Mailers [ANM] which represents more than 200 nonprofit organizations, including their affiliates, chapters and vendors. The membership includes religious, charitable, educational, scientific and philanthropic organizations. Mr. Denton expressed that the postal rate hike in January 1999 was unfair, unnecessary and unlawful. Whereas the first-class stamp rate rose by 1 cent, the nonprofit standard A mail rose by 3 cents. And, nonprofit educational publications with no advertising often pays higher postal rates than commercial publications of identical size, shape and weight. The Postal Service is supposed to break even. However, it received a \$550 million surplus in fiscal year 1998. The ANM has been adversely affected by Postal Service actions and is therefore leery of giving USPS more freedom to set prices without rigorous oversight of the PRC. The ANM testified that H.R. 22 creates a fair system of rate increase of "caps" and "bands" that would protect nonprofits from being singled out and would protect mailers from piling on increases. The bill offers an important protection preventing the Postal Service from attributing more costs to nonprofit mail than to commercial rate with identical characteristics. It also provides safeguards to prevent tampering with preferred rates in the future. They are pleased with the inclusion of "requester" language that would permit greater dissemination of educational material and thereby for greater contribution to USPS institutional costs. They also expressed appreciation for the retention of revenue forgone, or authorization for annual appropriation to the Postal Service for preferred rate mail, free mail for the blind, and voter registration. They expressed surprise at the Postal Service proposed amendments, which would have weakened H.R. 22, such as banking rate increases, the curtailing of the productivity factor, the retaining of rates that are in effect 8 months after passage of the legislation to become the baseline rate, the possible secret dealmaking in negotiated service contracts which could occur if the Postal Service amendments were adopted, the pricing of competitive products by permitting the markup of overhead contribution from competitive products, and concern about the Private Law Corp. However, the Alliance was interested in the amendment creating a separate basket for preferred rate products, though massing nonprofit standard A and nonprofit periodicals in the same bas-

ket could lead to serious, unanticipated problems. The PRC proposed amendments were also of interest to the ANM. Worksharing discounts as it relates to negotiated service agreements and a clear definition of the word "product" would enhance the legislation. The ANM encouraged providing each Governor with a staff member. They brought to the attention of the subcommittee that some Postal Inspectors have bullied and aggressively attempted to bankrupt community-based nonprofit organizations or have tried to drive nonprofit mailings out of that mainstream.

Robert "Kam" Kamerschen, chairman of the Board of ADVOL, a shared mail advertising distributor for more than 23,000 retail and service oriented businesses, testified on behalf of the Saturation Mailers Coalition, an organization of more than 40 print advertising companies that include weekly community newspapers, shopper publications, enveloped coupon distributors and shared mailers. Mr. Kamerschen said that traditional mail flow is dwindling but the popularity of print advertising is growing. Though not everyone reads the newspaper or has access to a computer, everyone receives mail, and herein lies the strength of mailed advertising. This presents the Postal Service an opportunity to grow revenue from saturation mail, which can happen only if it is priced competitively. The goal of modernizing the Postal Service and bringing predictability and stability to pricing is important to the companies participating in mailed advertising. There is competition between mailed advertising, newspaper advertising and private delivery companies, which has stimulated the economy over the past 20 years. It has resulted in innovation, efficiency, new products and services. Competition has made pricing flexibility crucial to attracting and keeping saturation mail viable; this class of mail has the highest cost coverage of any subclass in the system. The inability of the Postal Service to lower the cost of this class of mail endangers its ability to grow or maintain current volumes. This, in turn could endanger the Postal Service and cause it to lose its only growth area. The price-cap, proposed in H.R. 22, keeps in place the unfair allocation of institutional costs, which could trigger the demise of this class of mail. The witness proposed that negotiated service language would give the Postal Service the pricing freedom necessary to act in a business environment. The language prevents attrition of contribution to overhead and permits customers to save by worksharing or increased volume; NSAs are a necessary tool in doing business. The biggest challenge to the Postal Service, according to Mr. Kamerschen, is retaining its core volumes, or replenishing lost volumes in an age where there is technological diversion of mail and competition in hard copy delivery. The Postal Service must have flexibility to respond to marketplace changes. The witness suggested that pricing flexibility be available at the basket level, not the subclass level. He proposed some changes to H.R. 22 to improve the legislation, such as: 1) Negotiated Service Agreements as long as they produce an equal or greater total monetary contribution to institutional costs; 2) pricing flexibility within the noncompetitive category baskets, except for single-piece first class mail as proposed by the Postal Service and 3) elimination of the prohibition on transferring products covered by the postal monopoly into the competitive category. There has already been some

shift of mail from the Postal Service to its ADVO's own private delivery operation in the Cincinnati market, translating into a loss for the Postal Service of 18 million pieces and more than \$2 million in postage. Additionally, Postal Service has lost more than 44 million pieces resulting in \$8 million in lost revenue in the Philadelphia and Boston markets. Competition is healthy and should be encouraged and not stifled.

John T. Estes, executive director of the Main Street Coalition testified along with other colleagues in the Coalition on behalf of small mailers representing about 40 percent of Postal Service's annual mail volume. Mr. Estes said that the Postal Service should first be a public service that offers fair and affordable rates, provides universal service, and commits to frequent and timely delivery. It should be an agency that is dedicated to productivity, efficiency and stability. The Coalition is against any bias favoring large mailers. Basically they do not believe that a case has been made for drastic change to the Postal Service though they do not question that efficiency and effectiveness of the Postal Service should be accomplished. They agreed that the Postal Regulatory Commission with subpoena authority is long overdue and relaxing restriction on Postal Service banking procedures would give the Service more responsive financial management. The testimony indicated that the Directors of the Postal Service should have a variety of skills and experience. The witness opined that price-cap rate-making may not be suitable for the Postal Service, because there is no close examination of costs and there is potential to escalate prices rather than controlling it. Furthermore, it could lead to service reduction rather than cost reduction. The Coalition suggested that there is no justification to divide first-class mail into two baskets. The witness testified that permitting market test up to \$10 million and in some cases \$100 million is unwise. The organization was totally opposed to Negotiated Service Agreements stating that the Postal Service being a public service should provide delivery services equally for the benefit of all mailers—equal rates for equal service. The organization also opposed the establishment of the USPS Corp. The Coalition advocates improvement of the Postal Service but not necessarily reform.

John Sturm, president and chief executive officer of the Newspaper Association of America [NAA], representing about 1,700 newspapers, mostly daily papers and some weekly papers, testified generally about the same concerns espoused by the Main Street Coalition and included some other points. He said that the Postal Service is important to newspapers and that newspapers receive most of their revenues through the mail. He said that though newspapers are a large mailing customer, the Postal Service views them as competitors. The USPS has targeted newspaper-advertising revenue to direct mail advertising. The NAA believes that the Postal Service should remain a public service and should improve its core mission, providing universal mail service at non-discriminatory rates. NAA would like to see the office of the Inspector General strengthened and supports the improvement of contracting, transportation, and law enforcement and labor issues. NAA has concern that a government agency with a monopoly would be allowed to compete with the private sector; it opined that the govern-



ment should offer service only when the market fails or if the private sector cannot or will not provide the service. The Postal Service should not be allowed to have pricing flexibility, as this would give the Service the ability to discriminate in favor of large mailers. The Postal Service should not offer contract rates or volume discounts. Also, the USPS should not execute market tests, which could move business from the private sector to a government agency. NAA is against the application of the price cap regime to a government entity. This method of ratemaking would be best served in an entity that has shareholders. Finally, the NAA strongly opposes a separate private law corporation unless it was clearly a private entity with no attachments to the Postal Service.

Lee Cassidy testified on behalf of the National Federation on Nonprofits [NFN] which is a 17 year old coalition of more than 300 charities, religious groups, colleges, universities and their alumni associations, museums and other nonprofit organization which use direct mail for fundraising and communicating. To achieve their mission NFN said it is critical to have a strong, efficient Postal Service. Affordable nonprofit postage rates are crucial as well. NFN is a member of the Main Street Coalition for Postal Fairness, and though they do not agree on all points, they are generally together on major legislative issues. The NFN expressed that H.R. 22 may represent more modernization than some organizations may be able to handle. NFN is pleased with the "requestor" rate provision and supports giving the Postal Regulatory Commission additional powers, including subpoena powers. They would like to see the PRC as the final arbiter for deciding what is a nonprofit mailing and what is not in dispute—as opposed to the current procedure that gives the Postal Service the authority to determine the mailability of the piece. They support the H.R. 22 language to put nonprofit and commercial mail in pricing baskets based on the mail class. The history of nonprofit rates has not been predictable nor have they been affordable. They have had 23 rate increases since 1971 and one rate rollback. In the recent postal rate case, nonprofit rates for standard A mail increased five times the percent increased by commercial mailers, and in last rate case, nonprofit rates were, in some cases, higher than commercial rates. Nonprofit organizations need small increases and predictable rates. NFN asked that legislation be enacted prior to enactment of H.R. 22 to roll back nonprofit rates to the same percentage increase assigned to commercial mailers for equivalent mail, consistent with the optional pricing method for nonprofit rates that are included in H.R. 22.

David F. Stover testified on behalf of the 58-year Greeting Card Association [GCA] whose membership consists of publishers of 7 billion greeting cards that are exchanged in this country and about 5 billion are sent through the mail as single-piece first class letter. GCA believes that a healthy Postal Service is vital to the industry and to customers who use the mail for personal communication. GCA testified that the changes it supports in H.R. 22 are a strengthened Postal Regulatory Commission with powers to gather information, a mandate for independent study for labor relations, a streamlined, more flexible financial management process for the Postal Service and certain qualification for the Directors of USPS.

They are particularly supportive of the measure to protect mailers who utilize the monopoly classes of mail who have no alternatives. GCA submitted that it would be detrimental to use the “deregulation-plus-price-cap approach.” Splitting up the first class market into bulk and single piece letters could invite discrimination by the Postal Service who may concentrate on cost and revenue issues. The GCA opposed the amendments proposed by the Postal Service, as they would harm the citizen mailer.

Guy H. Wendler, testified on behalf of the American Business Press [ABP], a founding member of the Main Street Coalition. ABP is an association of the country’s leading business-to-business professional publications and has been active in postal matters and has promoted and protected the interests of the smaller circulation periodicals. The membership relies on the Postal Service to deliver its publications. Mr. Wendler testified that ABP members have been the target of proposed USPS changes in periodic rate design, for example the elimination of the flat, unzoned editorial rate that has been in existence since the founding of the Nation in order to give readers equal access to information. In the 1995 reclassification request the Postal Service proposed that a few hundred of the largest periodical publications would receive double-digit decreases while 20,000 smaller publications would be hit with increases of 20 percent or more. The ABP raised concerns regarding what the Postal Service might do with flexibility and authority that H.R. 22 would permit.

Charmaine Fennie, chair of the Coalition Against Unfair USPS Competition, testified for the 12,000 privately owned small businesses. These business include 10,000 mail and packaging stores operating under franchises and independent names, including Mail Boxes Etc., Parcel Plus, PostNew, Pak Mail, etc., and 2,000 independently owned office supply stores. The Coalition recommends some changes to H.R. 22 before supporting it. These changes include elimination of the Private Law Corp. [PLC] because neither the Postal Service nor any other advocate has brought up a compelling case for authorizing USPS competition with the private sector. There is no obligation for the PLC to provide financial support for the USPS. The Coalition asked for an amendment that would prohibit the Postal Service from engaging in competition against small businesses such as in packaging services. They endorsed the section of H.R. 22 dealing with the dual regulatory/competitive issue. The Coalition also asked for relief from the proposed CMRA regulations.

The executive vice president and CEO of the National Newspaper Association, Kenneth B. Allen, testified on behalf of the organization that was established in 1885 and has a membership of almost 4,000 daily and weekly newspapers. NNA members utilize first class, and periodicals category—both regular rate and within county periodicals mail. As a member of the Coalition, the NNA reiterated similar testimony and included general statements regarding the need for a level playing field so the USPS does not pick winners and losers among mailers; the need for adequate oversight but not overregulation; adequate public participation and public notice to ensure fairness; work sharing discounts based on costs avoided by the Postal Service. It was not apparent to the NNA whether

work-sharing discounts would be available in a price cap regime and whether the USPS would engage in favored pricing beneath the cap. The NNA opined that the USPS serves the public best when it delivers existing mail rather than focusing on generating more mail. They are not comfortable with negotiated service agreements because of the element of secrecy and NNA questioned the justification of a Federal agency participating in private endeavors. They expressed support for the division between competitive and noncompetitive mail if the firewall was firmly established. Meanwhile, there was a concern after study of the Postal Service amendments that the captive mail could cross-subsidize competitive mail.

Michael Dzvonik, chairman of the Mail Advertising Service Association International [MASA], the trade association for the mailing services industry testified on behalf of the 680 member organization. The companies in the membership are comprised of lettershops, data processing companies, mailhouses, direct mail agencies, fulfillment operations and suppliers to these businesses. Their role is to prepare mail that is delivered by the Postal Service, and thus, they consider themselves a partner with the Postal Service. MASA favors postal reform and supports the regulatory reform in H.R. 22 specifically flexibility in pricing competitive and non-competitive products and proposing new and experimental products and negotiated service agreements for competitive products. MASA does not support NSA for non-competitive monopoly products if piece volume is one of the price determinants nor the concept of the private law corporation, for fear that the Postal Service could enter into direct competition with businesses that already supply much of the mail the Postal Service delivers.

Several entities submitted written remarks regarding H.R. 22. They are:

The Honorable Duncan Hunter; Val-Pack Direct Marketing Systems, Inc.; Willmar Associates International, Inc.; Major Mailers Association; Advertising Mail Marketing Association; Parcel Shippers Association; Pitney Bowes; and Patton Boggs.

*c. Legislative status.*—Chairman John McHugh introduced H.R. 22 on January 6, 1999. It was referred to the Committee on Government Reform, and additionally to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the concerned committee. The measure was referred to the Subcommittee on the Postal Service on January 25, 1999, and hearings were conducted on February 11 and March 4, 1999. The subcommittee considered the bill on April 29, 1999 and it was forwarded to the Committee on Government Reform in the nature of a substitute by voice vote. On September 24, 1999 the Committee on the Judiciary referred the measure to the Subcommittee on Crime.

*d. Hearings.*—Hearings were conducted on H.R. 22 on February 11 and March 4, 1999.

2. *H.R. 100, a bill to establish designation for U.S. Postal Service buildings in Philadelphia, PA.*

*a. Report number and date.*—None.

*b. Summary of measure.*—The legislation names three post offices located in Philadelphia, PA. The building located at 2601 North 16th Street, Philadelphia will be designated as the “Roxanne H. Jones Post Office Building.” In 1984, Roxanne H. Jones was the first African-American woman elected to the State Senate in Pennsylvania. She was reelected for two additional terms prior to her death in 1997. During her tenure she helped pass legislation that aided people on welfare to break the cycle of welfare dependency by supporting legislation providing job training opportunities, introducing and passing legislation to expand affordable housing and to obtain State funding for drug treatment centers for addicted mothers and their children. Ms. Jones was a former welfare recipient. The bill also designates the post office located at 5300 West Jefferson Street in Philadelphia, as the “Freeman Hankins Post Office Building.” Freeman Hankins was elected to the Pennsylvania Senate in 1967 and served until his retirement in 1989. Senator Hankins served on the boards of the Pennsylvania Higher Development Agency, Lincoln University and the Mercy Douglas Corp. Additionally, H.R. 100 provides that the U.S. Postal Service building located at 2037 Chestnut Street in Philadelphia be designated as the “Max Weiner Post Office Building.” Mr. Weiner, a steadfast advocate for consumer rights and protections, was the founder of the Consumers Education and Protective Association, and the Independent Consumer Party. He was effective in helping many Pennsylvanians to keep their homes, heat their homes, protect their privacy and have access to public transportation.

*c. Legislative status.*—The legislation was introduced by Representative Fattah on January 6, 1999, and supported by all members of the House delegation of the State of Pennsylvania. The bill was referred to the House Committee on Government Reform the same day and then to the Subcommittee on the Postal Service on January 20, 1999. The subcommittee considered and marked-up the bill on April 29, 1999, forwarding it to full committee by voice vote. The committee on Government Reform considered and marked-up H.R. 100 on May 19, 1999, and ordered it to be reported by voice vote. The measure was then brought before the House under suspension of the rules and was considered as unfinished business. The motion to suspend the rules and pass the bill was agreed to by a 368–0 vote (Roll no. 146). The legislation was received in the Senate, read twice and referred to the Committee on Governmental Affairs on May 27, 1999. It was referred to the Subcommittee on International Security on June 21, 1999. On November 3, 1999, the Committee on Governmental Affairs ordered the bill to be reported favorably. It was then reported to the Senate without amendment or written report on November 4, 1999 and placed the Senate Legislative Calendar No. 391 under general orders. The bill passed the Senate by unanimous consent on November 19, 1999, and was cleared for the White House. It was signed by the President on November 29, 1999, and became Public Law No. 106–111.

*d. Hearings.*—No hearings were held on this measure.

3. *H.R. 170, a bill to require certain notices in any mailing using a game of chance for the promotion of a product or service, and for other purposes.*

*a. Report number and date.*—House Report No. 106–431, November 1, 1999.

*b. Summary of measure.*—As introduced, the Honesty in Sweepstakes Act of 1999 amends postal laws to prohibit delivery of any mail constituting a solicitation or offer in connection with a sales promotion for a product or service that uses any game of chance offering anything of value (including any sweepstakes) or anything resembling a negotiable instrument, unless specified notices in a specified font are printed on the envelope and enclosed material. The bill specifies that nothing in the act shall preempt any State law that regulated advertising or sales of goods and services associated with any game of chance. Following in-depth subcommittee hearings, the original legislation was amended by a substitute agreed to by the Subcommittee on the Postal Service and the full committee. It provides that H.R. 170 require sweepstakes mailings to clearly and conspicuously display a statement in the mailing, including the rules and order form, that no purchase is necessary to enter the contest; a statement that a purchase would not improve the recipient's chances of winning; that all terms and conditions of the sweepstakes promotion, including the rules and entry procedures be in language that is easy to find, read and understand; the name of the sponsor or mailer of the promotion and the principal place of business or other contact address of the sponsor or mailer and the rules; rules that clearly state the estimated odds of winning each prize, the quantity, estimated retail value and nature of each prize, and the schedule of any payments made over time. Furthermore, the legislation would prohibit sweepstakes mailings from making certain statements, including statements that an entry must be accompanied by an order or payment for a product previously ordered or that an individual is a winner of a prize unless that individual actually has won a prize.

H.R. 170, as amended imposes requirements on skill contest mailings. These mailings would be required to follow provisions on rules and disclosures of the sponsor similar to sweepstakes promotions and must also disclose the number of rounds, the cost to enter each round, whether subsequent rounds will be more difficult, and the maximum cost to enter all rounds. Additionally, they must also disclose the percentage of entrants who may solve the skill contest correctly and the date the winner will be determined as well as the quantity and estimated value of each prize. The legislation imposes new Federal standards on facsimile checks sent in any mailing. These checks must include a statement on the check itself that it is non-negotiable and has no cash value. The legislation strengthens existing law on government look-alike mailings. Such mailings often come in a brown envelope and may use terms that imply a connection with the Federal Government, but they are actually solicitations by a private entity for a product or service. The amended bill prohibits mailings that imply a connection to, approval or endorsement by the Federal Government through the misleading use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, trade or brand name, or any

other term or symbol, unless the mailings carry two disclaimers already provided for in existing law. The bill prohibits mailings that contain any false representation implying that Federal Government benefits or services will be affected by any purchase or non-purchase of a product. Any mailing that offers to provide any product or service provided by the Federal Government without cost must contain a notice to that effect. Anyone who uses the mail for sweepstakes or skill contests would be required to adopt reasonable practices and procedures to prevent the mailing of these materials to any person, who by virtue of a written request, including requests made by a conservator, guardian, individual with power of attorney or a State attorney general, states their intent not to receive such mailings. Records of such requests must be kept on file for 5 years. The bill requires companies sending sweepstakes or skill contest to establish a notification system, which would allow consumers to call a toll-free number to be removed from mailing lists of such companies. The name must be removed from such mailing lists within 60 days. The bill establishes a private right of action in State court for citizens who receive a follow-up mailing despite having requested removal from a mailer's lists. Mailers or promoters will have an affirmative defense against such actions if they have established and implemented, with due care, reasonable practices and procedures to effectively prevent mailings in violation of the section allowing names to be removed.

Presently, the U.S. Postal Service has inadequate authority to investigate, penalize, and stop deceptive mailing. This legislation grants the Postal Service subpoena authority, nationwide stop mail authority, and the ability to impose civil penalties and increases the civil penalties that the Postal Service may impose. Nothing in the legislation would preempt State or local law that imposes more restrictive requirements, regulations, damages, costs or penalties. Most of the provisions of H.R. 170 would take effect 120 days after the date of enactment.

*c. Legislative status.*—H.R. 170 was introduced by Representative LoBiondo on January 6, 1999, and referred to the House Committee on Government Reform. On January 20, 1999, the legislation was referred to the Subcommittee on the Postal Service. It was considered by the subcommittee on September 30, 1999, and reported as amended in the nature of a substitute by voice vote. On November 1, 1999, the Committee on Government Reform reported it as amended and issued House Report No. 106-431. It was placed on the Union Calendar No. 251 on November 1, 1999, and considered under suspension of the rules and was agreed to by voice vote. H.R. 170 was received in the Senate on November 3, 1999.

*d. Hearings.*—No hearing was conducted specifically on H.R. 170. However, aspects of the bill were examined during the hearing on sweepstakes and deceptive mailings which was held on August 4, 1999.

4. *H.R. 197, a bill to designate the facility of the U.S. Postal Service at 410 North 6th Street in Garden City, KS, as the "Clifford R. Hope Post Office."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 197 designates the facility of the U.S. Postal Service at 410 North 6th Street in Garden City, KS, as the “Clifford R. Hope Post Office.” The legislation honors former Congressman Clifford R. Hope who represented the Seventh Congressional District of Kansas from 1927 to 1957. Mr. Hope served as the chairman of the House Committee on Agriculture. Many of the policies that he was responsible for establishing during his 30-year tenure in Congress are still in existence today. Mr. Hope was a strong advocate of the defense and the military programs essential to World War II.

*c. Legislative status.*—This measure was introduced by Representative Moran of Kansas on January 6, 1999 and was referred to the House Committee on Government Reform. Each member of the House delegation of the State of Kansas cosponsored the measure. H.R. 197 was referred to the Subcommittee on the Postal Service on January 20, 1999. The subcommittee voted on the bill by voice vote on April 29, 1999, and forwarded it to full committee. The Committee on Government Reform considered the bill on May 19, 1999, and ordered it to be reported by voice vote. The House considered H.R. 197 under suspension of the rules and the bill was agreed to by voice vote. The Senate received the measure on May 27, 1999; it was read twice and referred to the Committee on Governmental Affairs. On June 21, 1999 it was referred to the Subcommittee on International Security. On November 3, 1999, the Committee on Governmental Affairs ordered the bill to be reported favorably, and on November 4, 1999 the committee referred it to the Senate without amendment or written report. H.R. 197 was placed on the Senate Legislative Calendar (No. 392) under general orders.

*d. Hearings.*—There were no hearings on H.R. 197.

5. *H.R. 642, a bill to redesignate the Federal building located at 701 South Santa Fe Avenue in Compton, CA, and known as the Compton Main Post Office, as the “Mervyn Malcolm Dymally Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—This legislation redesignates the Federal building located at 701 South Santa Fe Avenue in Compton, CA, presently known as the Compton Main Post Office, as the “Mervyn Malcolm Dymally Post Office Building.” The legislation honors former Representative Dymally who was born and studied in Trinidad prior to coming to the United States at the age of 19 to study at Lincoln University in Missouri. He graduated with a BA from California State University, Los Angeles in 1954, a MA from California State University in 1969 and a Ph.D. from the U.S. International University in San Diego in 1978. Mervyn Dymally was a California State Assemblyman from 1963 to 1966 and a State Senator from 1967–1975. He was Lieutenant Governor of California from 1975 to 1979. Dr. Dymally was elected to the 97th Congress and served for five succeeding terms. He was a member of the Committee on Post Office and Civil Service, the House Foreign Affairs Committee—chairing its Subcommittee on International Operations, and the District of Columbia Committee—

chairing—its Subcommittee on Judiciary and Education. He was chairman of the Congressional Black Caucus from 1987 to 1989.

*c. Legislative status.*—H.R. 642 was introduced by Representative Millender-McDonald on February 9, 1999; and was referred to the House Committee on Government Reform. The measure was referred to the Subcommittee on the Postal Service on February 23, 1999. Every member of the House delegation of the State of California cosponsored the bill. The subcommittee forwarded H.R. 642 to the full committee by voice vote on August 4, 1999. The committee considered the measure on September 30, ordering it to be reported by voice vote. The House passed H.R. 642 under unanimous consent on November 18, 1999. The Senate received the legislation on November 19, 1999, where it was read twice and referred to the Committee on Governmental Affairs.

*d. Hearings.*—No hearings were conducted on this legislation.

6. *H.R. 643, a bill to redesignate the Federal building located at 10301 South Compton Avenue, in Los Angeles, CA, presently known as the Watts Finance Office, as the “Augustus F. Hawkins Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 643 redesignates the Federal building located at 10301 South Compton Avenue, in Los Angeles, CA, presently known as the Watts Finance Office, as the “Augustus F. Hawkins Post Office Building.” This legislation honors former Representative “Gus” Hawkins who was born in Louisiana but moved to California with his parents when he was 11 years old in 1918. He earned his AB from the University of California in 1931 with a major in economics and completed his graduate degree in 1932 from the University of Southern California. After working in the real estate business, he was elected as a member of the California State Assembly from 1934 to 1963. Mr. Hawkins was elected to the 88th Congress and to 13 succeeding Congresses (1963–1991), choosing not to seek reelection in the 102d Congress. He was chairman of the Committee on House Administration in the 97th and 98th Congresses and chairman of the Committee on Education and Labor in the 98th through the 101st Congresses. Mr. Hawkins also served on the Joint Committee on Printing, and the Joint Committee on the Library. Mr. Hawkins served his constituents in the Watts area of Los Angeles for 48 years—28 years in the State Assembly and 20 in the House of Representatives. He was known for the Humphrey-Hawkins Act, a bill to reduce unemployment and implement job training and employment.

*c. Legislative status.*—H.R. 643 was introduced by Representative Millender-McDonald on February 9, 1999 and referred to the House Committee on Government Reform the same day. It was then referred to the Subcommittee on the Postal Service on February 17, 1999. The entire House delegation of the State of California cosponsored H.R. 643. The subcommittee considered and marked-up the legislation on August 4, 1999 and forwarded it to the full committee by voice vote. The committee considered and marked-up the bill on September 30, 1999 and ordered it to be reported by voice vote. The House under suspension of the rules considered H.R. 643 on October 12, 1999 and the bill passed by voice vote. The Senate re-



ceived the bill on October 13, 1999. It was read twice and referred to the Committee on Governmental Affairs and further referred to Subcommittee on International Security. The committee reported the bill on June 21, 2000, and it was placed on the Senate Legislative Calendar No. 612. It passed the Senate by unanimous consent on June 23, 2000, and was cleared for the White House. The bill was presented to the President on June 27, 2000, and the President signed it on July 6, 2000, when it became Public Law No. 106-231.

*d. Hearings.*—None.

7. *H.R. 1251, a bill to designate the U.S. Postal Service building located at 8850 South 700 East, Sandy, UT, as the “Noal Cushing Bateman Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 1251 honors Noal Cushing Bateman by naming the U.S. Postal Service building located at 8850 South 700 East, Sandy, UT after him. Mr. Bateman served in the Sandy City Council for 20 years and was mayor for 6 years. He also served as head of the local PTA chapter and led a successful school construction bond.

*c. Legislative status.*—Representative Cook introduced H.R. 1251 on March 24, 1999. It was referred to the House Committee on Government Reform and subsequently referred to the Subcommittee on the Postal Service on April 6, 1999. Each member of the House delegation of the State of Utah supported the bill. The subcommittee considered and marked-up the legislation on April 29, 1999, and forwarded it to the full committee by voice vote. The committee considered H.R. 1251 on May 19, 1999, and ordered it to be reported by voice vote. On May 24, 1999, the legislation was brought before the House under suspension of the rules and was considered as unfinished business. On motion to suspend the rules and pass H.R. 1251 the bill was agreed to and passed by a vote of 362-0 (Roll No. 145). The Senate received the legislation on May 27, 1999. It was read twice and referred to the Committee on Governmental Affairs. On June 21, 1999, it was referred to the Subcommittee on International Security. The Committee on Governmental Affairs ordered the bill to be reported favorably and on November 4, 1999, the Committee on Governmental Affairs reported H.R. 1251 without written report. The legislation was placed on the Senate Legislative Calendar (No. 395) under general orders. The Senate passed the legislation by unanimous consent on November 19, 1999, and it was cleared for the White House. A message regarding Senate action was sent to the House on November 22, 1999, and on November 30, 1999, the bill was presented to the President. The President signed H.R. 1251 on December 6, 1999, and it became Public Law No. 106-124.

*d. Hearings.*—No hearings were held on this measure.

8. *H.R. 1327, a bill to designate the U.S. Postal Service building located at 34480 Highway 101 South in Cloverdale, OR, as the “Maurine B. Newberger U.S. Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 1327 honors Maurine B. Neuberger by naming after her the U.S. Postal Service building located at 34480 Highway 101 South in Cloverdale, OR. Maurine Newberger was born in Cloverdale, OR in 1907. She attended public school and completed her education at the Oregon College of Education and the University of Oregon. She also attended the University of California at Los Angeles. After she married Richard Newberger, he won a seat in the Oregon State Senate and Maurine won a seat in the Oregon House. The Newbergers were the first husband and wife team to serve simultaneously in the Oregon Legislature. When Mr. Newberger was elected to the U.S. Senate in 1955, Maurine decided not to seek reelection to the Oregon House. After Senator Newberger's unexpected death in 1959, Maurine chose to run for her husband's seat in 1960 and won, making her the second woman in the Nation and first and only woman so far from Oregon, to serve in the U.S. Senate. She made her mark in the Senate by fighting for consumer rights, civil rights, the rights of the poor, conservation, campaign finance reform and public health. She led the crusade to put warnings on cigarette packages and is credited with coining the phrase, "The Surgeon General has Determined that Smoking may be Hazardous to your Health." She worked diligently to establish a Department of Consumer Affairs and to improve packaging and labeling regulations by the Food and Drug Administration. She was known as a consensus builder but she never backed down from fighting for principles in which she believed. Senator Neuberger was the first woman to filibuster the Senate, speaking for 4½. Even while pursuing other issues, Senator Maurine Newberger continued to remember her home State and was instrumental in preserving Oregon's beautiful coastline while, at the same time, working to attract tourism and programs to coastal towns, and to reducing rural poverty. Senator Neuberger did not seek reelection in 1966. She served instead on the President's Consumer Advisory Committee, the U.S. Advisory Committee for Arms Control and Disarmament, and the President's Commission on the Status of Women. She was also a consultant on consumer relations for the FDA, and served on the National Boards of Directors for the American Society and the American Association for the United Nations. She taught American government at Boston University, the Radcliffe Institute, and Reed College in Portland, OR.

*c. Legislative status.*—Representative Hooley introduced H.R. 1327 on March 25, 1999. It was referred to the House Committee on Government Reform that day and subsequently referred to the Subcommittee on the Postal Service on April 8, 1999. Each member of the House delegation of the State of Oregon cosponsored the bill. On June 24, 1999, the subcommittee discharged the legislation and the Committee on Government Reform considered the bill and marked it up, ordering it to be reported by voice vote. The House considered H.R. 1327 under suspension of the rules and on motion the bill was agreed to by voice vote. The Senate received H.R. 1327 on June 30, 1999, read it twice and referred it to the Committee on Governmental Affairs. On June 15, 1999, it was referred to the Subcommittee on International Security. On November 3, 1999, the Committee on Government Affairs ordered the measure to be re-

ported favorably. On November 4, 1999, the committee reported the bill to the Senate without written report and it was placed on the Senate's Legislative Calendar (No. 396) under general orders. The legislation passed the Senate by unanimous consent and was cleared for the White House. On November 22, 1999, a message was sent to the House regarding the Senate's action. H.R. 1327 was presented to the President on November 30, 1999, and it was signed by him on December 6, 1999, becoming Public Law No. 106-125.

*d. Hearings.*—There were no hearings on H.R. 1327.

9. *H.R. 1374, a bill to designate the U.S. Post Office building located at 680 State Highway 130 in Hamilton, NJ, as the "John K. Rafferty Hamilton Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 1374 designates the U.S. Post Office building located at 680 State Highway 130 in Hamilton, NJ as the "John K. Rafferty Hamilton Post Office Building." Mr. Rafferty has served his community of Hamilton for more than 30 years. He first worked on the Hamilton committee for 6 years and then became Hamilton's first full-time mayor, serving continuously since 1976. Mr. Rafferty is the recipient of numerous awards and recognition, including the Young Men's Christian Association Man of the Year award in 1992, the Boy Scouts of American Distinguished Citizen Award in 1996, and in 1997 the New Jersey Conference of Mayors awarded him the Mayor of the Year award.

*c. Legislative status.*—H.R. 1374 was introduced on April 4, 1999, by Representative Smith of New Jersey and was referred to the House Committee on Government Reform. On September 30, 1999, the committee considered the measure and ordered it to be reported as amended by voice vote. The amendment corrected the address. On October 12, 1999, the House considered H.R. 1374 under suspension of the rules and the motion to suspend the rules and pass the bill, as amended, was agreed to by voice vote. The Senate received the bill on October 13, 1999. It was read twice and referred to the Committee on Government Affairs. On November 7, 1999, it was referred to the Subcommittee on International Security. The committee ordered the bill to be reported on March 23, 2000. The Senate passed the bill by unanimous consent and the President signed it on April 13, 2000, when it became Public Law No. 106-183.

*d. Hearings.*—No hearings were conducted on H.R. 1374.

10. *H.R. 1377, a bill to designate the facility of the U.S. Postal Service at 13234 South Baltimore Avenue in Chicago, IL, as the "John J. Buchanan Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 1377 designates the facility of the U.S. Postal Service at 13234 South Baltimore Avenue in Chicago, IL as the "John J. Buchanan Post Office Building." This naming honors James Buchanan who served as Alderman of Chicago's 10th ward from 1963 to 1971 and again from 1991 to April 1999, when he retired. However, he still serves on the Board of Directors of the Hegewisch Chamber of Commerce, South Chicago YMCA, South-

East Alcohol and Drug Abuse Center, and Trinity Hospital Governing Council. Mr. Buchanan also served as a member of the U.S. Navy.

*c. Legislative status.*—H.R. 1377 was introduced by Representative Weller on April 13, 1999, and referred to the House Committee on Government Reform. On April 20 the measure was referred to the Subcommittee on the Postal Service. The entire House delegation of the State of Illinois cosponsored H.R. 1377. The subcommittee considered it on April 29, 1999, and marked-up and forwarded to the full committee by voice vote. On May 19, 1999 the committee scheduled a mark-up session and ordered the bill to be reported by voice vote. The House considered H.R. 1377 under suspension of the rules and the measure was agreed to by voice vote. The Senate received the bill on May 27, 1999. It was read twice and referred to the Committee on Governmental Affairs. It was referred to the Subcommittee on International Security on June 21, 1999. The Committee on Governmental Affairs ordered the bill to be reported with an amendment in the nature of a substitute and an amendment to the title. H.R. 1377 was placed on the Senate Legislative Calendar (No. 397) under general orders on November 4, 1999. The Senate passed the legislation with an amendment and an amendment to the title by unanimous consent. On November 22, 1999, the Senate sent a message to the House on its actions. On May 15, 2000, Mr. Gilman moved that the House suspend the rules and agree to the Senate amendments, which were agreed to by voice vote. The legislation was cleared for the White House the same day and signed by the President on May 26, 2000, becoming Public Law No. 106-209.

*d. Hearings.*—There were no hearings on H.R. 1377.

11. *H.R. 2307, a bill to designate the building of the U.S. Postal Service located at 5 Cedar Street in Hopkinton, MA, as the "Thomas J. Brown Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2307 designates the building of the U.S. Postal Service located at 5 Cedar Street in Hopkinton, MA, as the "Thomas J. Brown Post Office Building." The honoree, Thomas Brown, is a past president of the Boston Athletic Association and former postmaster of the town of Hopkinton, which is the starting point for the Boston Marathon. Mr. Brown has been actively involved in the Boston Marathon in his capacity as president of the Boston Athletic Association.

*c. Legislative status.*—Representative McGovern introduced this legislation on June 22, 1999 and it was referred to the House Committee on Government Reform. It was referred to the Subcommittee on the Postal Service on June 30, 1999. The entire House delegation of the State of Massachusetts cosponsored H.R. 2307. The subcommittee considered and marked-up the bill on August 4, 1999, and forwarded it to the full committee by voice vote. The committee considered and marked up the legislation on September 30, 1999, and ordered it to be reported by voice vote. The bill was considered under suspension of the rules on the House floor and it was agreed to by voice vote. The Senate received the legislation on November 9, 1999. The bill was read twice on November 19, 1999

and referred to the Committee on Governmental Affairs. H.R. 2307 was referred to the Subcommittee on International Security, Proliferation and Federal Services on December 2, 1999, and reported by the committee on Governmental Affairs on June 21, 2000. The measure was placed on the Senate Legislative Calendar No. 615 on the same day. It was passed by unanimous consent by the Senate on June 23, 2000, and was cleared for the White House. The President signed the bill on July 6, 2000; it became Public Law No. 106-234.

*d. Hearings.*—There were no hearings on H.R. 2307.

12. *H.R. 2319, a bill to make the American Battle Monuments Commission and the World War II Memorial Advisory Board eligible to use nonprofit standard mail rates of postage.*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2319 is legislation that is needed to help Americans construct a memorial to thank our World War II veterans. Public Law 103-32 authorizes the construction of a memorial to honor members of the Armed Forces who served in World War II and those who supported them stateside. The legislation designated the American Battle Monuments Commission as the Federal agency charged with establishing the memorial, and it created the Presidentially-appointed World War II Memorial Advisory Board: to promote the building of the memorial and encourage the donation of private contributions for it. In authorizing the Memorial, Congress minimized the Memorial's cost to the taxpayer by requiring the Commission and the Board to solicit voluntary contribution as the primary source of funds. Congress did not intend these government agencies to be "for profit" organizations. The Internal Revenue Service has ruled that these donations are tax deductible. Nevertheless, the U.S. Postal Service has refused to allow the Commission or Board access to the reduced postage rates that are available to any other nonprofit mailer. The Postal Service bases the decision on a technical reading of its regulations. The USPS acknowledged that specific legislative direction would be needed to correct the problem to clarify Public Law 103-32 by stating that the American Battle Monuments Commission and the World War II Memorial Advisory Board are eligible for nonprofit mail rates in carrying out their congressionally-mandated task of raising the necessary voluntary contributions. The legislation limits the nonprofit rate privilege to only those World War II Memorial fundraising activities and dated by the legislation in 1993. The Department of Veterans Affairs reports that of the 16.5 million who served in the Armed Forces during World War II there are currently 6.3 million who survive today. By building this memorial the Nation will be able to show the survivors the appreciation of a grateful Nation. However, if voluntary contributions made specifically for the purpose of erecting the memorial are diverted for postage, the building of the memorial will be further delayed.

*c. Legislative status.*—This legislation was introduced by the chairman of the Subcommittee on the Postal Service, Representative McHugh, on June 23, 1999, and referred to the House Committee on Government Reform. On June 30, 1999, the legislation was referred to the Subcommittee on the Postal Service. The sub-

committee considered and marked up H.R. 2319 on August 4, 1999, and forwarded to the full committee by voice vote. (The provisions of this legislation was attached to H.R. 2490, the Fiscal Year 2000 Treasury, Postal Service, and General Government Appropriation Act which became Public Law 106–58 on September 30, 1999.)

*d. Hearings.*—There were no hearings held on H.R. 2319.

13. *H.R. 2357, a bill to designate the U.S. Post Office located at 3675 Warrensville Center Road in Shaker Heights, OH, as the “Louise Stokes Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2357 is a bill to designate the U.S. Post Office located at 3675 Warrensville Center Road in Shaker Heights, OH, as the “Louise Stokes Post Office.” This measure honors Louise Cinthy Stone Stokes, the 8th of 11 children born to Reverend William and Fannie Stone. She married Charles Louis Stokes, a laundry worker, and they were parents of Louis and Carl. Charles Stokes died when his son Carl was 13 months and Louis was 2 years old. Louise, now widowed, worked as a domestic worker and lived in public housing with her sons and her mother. Louise Stokes insisted that her sons get jobs at an early age and that they get an education. Louis Stokes graduated from Case Western Reserve and Cleveland Marshall Law School and Carl Stokes graduated from Marshall Law School. Louis served as a civil rights attorney and, in 1968, he became the first African-American Congressman from Ohio. That same year, Carl became the first African American mayor of a major U.S. city; he later became an U.S. Ambassador. Louise Stokes was selected Cleveland’s Woman of the Year, Ohio Mother of the Year, and received numerous awards from religious and civic organizations. The guiding principles of Louise Stokes’ life were the value of hard work, education and religion.

*c. Legislative status.*—H.R. 2357 was introduced by Representative Traficant on June 24, 1999, and it was referred to the House Committee on Government Reform. It was referred to the Subcommittee on the Postal Service on July 6, 1999. Each member of the House delegation of the State of Ohio cosponsored H.R. 2357. The subcommittee considered and marked-up the bill on August 4, 1999, and forwarded it to the full committee by voice vote. The committee considered and marked up the legislation on September 30, 1999. On October 12, 1999, the House considered H.R. 2357 under suspension of the rules. The bill was agreed to by voice vote. The Senate received the legislation on October 13, 1999; it was read twice and referred to the Committee on Governmental Affairs. The bill was referred to the Subcommittee on International Security on November 7, 1999. The committee ordered the bill to be reported favorably on June 14, 2000, and it was placed on the Senate Legislative Calendar No. 616 on June 21, 2000. The Senate passed the bill by unanimous consent on June 23, 2000, and it was cleared for the White House. The President signed the measure on July 6, 2000, and it became Public Law No. 106–235.

*d. Hearings.*—There were no hearings on H.R. 2357.

14. *H.R. 2358, a bill to designate the U.S. Post Office located at 3813 Main Street in East Chicago, IN, as the "Lance Corporal Harold Gomez Post Office."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2358 designates the U.S. Post Office located at 3813 Main Street in East Chicago, IN, as the "Lance Corporal Harold Gomez Post Office." Harold Gomez, son of Mr. and Mrs. Alfredo Gomez, was born in September 1946 in East Chicago, IN. He enlisted in the U.S. Marine Corps in 1965 and was sent to Vietnam in March 1966 following basic infantry training. Corporal Gomez was a fire team leader in a rifle company of the Third Marine Division, when, in 1967, a land mine explosion in South Vietnam killed him. He received numerous awards, including the Purple Heart Medal, Combat Action Ribbon, Presidential Unit Citation, National Defense Service Medal, Vietnam Service Medal, RVN Military Merit Medal, RVN Gallantry Cross Medal, Vietnam Campaign Medal, and the Rifle Sharpshooters Badge. Corporal Gomez was posthumously awarded the Silver Star Medal for his courageous leadership and heroism. He was the first citizen from Northwest Indiana to die in the Vietnam War. After his death, Central High School in East Chicago, from where Corporal Gomez graduated, named and dedicated the library to him and the American GI Forum of the United States chartered the Harold Gomez Chapters in East Chicago.

*c. Legislative status.*—Representative Visclosky introduced H.R. 2358 on June 24, 1999, and the bill was referred to the House Committee on Government Reform. Each member of the House delegation of the State of Indiana cosponsored the bill. It was referred to the Subcommittee on the Postal Service on June 30, 1999. The Committee on Government Reform considered and marked up the legislation on September and ordered it to be reported by voice vote.

*d. Hearings.*—No hearings were conducted on H.R. 2358.

15. *H.R. 2460, a bill to designate the U.S. Post Office located at 125 Border Avenue West in Wiggins, MS, as the "Jay Hanna "Dizzy" Dean Post Office."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2460 designates the U.S. Post Office located at 125 Border Avenue West in Wiggins, MS, as the "Jay Hanna "Dizzy" Dean Post Office." Jay Hanna Dean was born in January 16, 1911. He made his home at his wife's ancestral home in Stone County, MS. "Dizzy" Dean loved his adopted home and was an ardent supporter of the community of Bond, the city of Wiggins, Stone County, and the State of Mississippi. "Dizzy" Dean had an outstanding record as a major league baseball pitcher. He was also a baseball telecaster, featuring the major league baseball's "Game of the Week." Jay Hanna Dean died on July 17, 1974.

*c. Legislative status.*—Representative Taylor introduced H.R. 2460 on July 1, 1999 and the bill was referred to the House Committee on Government Reform. On August 3, 1999, the measure was referred to the Subcommittee on the Postal Service. The bill was cosponsored by the entire House delegation from the State of Mississippi. The committee considered and marked-up the legisla-

tion on September 30, 1999, and ordered it to be reported by voice vote. The House considered the legislation under suspension of the rules on October 12, 1999, and agreed to pass the bill by voice vote. The Senate received H.R. 2460 on October 13, 1999, and it was read twice and referred to the Committee on Governmental Affairs. On November 7, 1999, the legislation was referred to the Subcommittee on International Security. The committee ordered the bill to be reported on June 14, 2000, and it was placed on the Senate Legislative Calendar No. 617 on June 21, 2000. The Senate passed H.R. 2460 by unanimous consent on June 23, 2000, when it was cleared for the White House. The President signed the bill on July 6, 2000, and it became Public Law No. 106-236.

*d. Hearings.*—None were held on this legislation.

16. *H.R. 2591, a bill to designate the U.S. Post Office located at 713 Elm Street in Wakefield, KS, as the “William H. Avery Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2591 designates the U.S. Post Office located at 713 Elm Street in Wakefield, KS, as the “William H. Avery Post Office.” William Avery was born the son of a farmer and rancher near Wakefield, KS in 1911. After graduating from the University of Kansas he returned home to raise crops and livestock on his family farm. Mr. Avery was elected to the State House of Representatives and served from 1951 to 1955; he was a member of the Legislative Council from 1953 to 1955. Mr. Avery won the Republican nomination for the U.S. Congress and served in Congress from 1955 to 1965. In 1965 the people of Kansas elected him to serve one term as the 37th Governor of Kansas. Mr. Avery continues to live in Wakefield.

*c. Legislative status.*—Representative Moran of Kansas introduced H.R. 2591 on July 22, 1999, when it was referred to the House Committee on Government Reform. On July 28, 1999, the bill was referred to the Subcommittee on the Postal Service. All members of the House delegation of the State of Kansas supported the measure. The Committee on Government Reform considered and marked-up the legislation on September 30, 1999. The House considered H.R. 2591 on October 12, 1999, under suspension of the rules and the bill was agreed to by voice vote. The Senate received the legislation on October 13, 1999. It was read twice and referred to the Committee on Governmental Affairs. On November 7, 1999, H.R. 2591 was referred to the Subcommittee on International Security. The committee ordered the bill reported favorably on June 14, 2000, and it was placed on the Senate Legislative Calendar No. 618 on June 21, 2000. The Senate passed the bill by unanimous consent on June 23, 2000, and it was cleared for the White House. The President signed the bill on July 6, 2000, and it became Public Law No. 106-237.

*d. Hearings.*—None were held on this bill.

17. *H.R. 3018, a bill to designate the U.S. Post Office located at 557 East Bay Street in Charleston, SC, as the “Marybelle H. Howe Post Office.”*

*a. Report number and date.*—None.



*b. Summary of measure.*—H.R. 3018 as introduced designates the U.S. Post Office located at 557 East Bay Street in Charleston, SC, as the “Marybelle H. Howe Post Office.” Marybelle Higgins was born in South Carolina. She graduated with a degree in journalism from the University of South Carolina in 1937 and married Gedney Howe, who she met there. The family settled in Charleston where Marybelle was a homemaker, active in the church and in politics. In 1950, she was elected president of Church Women United, a biracial group that administered to the need of migrant laborers and their families on Sea Island—south of Charleston. In the late 1950’s she worked with others to open Camp Care on John’s Island to minister to the children of migrant worker—this later became known as Rural Mission, Inc. Before her death, the mission honored Mrs. Howe by making her the first person to be placed on its Honor Roll. Her work for migrant workers was instrumental in establishing the South Carolina Commission for Farm Workers, which later became a model for Federal assistance programs. Mrs. Howe also worked to help African-Americans. She was named the founding chairman of the Charleston County Commission on Economic Opportunity. She served as a board member of the Charleston County Library for 25 years and chair of its board of trustees for many years. She also served on the Board of Women Visitors of the University of South Carolina for several years and was honored by the University for her service to her church, community and the University. Marybelle Howe pursued her convictions even though they may not have been popular. She was a great inspiration to others in addition to being a wife, mother, journalist and community leader.

The legislation was amended to include the provisions of H.R. 3016, H.R. 3017 and H.R. 3019. H.R. 3018 now provides that the following U.S. Post Offices be named to honor other citizens of South Carolina deserving such an honor: (a) Section 1 of the amendment designates the U.S. Post Office located at 301 Main Street in Eastover, SC, as the “Layford R. Johnson Post Office,” (b) Section 2 of the amendment designates the U.S. Post Office located at 78 Sycamore Street in Charleston, SC, as the “Richard E. Fields Post Office,” (c) Section 3 of the amendment honors Marybelle Higgins Howe (the original H.R. 3018), and (d) Section 4 of the bill designates the U.S. Post Office located at 4026 Lamar Street in Columbia, SC, as the “Mamie G. Floyd Post Office.”

*c. Legislative status.*—Representative Clyburn introduced H.R. 3018 on October 5, 1999, with the original cosponsorship of all members of the House delegation from the State of South Carolina. The legislation was referred to the House Committee on Government Reform on October 5, 1999, and referred to the Subcommittee on the Postal Service on October 8, 1999. The subcommittee considered and marked-up the legislation on October 21, 1999, amending it and forwarding it to the full committee by voice vote in the nature of a substitute. The amendment, as proposed by Ranking Member Fattah, included the provisions of H.R. 3016, H.R. 3017 and H.R. 3019, which were all introduced by Mr. Clyburn on October 5, 1999, and cosponsored by the South Carolina delegation to the House. Each of these bills was referred to the Subcommittee on the Postal Service on October 8, 1999. The subcommittee consid-

ered the legislation on October 21 and forwarded it to full committee in the nature of a substitute by voice vote. On October 28, 1999, the committee considered and marked-up the legislation and ordered it to be reported in the nature of a substitute by voice vote. The legislation was brought to the floor by Representative Terry who moved to suspend the rules and pass the bill, as amended. At the conclusion of debate, the chair put the question on the motion to suspend the rules. Mr. Terry objected to the yeay-nay vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed. The point of no quorum was withdrawn. It was considered as unfinished business. The motion to suspend the rules and pass the bill, as amended, was passed by a vote of 375–0 (Roll no. 31). The motion to reconsider was laid on the table was agreed to without objection. The title of the measure was amended and agreed to without objection. The bill was received in the Senate on March 9, 2000, and read twice and referred to the Committee on Governmental Affairs. It was referred to the Subcommittee on International Security, Proliferation and Federal Services on April 4, 2000. The Committee on Governmental Affairs ordered the bill to be favorably reported on June 14, 2000. The committee reported the bill without written report on June 21, 2000. The bill was placed on the Senate Legislative Calendar No. 620. The Senate passed the bill by unanimous consent on June 23, 2000, and it was cleared for the White House. On June 26, 2000, a message was sent by the Senate to the House. H.R. 3018 was presented to the President on June 27, 2000, and it was signed on July 6, 2000, becoming Public Law No. 106–239.

*d. Hearings.*—None was held on this measure.

18. *H.R. 3189, a bill to designate the U.S. Post Office located at 14071 Peyton Drive in Chino Hills, CA, as the “Joseph Iletto Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 3189 designates the U.S. Post Office located at 14071 Peyton Drive in Chino Hills, CA, as the “Joseph Iletto Post Office.” The legislation honors Joseph Santos Iletto, an employee of the U.S. Postal Service, who was slain while on duty on August 10, 1999 in a hail of bullets by a white supremacist. According to an affidavit filed in Federal court, the gunman had just, an hour before shooting Mr. Iletto, opened fire at a Jewish community center in Los Angeles, wounding five children and employees. While making his rounds delivering mail, Mr. Iletto encountered the assassin who, according to the affidavit, thought it would be a good idea to kill a nonwhite person who was also a government employee. Mr. Iletto was the oldest of five children, born and raised in the Philippines and named after St. Joseph, the patron saint of the worker. He immigrated to the United States when he was 14 years old. After completing high school, he studied at East Los Angeles College, earning an associate degree in engineering in 1983. He had two jobs, one to test electronic filters for heart pacemakers, and the other was a part time job as a substitute mail carrier. He was substituting for a regular letter carrier when he was killed at age 39. Mr. Iletto took the postal position 2 years ago because he was seeking better pay and an outside job. Mr. Iletto

was known for his goodness, his good humor, his willingness to help and for being reliable. His work ethic and reliability won him a special achievement award from the Postal Service. He was known to be very competitive and was a skilled chess player, having been taught to play the game at age 7 by his father.

*c. Legislative status.*—Representative Miller of California introduced the legislation on November 1, 1999, and it was referred to the House Committee on Government Reform. The legislation was considered by the House under suspension of the rules and was agreed to by voice vote. The Senate received the legislation on November 9, 1999. It was read twice and referred to the Committee on Governmental Affairs on November 19, 1999. On December 2, 1999, the bill was referred to the subcommittee on International Security, Proliferation, and Federal Services. The committee reported the bill on March 27, 2000, and it was placed on the Senate Legislative Calendar No. 475. The Senate passed the bill by unanimous consent on April 3, 2000, and it was cleared for the White House. The President signed the bill on April 14, 2000, and it became Public Law No. 106–184.

*d. Hearings.*—No hearing was held on this bill.

19. *S. 335, a bill known as the Deceptive Mail Prevention and Enforcement Act.*

*a. Report number and date.*—Senate Report No.106–102, July 1, 1999.

*b. Summary of measure.*—The Deceptive Mail Prevention and Enforcement Act amends Federal law to revise the current prohibition against mail solicitations by a nongovernmental entity for a product or service, for information, or for the contribution of funds or membership fees, which contain a seal, insignia, trade or brand name which could reasonably be construed as implying any Federal Government connection or endorsement. The bill prohibits any matter that contains a reference to the Postmaster General, citation to a Federal statute, or the name of a Federal agency, department, commission, or program. Additionally it prohibits any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government. It permits mailings of such matter if it meets certain existing requirements and, in addition, it does not contain a false representation implying that Federal Government benefits or services will be affected by any purchase or nonpurchase.

Section 2 of the bill declares nonmailable any matter otherwise legally acceptable in the mails if it constitutes a solicitation for the purchase of any product that is provided by and may be obtained without cost from the Federal Government, but does not contain a statement giving notice of such information.

Section 3 prescribes mailing restrictions and disclosure requirements for sweepstakes, skill contests, and facsimile checks. It exempts from such restrictions and requirements any matter containing a facsimile check, skill contest, or sweepstakes that appears in a magazine, newspaper, or other periodical if the matter is not directed to a named individual or does not include an opportunity to make a payment or order a product or service. The bill requires

persons who use the mails for any matter containing sweepstakes, skill contests, facsimile checks or specified related material to adopt reasonable practices and procedures to prevent the mailing of such matter to persons who submit written requests to the mailer or to the attorney general of the appropriate State (who then transmits the request to the mailer) that such materials should not be mailed to them. The bill requires persons who mail matter to which nonmailability restrictions apply to maintain or cause to be maintained records of all such requests that permit the suppression of the names of such requesters for a 5-year period beginning on the date of the written requests.

Section 4 makes postal law sanctions involving false representations and lotteries applicable to deceptive mailings under this act.

Section 5 allows the Postal Service to apply for a temporary restraining order and preliminary injunctions in the preparation for or during pendency of proceedings concerning deceptive mailings.

Section 6 increases civil penalties for violation of current postal law sanctions and establishes civil penalties for violation of this act.

Section 7 authorizes the use of administrative subpoenas by the Postmaster General in any investigation involving nonmailable matter.

Section 8 creates a new, uniform notification system requiring a promoter who originates and mails or causes to be mailed any skill contest or sweepstakes (except those not directed to a named individual, or that do not include an opportunity to make a payment or order a product or service) to: (1) include with each mailing a clearly and conspicuously displayed statement which includes the address or toll-free telephone number of the notification system established under this act and states that such system may be used to prohibit the mailing of any skill contest or sweepstakes by that promoter to such individual; and (2) establish and maintain a notification system that provides for an individual or other duly authorized person to notify the system of the individual's election to have his or her name and address excluded from all lists of names and addresses used by that promoter to mail such material. This section declares nonmailable any skill contest or sweepstakes otherwise legally acceptable in the mails that is addressed to an individual who made an election to be excluded from the promoter's list and prohibits the commercial use of any list of names and addresses compiled from individuals who exercise an election to be excluded from such a list. Furthermore, it establishes civil penalties for persons who violate the prohibitions and for promoters who recklessly mail such nonmailable matter or fail to comply substantially with the notification system requirements.

Section 9 states that nothing in this bill shall be construed to preempt any provision of State or local law that imposes more restrictive requirements, regulation, damages, costs or penalties.

Section 10 provides that the bill will take effect 120 days after the date of enactment.

*c. Legislative status.*—Senator Collins introduced the legislation on February 3, 1999. It was read twice in the Senate and referred to the Committee on Governmental Affairs. On March 8, 1999, it was referred to the Subcommittee on International Security. The

Committee on Governmental Affairs ordered the legislation to be reported favorably with an amendment in the nature of a substitute. On July 1, 1999, the Committee on Governmental Affairs reported the legislation as amended with an amendment in the nature of a substitute to the Senate with a written report No. 106–102. The legislation was placed on the Senate Legislative Calendar (No. 191) under general orders. The measure laid before the Senate by unanimous consent on August 2, 1999. Senator Collins proposed amendment SP 1497 that was agreed to in the Senate by voice vote. The committee substitute as amended was agreed to by voice vote. S. 335 passed the Senate with an amendment and an amendment to the title by yea-nay vote (93–0) Record vote No. 248. On August 3, 1999, a message of Senate action was sent to the House and the legislation was referred to the House Committee on Government Reform. On August 6, 1999, S. 335 was referred to the Subcommittee on the Postal Service. The legislation was brought to the House floor on November 9, 1999, under suspension of the rules. The motion to suspend the rules and pass the bill, as amended, was agreed to by voice vote. On November 10, 1999, a message on House action was received in the Senate and S. 335 was placed on the desk with the House amendment to the Senate bill. The legislation as amended by the House was brought before the Senate on November 19 and passed unanimously. The legislation was cleared for signature by the President who signed the bill on December 12, 1999, and became Public Law No. 106–168.

*d. Hearings.*—The subcommittee held hearings on the general topic of “Deceptive Sweepstakes Mailings” on August 4, 1999.

20. *H.R. 2952, To redesignate the facility of the U.S. Postal Service located at 100 Orchard Park Drive in Greenville, SC, as the “Keith D. Oglesby Station.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2307 designates the facility of the U.S. Postal Service located at 100 Orchard Park Drive in Greenville, SC, as the Keith D. Oglesby Station.” This bill recognizes Mr. Oglesby, a postmaster of Greenville for 6 years who drowned tragically in 1999 while on vacation with his family. Among the numerous activities Postmaster Oglesby was associated with are: chairperson for Greenville County’s Combined Federal Campaign; postal co-chair for the Upstate Postal Customer Council; Board of Directors and President of Senior Action, an organization to provide and raise funds for social events for senior adults in Greenville County. Mr. Oglesby was awarded the Benjamin Award, the Postal Service’s top public relations honor. He received the second Benjamin award posthumously.

*c. Legislative status.*—H.R. 2952 was introduced by Representative DeMint on September 27, 1999, and was cosponsored by the House delegation from the State of South Carolina. The bill was referred to the House Committee on Government Reform on September 27, 1999, and to the Subcommittee on the Postal Service on October 8, 1999. The subcommittee considered and marked-up the legislation and forwarded it to the committee by voice vote on October 21, 1999. The committee considered and marked-up H.R. 2952 on October 28, 1999, and ordered it reported by voice vote. The

House called up the bill under suspension of the rules on March 3, 2000. At the conclusion of the debate, the chair put the question on the motion to suspend the rules. Mr. Terry objected the yea-nay vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed. The point of no quorum was withdrawn. The bill was considered as unfinished business. The motion to suspend the rules and pass the bill was agreed to by recorded vote (377–0) and the motion to reconsider laid on the table was agreed to without objection. The Senate received the legislation on March 9, 2000. It was read twice and referred to the Committee on Governmental Affairs. On April 4, 2000, the bill was referred to the Subcommittee on International Security, Proliferation and Federal Services. On June 14, 2000, the Committee on Governmental Affairs ordered the bill to be reported favorably without amendment. On June 21, 2000, Senator Thompson, Chair Committee on Governmental Affairs, reported the bill without amendment and without written report. It was placed on the Senate Legislative Calendar No. 619 under general orders. The bill passed the Senate on June 23, 2000 without amendment and by unanimous consent and was cleared for the White House. A message on Senate action was sent to the House on June 26, 2000, and the bill was presented to the President on June 27, 2000. The President signed the bill on July 6, 2000 and it became Public Law No. 106–238.

21. *H.R. 3699 To designate the facility of the U.S. Postal Service located at 8409 Lee Highway in Merrifield, VA, as the “Joel T. Broyhill Postal Building.”*

a. *Report number and date.*—None.

b. *Summary of measure.*—H.R. 3699 designates the facility of the U.S. Postal Service located at 8409 Lee Highway in Merrifield, VA, as the Joel T. Broyhill Postal Building. This measure recognizes the accomplishments of Congressman Broyhill who was elected to the 83rd Congress in 1955 and served in the House for 22 years. Born in Hopewell, VA, Mr. Broyhill was the first Member of Congress to represent the newly created 10th Congressional District of Virginia and served as a Republican Member. He was a member of the then-Committee on Post Office and Civil Service, the Committee on the District of Columbia, and the Committee on Ways and Means. Congressman Broyhill is a decorated veteran of World War II. He served as a captain in the 106th Infantry Division. At the age of 25, he fought in the “Battle of Bulge” and was taken prisoner and held in a German POW camp until he heroically escaped and rejoined the advancing Allied forces. Congressman Broyhill dedicated most of his life to service to his country in both a public and military capacity.

c. *Legislative status.*—H.R. 3699 was introduced by Representative Wolf on February 29, 2000, and was cosponsored by all members of the House delegation from the State of Virginia. It was referred to the House Committee on Government Reform the same day and to the Subcommittee on the Postal Service on March 1, 2000. The committee considered and marked-up the legislation on March 9, 2000, and ordered it to be reported by Voice Vote. The measure was brought to the floor on March 14, 2000, by chairman

of the Subcommittee on the Postal Service, Mr. McHugh, who moved to suspend the rules and pass the bill. At the conclusion of debate, the yeas and nays were demanded and ordered. The Chair announced that further proceedings on the motion would be postponed. It was considered as unfinished business. Later that day, the motion to suspend the rules and pass the bill was agreed to by the yeas and nays (405–0). The motion to reconsider laid on the table was agreed to without objection. On March 20, 2000, H.R. 3699 was received in the Senate and read twice and referred to the Committee on Governmental Affairs. On April 4, 2000, the bill was referred to the Subcommittee on International Security, Proliferation and Federal Services. The Committee on Governmental Affairs, on June 14, 2000, ordered the bill to be reported favorably with amendment. The bill was placed on the Senate Legislative Calendar under general orders. H.R. 3699 passed the Senate without amendment by unanimous consent on June 23, 2000 and was cleared for the White House. The Senate sent a message to the House on its action on June 26, 2000. The bill was presented to the President on June 27, 2000, and was signed by the President on July 6, 2000, when it became Public Law No. 106–240.

*d. Hearings.*—No hearings were held on this measure.

22. *H.R. 3701, To designate the facility of the U.S. Postal Service located at 3118 Washington Boulevard in Arlington, VA, as the “Joseph L. Fisher Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 3701 honors the late Congressman Fisher. Congressman Fisher was born in Pawtucket, RI. He held a Ph.D in economics from Harvard University and then was an economist at the U.S. Department of State. He served in World War II in the Pacific Theater from 1943 to 1946. In 1963 he was elected to the Arlington County Board where he advocated regional air, water pollution and transit improvement projects. He then served as chairman of the Washington Metropolitan Area Transit Authority. Later, he was a senior economic advisor on the Council of Economic Advisors during the Truman Administration. Mr. Fisher was elected as the Representative of the 10th District of Virginia in 1974 as a Democrat and served for three terms. During this period, he was a member of the House Ways and Means Committee, and the Budget Committee, earning the reputation for his diligent work on taxation, energy and budget policy. He chaired seven task forces charged with national policy issues. After his service in Congress, he served as secretary of human resources for the Commonwealth of Virginia. He was a professor of political economy at George Mason University and chairman of the National Academy of Public Administration. He also served as head of the Unitarian Universalist Association. Congressman Fisher died in Virginia in 1992.

*c. Legislative status.*—Representative Wolf introduced H.R. 3701 on February 29, 2000, with the cosponsorship of all members of the House delegation from the State of Virginia. The bill was referred to the House Committee on Government Reform the same day and referred to the Subcommittee on the Postal Service on March 1, 2000. The committee considered and marked up the bill on March

9, 2000, and it was ordered to be reported by voice vote. On March 14, Mr. McHugh, chairman, Subcommittee on the Postal Service moved to suspend the rules and pass the legislation. At the conclusion of debate, the yeas and nays were demanded and ordered. Pursuant to the provision of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed. It was considered as unfinished business and the bill was agreed to by the yeas and nays (400–0). The motion to reconsider laid on the table agreed to without objection. The bill was received in the Senate on March 20 and was read twice and referred to the Committee on Governmental Affairs. On April 4, 2000, it was referred to the Subcommittee on International Security, Proliferation and Federal Services. The Committee on Government Affairs ordered the bill to be favorably reported without amendment on June 14, 2000. The Committee on Governmental Affairs reported the bill without amendment or written report on June 21, 2000. H.R. 3701 was placed on the Senate Legislative Calendar No. 622 under general orders on June 21, 2000. The bill passed the Senate without amendment by unanimous consent on June 23, 2000, and it was cleared for the White House. A message on the Senate action was sent to the House on June 26, 2000, and the bill was presented to the President on June 27. The President signed the bill on July 6, 2000, and it became Public Law No. 106–241.

*d. Hearings.*—No hearings were held on this legislation.

23. *H.R. 1666, to designate the facility of the U.S. Postal Service at 200 East Pinckney Street in Madison, FL, as the “Captain Colin P. Kelly Jr. Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 1666 names a post office after Colin P. Kelly, Jr., widely recognized as our Nation’s first World War II hero. Colin Kelly was born in 1915 in Madison, FL, and was raised there. He entered West Point in the summer of 1933, and after graduation was assigned to flight school and a B–17 group. He was the first Army officer to fly the Boeing Flying Fortress in the Far East. He was shot down on December 10, 1941.

*c. Legislative History/Status.*—H.R. 1666 was introduced by Representative Boyd on May 4, 1999. The bill was cosponsored by all members of the House delegation from the State of Florida. H.R. 1666 was referred to the House Committee on Government Reform on May 4, 1999, and to the Subcommittee on the Postal Service on May 5, 1999. The subcommittee considered and marked-up the legislation on August 4, 1999, and forwarded it to full committee by voice vote. The committee considered and marked-up the bill on September 30, 1999, and ordered it to be reported by voice vote. The Chairman of the subcommittee, Mr. McHugh, moved to suspend the rules and pass the bill on March 21, 2000. The motion to suspend the rules and pass the bill was agreed to by voice vote, and the motion to reconsider was laid on the table was agreed to without objection. The Senate received the bill on March 22, 2000, and it was read twice and referred to the Committee on Governmental Affairs. The bill was referred to the Subcommittee on International Security, Proliferation and Federal Services on April 4, 2000. The Committee on Governmental Affairs ordered the meas-



ure to be reported favorably, without amendment, on June 14, 2000. On June 21, 2000, the bill was placed on the Senate Legislative Calendar No. 614 under general orders and the Senate passed it on June 23, 2000, by unanimous consent. It was cleared for the White House the same day. A message on the Senate action was sent to the House on June 26, 2000. The bill was presented to the President on June 27, 2000, and signed by the President on July 6, 2000, becoming Public Law No. 106-233.

d. *Hearings*.—No hearing were conducted on H.R. 1666.

24. *H.R. 4241, to designate the facility of the U.S. Postal Service located at 1818 Milton Avenue in Janesville, WI, as the "Les Aspin Post Office Building."*

a. *Report number and date*.—None.

b. *Summary of measure*.—This measure names a post office after Les Aspin, who was born in Milwaukee, WI on July 21, 1938. He received his B.A. from Yale University in 1960, M.S. from Oxford University, England in 1962, and a Ph.D. in economics from the Massachusetts Institute of Technology in 1965. He became an assistant professor of economics at Marquette University in Milwaukee. Mr. Aspin was a staff member to U.S. Senator William Proxmire and staff assistant to Walter Heller, chairman of President Kennedy's Council of Economic Advisers. While serving as a Captain in the U.S. Army from 1966 to 1968, Dr. Aspin was an economic adviser to the Secretary of Defense. The First Congressional District of Wisconsin elected Les Aspin as a Democrat to the 92nd Congress and to the 11 succeeding Congresses. He was a member of the Committee on Armed Services and was its chairman from the 99th through the 102nd Congresses. Representative Aspin became Secretary of Defense in 1993 until his resignation on January 20, 1994. Additionally, from August 1994 until his death at age 57 on May 21, 1995, he was professor of international policy, Washington Center for Government, Marquette University; Chair of the Foreign Intelligence Advisory Board and of the Commission on the Roles and Capabilities of the U.S. Intelligence Community.

c. *Legislative status*.—H.R. 4241 was introduced by Representative Ryan on April 11, 2000, and referred to the House Committee on Government Reform. All members of the House delegation from the State of Wisconsin cosponsored the legislation. On April 19, 2000, the bill was referred to the Subcommittee on the Postal Service. The legislation was brought to the floor on June 6, 2000, and a motion was made to suspend the rules and pass the bill. At the conclusion of debate, the yeas and nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed. It was considered as unfinished business; the motion to suspend the rules and pass the bill was agreed to by the yeas and nays (378-6) (Roll No. 235). The motion to reconsider was laid on the table and agreed to without objection. The bill was received in the Senate and read twice on June 7, 2000, and referred to the Committee on Governmental Affairs. On June 14, 2000, the Committee on Governmental Affairs ordered H.R. 4241 to be reported favorably without amendment. The committee, on June 21, 2000, reported the bill without written report. On June 21, 2000 the bill

was placed on the Senate Legislative Calendar No. 623 under general orders. The Senate passed the bill by unanimous consent on June 23, 2000, and it was cleared for the White House. A message on Senate action was sent to the House on June 26, 2000; the bill was presented to the President on June 27, 2000. H.R. 4241 was signed by the President on July 6, 2000, and it became Public Law No. 106-242.

*d. Hearings.*—No hearings were conducted.

25. *H.R. 3030, to designate the facility of the U.S. Postal Service located at 757 Warren Road in Ithaca, NY, as the "Matthew F. McHugh Post Office."*

*a. Report number and date.*—None.

*b. Summary of measure.*—This legislation venerates Matthew McHugh who represented the 27th and 28th Congressional Districts of New York. He was elected to Congress in 1975 and served until 1992. Mr. McHugh studied at Mount St. Mary's College in Emmitsburg, MD, where he graduated magna cum laude in 1960. He then received his Juris Doctor from Villanova Law School where he was the editor of the law review. He was city prosecutor in Ithaca, then practiced law in Ithaca, NY. He was elected to Congress and served on the Committee on Appropriations from 1978 to 1992 (Subcommittee on Foreign Operation, Export Financing and Related Programs, and the Subcommittee on Rural Development, Agriculture and Related Agencies). He also served on the Permanent Select Committee on Intelligence where he was chairman of the Subcommittee on Legislation; acting chairman of the Committee on Standards of Official Conduct; Select Committee on Children, Youth and Families; Veterans Affairs Committee; Agriculture Committee; Interior Committee; Arms Control and Foreign Policy Caucus; and chairman of the Democratic Study Group. After leaving the House, Mr. Hugh continued his participation in improving our Nation and the world. He is presently the counselor to the President of the World Bank in Washington, DC, a position he assumed in 1993. Prior to that he was vice president, University counsel, and secretary to the Corp. of Cornell University in Ithaca, NY. He continues to serve in various capacities at organizations such as the National Endowment for Democracy; the Central and East European Law Initiative of the American Bar Association; the International Crisis Group; president of the Association of Former Members of Congress; Bread for the World; New York State Regents Commission on Higher Education; the Board of Consultors of the Villanova School of Law; and chairman of the Board of Trustees of Mount St. Mary's College.

*c. Legislative status.*—Representative Hinchey introduced H.R. 3030 on October 6, 1999. The measure was cosponsored by all members of the House delegation from the State of New York. The bill was referred to the Committee on Government Reform on October 6, 2000, and to the Subcommittee on the Postal Service on October 18, 2000. The committee considered and marked up the bill on March 3, 2000, and ordered it to be reported by voice vote. The measure was brought to the floor on June 6, 2000, under suspension of the rules. At the conclusion of debate, the yeas and nays were demanded and ordered. Pursuant to the provision of clause 8,

rule XX, the Chair announced that further proceedings on the motion would be postponed and it was considered as unfinished business. The motion to suspend the rules and pass the bill was agreed to by the yeas and nays (385–2, Roll No. 236). The motion to reconsider was laid on the table was agreed to without objection. The bill was received in the Senate and read twice on June 7, 2000, and referred to the Committee on Governmental Affairs. On June 20, the bill was referred to the Subcommittee on International Security, Proliferation and Federal Services. The Committee on Governmental Affairs ordered the bill to be favorably reported on September 27, 2000. On September 29, 2000, the Committee on Governmental Affairs by Senator Thompson under authority of the order of the Senate of September 28, 2000, reported the bill without written report. It was placed on the Senate Legislative Calendar No. 865 under general orders. H.R. 3030 passed the Senate by unanimous consent on October 6, 2000, and was cleared for the White House. On October 10, 2000, the Senate sent a message to the House on its actions. The measure was presented to the President on October 12, 2000 and it was signed on October 19, 2000. It became Public Law No. 106–321.

*d. Hearings.*—No hearing was conducted.

26. *H.R. 2938, to designate the facility of the U.S. Postal Service located at 424 South Michigan Street in South Bend, IN, as the “John Brademas Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 2938 designates the facility of the U.S. Postal Service located at 424 South Michigan Street in South Bend, IN, as the “John Brademas Post Office.” The bill recognizes the accomplishments of John Brademas who was born in Mishawaka, IN in 1927. He joined the Navy and was a Veterans National Scholar at Harvard University from which he graduated in 1949 with a B.A. magna cum laude and was elected to Phi Beta Kappa. He was a Rhodes Scholar at Oxford University and received the Doctor of Philosophy in Social Studies in 1954. Dr. Brademas was the first native-born American of Greek origin to be elected to Congress. He represented the Third Congressional District of Indiana for 22 years (1959 to 1981). He served on the Committee on Education and Labor and was House Majority Whip for his last 4 years in Congress. While in Congress, he worked tirelessly in support of legislation promoting education. He was primary sponsor of legislation improving elementary and secondary education, vocational education and services for the elderly and the handicapped. In 1977, Dr. Brademas chaired the first congressional delegation to visit the People’s Republic of China, and in 1985 took part in the first Chinese-United States University presidents’ seminar, held in Beijing. After his service in Congress, Dr. Brademas became president of New York University, the largest private university in the United States, for 11 years, transforming NYU from a regional commuter school into a national and international residential research university. He served on the boards of Americans for the Arts, Kos Pharmaceuticals, Inc., Loews Corp., Oxford University Press-USA and Scholastic, Inc. He is a former member of the Board of Overseers of Harvard and of the boards of the Aspen Institute,

New York Stock Exchange and the Rockefeller Foundation. Additionally he is president of the King Juan Carlos I of Spain Center of New York University Foundation. He also serves on the boards of the society for the Preservation of the Greek Heritage, the Spanish Institute, the United States-Japan Foundation and the Alexander S. Onassis Public Benefit Foundation (USA).

*c. Legislative status.*—Representative Roemer introduced H.R. 2938 on October 19, 1999, which was then cosponsored by all members of the House delegation of the State of Indiana. The legislation was referred to the House Committee on Government Reform on September 23, 1999, and to the Subcommittee on the Postal Service on September 28, 1999. The committee considered and marked-up the bill on September 30, 1999, and ordered it to be reported by voice vote. The bill was scheduled for consideration on the floor on June 20, 2000. Chairman McHugh moved to suspend the rules and pass the bill. The motion was agreed to be voice vote and the motion to reconsider was laid on the table was agreed to without objection. The Senate received H.R. 2938 on June 21, 2000, and it was read twice and referred to the Committee on Governmental Affairs. The Committee on Governmental Affairs discharged the measure by unanimous consent on October 6, 2000, it passed the Senate by unanimous consent, and it was cleared for the White House. A message on the Senate action was sent to the House on October 10, 2000. The measure was presented to the President on October 12, 2000, and signed by the President on October 19, 2000, becoming Public Law No. 106–320.

*d. Hearings.*—No hearing was conducted on this bill.

27. *H.R. 4658, to designate the facility of the U.S. Postal Service located at 301 Green Street in Fayetteville, NC, as the “J. L. Dawkins Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4658 designates the facility of the U.S. Postal Service located at 301 Green Street in Fayetteville, NC, as the “J.L. Dawkins Post Office Building” in honor of J.L. Dawkins who was born in North Carolina and spent his youth in Fayetteville. He attended Wake Forest University for 2 years and returned to Fayetteville to work. J.L. Dawkins’ father, a former State representative, died when his son was 15 years old. Young J.L. Dawkins always knew he wanted to go into politics and set his sights on being mayor. He was elected to the city council and served for six terms in that position before being elected mayor in 1987. He was reelected six times. He never lost an election even when he was being treated for cancer with experimental and aggressive forms of chemotherapy for more than a year. Mayor Dawkins was known for his friendly and gracious ways and was known as Fayetteville’s “Mayor for Life.”

*c. Legislative status.*—H.R. 4658 was introduced by Representative Hayes on June 14, 2000. The legislation was cosponsored by all members of the House delegation of the State of North Carolina. It was referred to the House Committee on Government Reform on June 14, 2000, and to the Subcommittee on the Postal Service on June 20, 2000. The subcommittee considered and marked-up the bill on June 29, 2000, and forwarded it to the full committee by

voice vote. The bill was brought to the floor for consideration by Chairman McHugh on July 11, 2000, who moved to suspend the rules and pass the bill. The motion was agreed to by voice vote and the motion to reconsider was laid on the table and agreed to without objection. The legislation was received in the Senate and read twice and referred to the Committee on Governmental Affairs. It was referred to the Subcommittee on International Security, Proliferation and Federal Services on July 25, 2000. The Committee on Government Affairs ordered the measure to be reported favorably on September 27, 2000. The Committee on Governmental Affairs reported the bill on the floor on September 29, 2000, without written report. It was placed on the Senate Legislative Calendar No. 879 under general orders. The measure passed the Senate by unanimous consent. It was cleared for the White House on October 6, 2000; a message on the Senate action was sent to the House on October 10, 2000. The bill was presented to the President on October 12, 2000, and signed into law on October 19, 2000, becoming Public Law No. 106-341.

*d. Hearings.*—No hearing was conducted on this legislation.

28. *H.R. 4169, to designate the facility of the U.S. Postal Service located at 2000 Vassar Street in Reno, NV, as the “Barbara F. Vucanovich Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4169 honors Representative Vucanovich by naming the facility of the U.S. Postal Service located at 2000 Vassar Street in Reno, NV, as the “Barbara F. Vucanovich Post Office Building.” Barbara Vucanovich was born in Camp Dix, NJ. She grew up in Albany, NY, and attended college there after which she moved to Nevada. Barbara Vucanovich served as the U.S. Representative of the then-newly-created Second District of Nevada from 1983 until 1997. As a Republican Member of the House of Representatives, she focused on issues important to Nevadans including Federal wilderness and national park policy, public land use, and nuclear waste disposal. Ms. Vucanovich retired from Congress after serving on the Committee on Interior and Insular Affairs, the Committee on House Administration, and as the Chairperson of the Appropriations Subcommittee on Military Construction.

*c. Legislative status.*—The legislation was introduced by Representative Gibbons on April 4, 2000, and cosponsored by the House delegation from the State of Nevada. The bill was referred to the House Committee on Government Reform on April 4, 2000, and to the Subcommittee on the Postal Service on April 11, 2000. On July 11, 2000, the chairman of the subcommittee moved to suspend the rules and pass the bill. At the conclusion of debate, the chair put the question on the motion to suspend the rules. Mr. McHugh objected to the vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed until July 12, 2000. The point of no quorum was withdrawn. The bill was considered as unfinished business on July 12, 2000. The motion to suspend the rules and pass the bill was agreed to by a recorded vote of 418-1 (Roll No. 389). The motion to reconsider laid on the table was agreed to without objection. The Senate received the leg-

islation on July 13, 2000; it was read twice and referred to the Committee on Government Affairs. On July 25, 2000, the committee referred the legislation to the Subcommittee on International Security, Proliferation and Federal Services. On September 27, 2000, the Committee on Government Affairs ordered the bill to be reported favorably. On September 29, 2000, the committee under the authority of the order of the Senate reported the bill without written report. It was placed on the Legislative Calendar under general orders on September 29, 2000, and passed by unanimous consent on October 6, 2000, and was cleared for the White House. A message on the Senate action was sent to the House on October 10, 2000. The bill was presented to the President on October 12, 2000, which he signed on October 19, 2000. It is now Public Law No. 106-328.

*d. Hearings.*—No hearing was held.

29. *H.R. 3909, a bill to designate the facility of the U.S. Postal Service located at 4601 south cottage Grove Avenue in Chicago, IL, as the "Henry W. McGee Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 3909 designates the facility of the U.S. Postal Service located at 4601 South Cottage Grove Avenue in Chicago, IL, as the "Henry W. McGee Post Office Building." Mr. McGee was born in 1910 in Hillsboro, TX, and moved to Chicago in 1966. He started working for the Postal Service when he was 20 years old and retired in 1973 after working for 45 years. Mr. McGee was Chicago's first African-American postmaster in 1966 and was also the first career postmaster in Chicago. During World War II, he was a member of the Illinois State Militia. He earned his bachelor of Science degree from the Illinois Institute of Technology in 1949 and a masters degree in public administration from the University of Chicago in 1961. Mr. McGee was the founding board member of the Rochelle Lee Fund for Children's Literacy. He died in March 2000 at the age of 90.

*c. Legislative status.*—This measure was introduced on March 14, 2000, by Representative Rush. Each member of the House delegation from the State of Illinois cosponsored the bill which was referred to the House Committee on Government Reform. It was then referred to the Subcommittee on the Postal Service on March 21, 2000. The subcommittee considered and marked up the bill on June 29, 2000, and it was forwarded to full committee by voice vote. The chairman of the subcommittee, Mr. McHugh, moved to suspend the rules and pass the bill on July 11, 2000. The motion was agreed to by voice vote and the motion to reconsider was laid on the table and agreed to without objection. The Senate received the measure on July 12, 2000. It was read twice and referred to the Committee on Governmental Affairs. The committee referred it to the Subcommittee on International Security, Proliferation and Federal Services. On September 27, 2000, the Committee on Governmental Affairs ordered the bill to be favorably reported. The Committee on Governmental Affairs reported the bill by authority of the Senate of September 28, 2000 without written report. On September 29, the legislation was placed on the Senate Legislative Calendar No. 867. H.R. 3909 passed the Senate without amend-

ment by unanimous consent on October 6, 2000, and was cleared for the White House. A message on the Senate action was sent to the House on October 10, 2000, and presented to the President on October 12, 2000. It was signed by the President on October 19, 2000, and became Public Law No. 106-325.

*d. Hearings.*—No hearing was held on this measure.

30. *H.R. 4447, to designate the facility of the U.S. Postal Service located at 919 West 34th Street in Baltimore, MD, as the “Samuel H. Lacy, Sr. Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—The legislation designates the facility of the U.S. Postal Service located at 919 West 34th Street in Baltimore, MD, as the “Samuel H. Lacy, Sr. Post Office Building.” H.R. 4447 honors Mr. Samuel H. Lacy, Sr. who was a renowned sports writer and editor for the Baltimore Afro-American Newspaper since 1944. He spent 60 years in journalism, working with radio, television, and the print media.

*c. Legislative status.*—H.R. 4447 was introduced on May 15, 2000, and was cosponsored by all members of the House delegation of the State of Maryland. It was referred to the House Committee on Government Reform on May 15, 2000, and to the Subcommittee on the Postal Service on May 17, 2000. On July 11, 2000, Chairman McHugh moved to suspend the rules and pass the bill on the House floor and it was considered under suspension of the rules. At the conclusion of debate, the chair put the question on the motion to suspend the rules. Mr. McHugh objected to the vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed until July 12, 2000. The point of no quorum was withdrawn. On July 12, 2000, it was considered as unfinished business. On motion to suspend the rules, the bill was agreed to by recorded vote (412-0), and the motion to reconsider was laid on the table without objection. H.R. 4447 was received in the Senate and read twice and referred to the Committee on Governmental Affairs on July 13, 2000. It was referred to the Subcommittee on International Security, Proliferation and Federal Services on July 25, 2000. The Committee on Governmental Affairs ordered the bill favorably reported on September 27, 2000, and on September 29, 2000 Senator Thompson under authority of the order of the Senate reported the bill without written report. It was placed on the Senate Legislative Calendar No. 871 under general orders. The measure passed the Senate by unanimous consent on October 6, 2000, and was cleared for the White House the same day. A message on the Senate action was sent to the House on October 10, 2000. The bill was presented to the President on October 12, 2000. The President signed it into law on October 19 and it became Public Law No. 106-333.

*d. Hearings.*—No hearing was held on H.R. 4447.

31. *H.R. 4437, to grant to the U.S. Postal Service the authority to issue semipostals, and for other purposes.*

*a. Report number and date.*—H. Rept. No. 106-734.

*b. Summary of measure.*—H.R. 4437 authorizes the Postal Service to issue semipostal stamps to help provide funding for a par-

ticular area of medical research. The purchase or use of any semipostal stamp issued is voluntary on the part of postal patrons. Since the success of the Breast Cancer Research Stamp [BCRS] more than a dozen bills have been introduced in Congress which are semipostal in nature. Not all these bills are medical or geared to research. It makes little sense to have the Postal Service deal only with the medical research stamps and Congress with all other semipostal legislation. Therefore, the amended version of the legislation which was enacted, gives the Postal Service the authority to issue and sell all stamps which help provide funding for a cause which the Postal Service considers to be in the national public interest and is appropriate. It also mandates that the Postal Service recover its costs before transferring funds to an agency or agencies involved in benefiting from the sale of semipostals. The amendment was made in nature of a substitute reflecting the changes and making stylistic changes to enhance clarity. No changes were made to the reporting requirement or to Section 3 of H.R. 4437, which is an extension of the breast cancer research stamp for an additional 2 years. This section is the same language as H.R. 4068, the Stamp Out Breast Cancer Reauthorization Act, legislation introduced by Representative Bass. When bills are introduced to raise money for worthy causes, it is a dilemma for Members to support all or many of the measures. The General Accounting Office, in its testimony before the Senate reported that the saturation of commemorative coins in the marketplace diluted the interest and purchase of the coins for worthwhile purposes. By granting the Postal Service the authority to issue semipostal stamps, and requiring that regulations be established prior to the production of the stamps, and how many semipostal stamps should be issued each year, will simplify the process. H.R. 4437 provides that the provisions sunset 10 years after the issuance of the first semipostal, excluding the breast cancer research stamp.

*c. Legislative status.*—H.R. 4437 was introduced by Chairman McHugh on May 11, 2000, and the bill was referred to the Committee on Government Reform, in addition to the Committees on Commerce, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provision as fall within the jurisdiction of the committees concerned. The measure was referred to the Subcommittee on the Postal Service and to the Subcommittee on Health and Environment on May 17, 2000. The Subcommittee on the Postal Service considered and marked-up the bill on June 28, 2000, and it was forwarded by the subcommittee to the Committee on Government Reform as amended by voice vote. The committee reported the bill as amended on July 17, 2000 accompanied by H. Rept. 106-734. The House Committees on Commerce and the Armed Services granted an extension for further consideration ending not later than July 17, 2000, and later that day, both committees discharged the bill. The bill was placed on the Union Calendar No. 415. Chairman McHugh moved to suspend the rules and pass the bill, as amended on July 17, 2000. It was considered under suspension of the rules on July 17, 2000, and was agreed to by voice vote. The motion to reconsider was laid on the table and was agreed to without objection. The measure was received in the Senate on July 18, 2000, and read



twice. The Senate passed the bill by unanimous consent on July 26, 2000, and it was cleared for the White House the same day. H.R. 4437 was presented to the President on July 27, 2000, and it was signed by him on July 28, 2000, becoming Public Law No. 106-253.

*d. Hearings.*—No hearing was conducted on this legislation.

32. *H.R. 4430, to redesignate the facility of the U.S. Postal Service located at 11831 Scaggsville Road in Fulton, MD, as the “Alfred Rascon Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4430 honors Alfred Rascon who was born in Chihuana, Mexico, but settled in Oxnard, CA, when his parents immigrated to the United States. Alfred enlisted in the U.S. Army for airborne training in 1963, shortly after graduating from high school. He was assigned to Fort Sam Houston, TX, for basic and specialist medical training. He deployed with the Airborne Brigade to south Vietnam as the 1st Battalion Reconnaissance Platoon medic and was seriously wounded in 1966. He was honorably discharged from active duty and placed in the Army Reserves. He then worked and attended college and graduated from the Army’s Infantry Officers Candidate School in 1970 and was commissioned as Second Lieutenant. He served in a number of combat assignments. He worked with the Department of Justice’s Drug Enforcement Administration and presently serves as Inspector General of the Selective Services System. On February 8, 2000, 34 years after the fact, Alfred Rascon was awarded the Congressional Medal of Honor, for his heroic efforts and serious injuries in 1966 in south Vietnam where he risked his life for his fellow soldiers and wounded squad members.

*c. Legislative status.*—H.R. 4430 was introduced by Representative Bartlett on May 11, 2000. All House members of the State of Maryland cosponsored the legislation. It was referred to the House Committee on Government Reform on May 11, 2000 and to the Subcommittee on the Postal Service on May 15, 2000. The committee considered and marked-up the legislation on June 29, 2000, and it was ordered to be reported as amended, by voice vote. On July 18, 2000, Chairman McHugh moved to suspend the rules of the House and pass the bill as amended. The motion to suspend the rules and pass the bill as amended, was agreed to by voice vote. The motion to reconsider was laid on the table, the title of the measure was amended and agreed to without objection. The Senate received the amended legislation on July 19, 2000, where it was read twice and referred to the Committee on Governmental Affairs. The committee referred the legislation to the Subcommittee on International Security, Proliferation and Federal Services.

*d. Hearings.*—No hearing was conducted on H.R. 4430.

33. *H.R. 4157, to designate the facility of the U.S. Postal Service located at 600 Lincoln Avenue in Pasadena, CA, as the “Matthew ‘Mack’ Robinson Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4157 honors Matthew Robinson by naming the postal facility located at 600 Lincoln Avenue in Pasadena, CA, after him. Matthew Robinson was born in Cairo,

GA, and moved to Pasadena at age 6 where he attended Pasadena public schools. He attended Pasadena Junior College where he shone as an athlete. He was a contemporary of other great athletes while he studied at Pasadena—his younger brother, Jackie, was one of baseball's giants, and Jesse Owens who 'Mac' joined on the 1936 Olympic team to Berlin. After the Olympics, Mack attended the University of Oregon. Unfortunately, his family was struck with hardship and Mack returned home to Pasadena to support his family. He found work with the city of Pasadena often sweeping streets in his Olympic jersey. The New York Times reported that Mack lost his job when the city fired all its African American employees in a desegregation battle. Mack then began a lifetime service to his community as a volunteer. His work helped to lead Pasadena from segregation to unification and today Pasadena is known for its diversity.

*c. Legislative status.*—This legislation was introduced by Representative Rogan on April 3, 2000. It was referred to the House Committee on Government Reform on April 3, 2000, and then to the Subcommittee on the Postal Service on April 7, 2000. The subcommittee considered and marked-up the bill on June 29, 2000, and forwarded it to the full committee by voice vote. Chairman McHugh moved to suspend the rules of the House and pass the bill on July 18, 2000. The motion was agreed to by voice vote and the motion to reconsider was laid on the table and agreed to without objection. The measure was received in the Senate, read twice and referred to the Committee on Governmental Affairs on July 19, 2000. It was referred to the Subcommittee on International Security, Proliferation and Federal Services, on July 25, 2000. The Committee on Governmental Affairs ordered the bill to be reported favorably on September 27, 2000. The bill was placed on the Senate Legislative Calendar No. 869 under general orders on September 29, 2000. H.R. 4157 passed the Senate by unanimous consent on October 6, 2000 when it was cleared for the White House. It was presented to the President on October 12, 2000, and signed by the President on October 19, 2000, when it became Public Law No. 106-327.

*d. Hearings.*—No hearing was conducted on this legislation.

34. *H.R. 4517, to designate the facility of the U.S. Postal Service located at 24 Tsienneto Road in Derry, NH, as the "Alan B. Shepard, Jr. Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4517 honors retired Rear Admiral of the U.S. Navy, Alan B. Shepard, Jr., who was born in East Derry, NH in 1923 and grew up in the area. He received a bachelor of science degree from the U.S. Naval Academy in Annapolis. He graduated from the Naval Test Pilot School in Patuxent River, MD, in 1951, and the Naval War College, in Newport, RI in 1957. Alan Shepard was one of the Mercury astronauts in 1959 and holds the distinction of being the first American to journey into space. He was designated chief to the Astronaut Office in 1963. In 1971, Shepard made his second space flight as spacecraft commander on Apollo 14. He retired from NASA in 1974.

*c. Legislative status.*—This legislation was introduced by Representative Sununu on May 23, 2000. It was referred to the House Committee on Government Reform on May 23, 2000, and to the Subcommittee on the Postal Service on June 1, 2000. The bill was considered and marked up by the subcommittee on June 29, 2000, and forwarded by the subcommittee to full committee by voice vote. On July 18, 2000, Chairman McHugh moved to suspend the rules of the House and pass the bill. After the conclusion of debate, the yeas and nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed. It was considered as unfinished business. On motion to suspend the rules and pass the bill was agreed to by the yeas and nays (4243–0). The motion to reconsider laid on the table was agreed to without objection. The bill was received in the Senate on July 19, 2000, and read twice and referred to the Committee on Governmental Affairs and was placed on the Senate Legislative Calendar No. 876 and passed by the Senate by unanimous consent on October 6, 2000, when it was cleared for the White House. The bill was signed by the President on October 19, 2000, and became Public Law No. 106–337.

*d. Hearings.*—No hearing was conducted on H.R. 4517.

35. *H.R. 4554, to redesignate the facility of the U.S. Postal Service located at 1602 Frankford Avenue in Philadelphia, Pennsylvania, as the “Joseph F. Smith Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—This bill honors Joseph F. Smith, by naming a post office building in Philadelphia after him. Joseph Smith was born and raised in St. Anne’s Parish in Philadelphia. He served in the U.S. Army and received a Purple Heart for action in World War II. He then became a congressional staffer and later served in the Pennsylvania State Senate from 1970 to 1981. In 1981 he was elected to the 97th Congress and represented the Philadelphia area. He served as the Democrat city chairman in Philadelphia from 1983 to 1986. Former Congressman Smith died in May 2000.

*c. Legislative status.*—Representative Borski introduced H.R. 4554 on May 25, 2000 and the bill was referred to the Committee on Government Reform. All members of the House delegation from the State of Pennsylvania cosponsored the measure. It was referred to the Subcommittee on the Postal Service on June 5, 2000. The subcommittee considered and marked-up the bill favorably on June 29, 2000, and forwarded to the committee by voice vote. On July 18, 2000, Chairman McHugh moved to suspend the rules of the House and pass the bill. The motion to suspend the rules and pass the bill was agreed to by voice vote and the motion to reconsider was laid on the table and agreed to without objection. The Senate received the legislation on July 19, 2000, and it was read twice and referred to the Committee on Government Affairs. The committee referred the bill to the Subcommittee on International Security, Proliferation and Federal Services on July 25, 2000. The committee on Governmental Affairs ordered the legislation to be reported favorably on September 27, 2000, and it was reported to the Senate without written report and placed on the Senate Legislative Cal-

endar No. 877 on September 29, 2000. The Senate passed H.R. 4554 by unanimous consent on September 6, 2000, and it was cleared for the White House. The bill was presented to the President on October 12, 2000 and signed by him on October 19, 2000, when it became Public Law No. 106-339.

*d. Hearings.*—No hearing was conducted on H.R. 4554.

36. *H.R. 4884, to redesignate the facility of the U.S. Postal Service located at 200 West 2nd Street in Royal Oak, MI, as the “William S. Broomfield Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4884 honors former Member of Congress, William S. Broomfield by naming a post office in his honor at 200 West 2nd Street in Royal Oak, MI. Mr. Broomfield was born in Royal Oak, MI, and graduated from Michigan State College (now known as Michigan State University). He served in the U.S. Army Air Corps during the Second World War and then went into the real estate and property-management business. He was elected to the Michigan State House of Representatives from 1949 to 1954, and served as speaker pro tempore in 1953. He was elected to the State Senate in 1955 and 1956. In January 1957, Michigan’s 18th District elected him to the 85th Congress. He served for 17 succeeding Congresses until January 1992, when he retired voluntarily. During his tenure in Congress, Representative Broomfield served as a member of the Committee on Foreign Affairs and was ranking member from 1975 until his retirement. After his retirement, Mr. Broomfield started a foundation in Michigan that supports various charities in southeast Michigan, including the efforts to cure cancer, spina bifida, Alzheimer’s and the Salvation Army.

*c. Legislative status.*—H.R. 4884 was introduced by Representative Knollenberg on July 19, 2000, and cosponsored by all members of the House delegation from the State of Michigan. It was referred to the Committee on Government Reform on July 19, 2000, and to the Subcommittee on the Postal Service on July 31, 2000. The bill was brought to the House floor on September 6, 2000, and Representative Morella moved to suspend the rules and pass the bill. At the conclusion of debate, the yeas and nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed. It was considered as unfinished business. Later that day, the motion to suspend the rules and pass the bill was agreed to by the yeas and nays (404–0). The motion to reconsider was laid on the table and agreed to without objection. The Senate received the bill on September 7, 2000, where it was read twice and referred to the Committee on Governmental Affairs. It was referred to the Subcommittee on International Security, Proliferation, and Federal Services. The Committee on Governmental Affairs ordered H.R. 4884 to be reported favorably and without written report. The bill was placed on the Senate Legislative Calendar No. 880 under general orders on September 29, 2000. The measure passed the Senate by unanimous consent on October 6, 2000, and it was cleared for the White House. It was presented to the President on October 12,

2000, and signed by the President on October 19, 2000, becoming Public Law No. 106-342.

*d. Hearings.*—No hearing was conducted on H.R. 4884.

37. *H.R. 4534, to designate the facility of the U.S. Postal Service located at 114 Ridge Street in Lenoir, NC, as the “James T. Broyhill Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4534 designates the facility of the U.S. Postal Service located at 114 Ridge Street in Lenoir, NC, as the “James T. Broyhill Post Office Building” honoring Senator Broyhill. James Thomas Broyhill was born in Lenoir, NC in 1927. He attended public schools and graduated from the University of North Carolina in 1950 with a BS degree in business administration. Later he was elected to the 88th Congress to represent the 10th District of North Carolina in 1962 and was reelected to 11 succeeding Congresses until January 1986. During this period he served as the ranking member of the Committee on Energy and Commerce. Mr. Broyhill resigned his House seat in July 1986 when he was appointed to the U.S. Senate to fill the unexpired term of Senator James East of North Carolina who died unexpectedly.

*c. Legislative status.*—H.R. 4534 was introduced by Representative Burr on May 24, 2000. All members of the House delegation from the State of North Carolina cosponsored this bill. The bill was referred to the Committee on Government Reform on May 24, 2000, and to the Subcommittee on the Postal Service on June 5, 2000. The subcommittee considered and favorably marked-up the bill, as amended, on June 29, 2000, and it was forwarded to the committee by voice vote. On September 6, 2000, Representative Morella moved that the House suspend the rules and pass the bill, as amended. The motion was agreed to and passed by voice vote and the motion to reconsider was laid on the table was agreed to without objection. The title of the measure was amended and agreed to without objection. H.R. 4534 was received in the Senate, read twice and referred to the Committee on Governmental Affairs on September 7, 2000, and then referred to the Subcommittee on International Security, Proliferation and Federal Services on September 12, 2000. The Committee on Governmental Affairs ordered the bill to be favorably reported on September 27, 2000. On September 29, 2000, H.R. 4534 was placed on the Senate Legislative Calendar No. 873 under general orders. The Senate passed the bill by unanimous consent on October 6, 2000, and it was cleared for the White House. The bill was presented to the President on October 12, 2000, and was signed by the President on October 19, 2000, when it became Public Law No. 106-338.

*d. Hearings.*—No hearing was conducted on H.R. 4534.

38. *H.R. 4615, to redesignate the facility of the U.S. Postal Service located at 3030 Meredith Avenue in Omaha, NE, as the “Reverend J.C. Wade Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—This legislation names the facility of the Postal Service located at 3030 Meredith Avenue in Omaha, NE, as the “Reverend J.C. Wade Post Office.” Reverend James Com-

modore Wade was a noted pastor and a civic leader. He was born in Oklahoma in 1909. His mother died when he was 5 years old, his father died when he was 8, and his grandfather died when he was 11. At age 17 he was completely out on his own. He joined the ministry at age 21. He was known as being the youngest pastor in the State of Oklahoma. J.C. Wade was invited to speak in Omaha in 1944 and decided to stay on there. He served on the mayor's Advisory Committee in Omaha and organized the first Head Start program in Salem, NE. He was a member of the Baptist Pastor's Conference and the Interdenominational Alliance. He served as the President of the New Era Baptist State Convention, Inc., for 9 years and also as the State vice-president to the national Baptist convention for 9 years. On the national level, he was a member of the National Baptist Convention U.S.A., Inc. the Gospel Music Workshop of America, and the NAACP. Dr. Wade died in August 1999.

*c. Legislative status.*—This bill was introduced by Representative Terry on June 8, 2000, and was cosponsored by all members of the House delegation from the State of Nebraska. The legislation was referred to the House Committee on Government Reform on June 8, 2000, and to the Subcommittee on the Postal Service on June 14, 2000. The committee considered and marked-up H.R. 4615 on June 29, 2000, and ordered it reported by voice vote. On September 6, 2000, Representative Morella moved to suspend the rules of the House and pass the bill. The motion was agreed to by voice vote and the motion to reconsider was laid on the table and agreed to by voice vote. The Senate received the bill on September 7, 2000, and it was read twice and referred to the Committee on Governmental Affairs. The bill was referred to the Subcommittee on International Security, Proliferation, and Federal Services on September 12, 2000. On September 27, 2000, the Committee on Governmental Affairs, ordered the measure to be reported favorably without written report. The bill was placed on the Senate Legislative Calendar No. 878 under general orders on September 29, 2000, and on October 6, 2000, H.R. 4615 passed the Senate by unanimous consent and cleared for the White House the same day. It was presented to the President on October 12, 2000, and he signed it on October 19, 2000; the bill became Public Law No. 106-340.

*d. Hearings.*—No hearings were conducted on H.R. 4615.

39. *H.R. 3454, to designate the U.S. post office located at 451 College Street in Macon, GA, as the "Henry McNeal Turner Post Office."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 3454 names a post office in Macon, GA after Henry McNeal Turner, a well known missionary, pastor, evangelist, church administrator, Army chaplain, author of religious publication, and postmaster. Henry Turner faced many obstacles in his youth. However, he taught himself how to read, and at age 19 he became a preacher in the African Methodist Episcopal Church. In 1863, he organized the first regiment of African American troops. He became the first African American Army Chaplain and then became a chaplain of the regular troops. Mr. Turner was appointed as a delegate to the Constitutional Conven-

tion in 1867. He was elected to the Georgia State Legislature in 1868 and in 1870. He was appointed postmaster of Macon in 1869. After a year as postmaster, Mr. Turner returned to the State legislature and founded the Georgia Equal Rights League. He actively championed equal rights and led mission trips to Sierra Leone, Liberia, and South Africa.

*c. Legislative status.*—H.R. 3454 was introduced by Representative Chambliss on November 18, 1999. It was cosponsored by the entire House delegation from the State of Georgia. The bill was referred to the Committee on Government Reform on November 18, 1999, and to the Subcommittee on the Postal Service on November 30, 1999. The subcommittee considered and marked-up the legislation favorably on June 28, 2000, by voice vote and it was forwarded to the full committee by voice vote. On September 6, 2000, Representative Morella moved that the House suspend the rules and pass H.R. 3454. The motion was agreed to by voice vote and the motion to reconsider was laid on the table and agreed to without objection. The Senate received the measure on September 7, 2000, where it was read twice and referred to the Committee on Government Affairs. On September 12, 2000, it was referred to the Subcommittee on International Security, Proliferation, and Federal Services. The Committee on Governmental Affairs ordered the measure to be reported favorably on September 27, 2000. On September 29, 2000, the bill was placed on the Senate Legislative Calendar No. 866, under general orders. On October 6, 2000, the Senate passed the bill by unanimous consent and the bill was cleared for the White House. The bill was presented to the President on October 12, 2000, and the President signed it on October 19, 2000, when it became Public Law, No. 106–322.

*d. Hearings.*—No hearings were conducted on H.R. 3454.

40. *H.R. 4484, to designate the facility of the U.S. Postal Service located at 500 North Washington Street in Rockville, MD, as the “Everett Alvarez, Jr. Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4484 is legislation naming the Rockville, MD Post Office after Everett Alvarez, Jr. Everett Alvarez is a distinguished military officer and public servant. He was the first in his family to go to college; he earned a bachelor of science in electrical engineering from the University of Santa Clara in 1960 and then joined the U.S. Navy. On August 5, 1964, he was the first American aviator shot down over North Vietnam. He was then a Lieutenant Junior Grade, an A–4 Skyhawk pilot assigned to Attach Squadron 144 on board the U.S.S. Constellation. He was shot down and captured on the first raid in North Vietnam. He was kept in a local jail cell in Hon Gai and then moved to a nearby farm until he was taken to Hanoi and placed in the infamous “Hanoi Hilton” where he lived until March 1965, when other American prisoners started to arrive. Everett Alvarez was the longest confirmed prisoner of war in North Vietnam. He was released in February 1973, after 8½ years of imprisonment. For his courageous service, Mr. Alvarez was awarded numerous military decorations, including the Silver Star, two Legions of Merit (with combat “v”), two Bronze Stars (with combat “v”), the Distinguished Flying

Cross, and two Purple Heart medals. He retired after serving in the Navy for 20 years and then accepted an appointment as Deputy Director of the Peace Corps. In 1982, President Reagan nominated him, and the Senate confirmed his appointment, as the Deputy Administrator of the Veterans Administration.

*c. Legislative status.*—H.R. 4484 was introduced by Representative Morella on May 17, 2000. This legislation is cosponsored by all members of the House delegation of the State of Maryland. The legislation was referred to the Committee on Government Reform on May 17, 2000, and to the Subcommittee on the Postal Service on June 2, 2000. The subcommittee marked up the bill on June 29, 2000, and forwarded it to the full committee by voice vote. The bill was brought to the House floor and Mrs. Morella moved to suspend the rules and pass the bill on September 6, 2000. At the conclusion of debate, the yeas and nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed. It was considered as unfinished business, and later the motion to suspend the rules and pass the bill was agreed to by the yeas and nays (403–0). The motion to reconsider laid on the table was agreed to without objection. The bill was received in the Senate and read twice on September 7, 2000, and referred to the Committee on Governmental Affairs. On September 12, 2000, the bill was referred to the Subcommittee on International Security, Proliferations, and Federal Services. The Committee on Governmental Affairs ordered the bill to be reported on September 27, 2000, and on September 29, 2000, it was placed on the Senate Legislative Calendar No. 875. The Senate passed the bill without amendment by unanimous consent on October 6, 2000, and it was cleared for the White House. The President signed the legislation on October 19, 2000, and it became Public Law No. 106–336.

*d. Hearings.*—No hearings were conducted on this legislation.

41. *H.R. 2302, to designate the building of the U.S. Postal Service located at 307 Main Street in Johnson City, NY, as the “James W. McCabe, Sr. Postal Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—This bill designates the building of the U.S. Postal Service located at 307 Main Street in Johnson City, NY, as the “James W. McCabe, Sr. Post Office Building.” James W. McCabe was born and attended elementary school in Johnson City, NY, in 1917. He graduated cum laude from the University of Notre Dame where he majored in Latin and had minors in English and philosophy. He attended SUNY-Albany to complete teaching requirements, and he also received a master’s degree in education. He did further graduate studies at Syracuse University, Colgate University, and Ithaca College. Mr. McCabe served with the Army Air Corps from 1943 through 1945. He was stationed in the south Pacific with a B–24 bomber crew. He was awarded the Air Medal with an oak leaf cluster and was honorably discharged with the rank of technical sergeant. After military service, Mr. McCabe taught Latin and English at Johnson City High School. James McCabe served as mayor of Johnson City from 1963 to 1971 and on the executive committee of the New York Conference of Mayors



in 1970–1971. He was elected to represent his constituents as an Assemblyman from January 1973 to 1985. For his efforts on behalf of the mentally disabled, the mayor of New York, on behalf of New York City and the Advisory Board of the New York City Department of Mental Health and Mental Retardation Services, presented Mr. McCabe the Human Service Award in 1977. Also, in 1977, he received the Legislator of the Year Award from the New York State Personnel and Guidance Association for his work in mental health. In 1981 and 1982, Mr. McCabe was named Legislator of the Year by the New York State Association of Counties, and the Friend of Education Award. After his service in the State Assembly, Mr. McCabe served on the New York State Board of Regents for 5 years. Mr. McCabe died in Johnson City on May 23, 1999.

*c. Legislative status.*—H.R. 2302 was introduced by Representative Hinchey on June 22, 1999, and was cosponsored by all members of the House delegation from the State of New York. The bill was referred to the House Committee on Government Reform on June 22, 1999, and to the Subcommittee on the Postal Service on June 30, 1999. The committee considered and marked up the bill on June 30, 1999, and it was ordered to be reported by voice vote. On September 6, 2000, Representative Morella moved to suspend the rules of the House and pass the bill. The motion to suspend the rules and pass the bill was agreed to by voice vote and the motion to reconsider was laid on the table and agreed to without objection. The Senate received the legislation on September 7, 2000, and it was read twice and referred to the Committee on Governmental Affairs. On September 12, 2000, the bill was referred to the Subcommittee on International Security, Proliferation, and Federal Services. The Committee on Governmental Affairs ordered H.R. 2302 to be reported favorably on September 27, 2000. The bill was placed on the Senate Legislative Calendar No. 864 and it passed the Senate by unanimous consent on October 6, 2000 and was cleared for the White House. H.R. 2302 was presented to the President on October 12, 2000, and was signed by the President on October 19, 2000, when it became Public Law No. 106–315.

*d. Hearings.*—No hearings were held on this legislation.

42. *H.R. 4448, to designate the facility of the U.S. Postal Service located at 35 Dolfield Avenue in Baltimore, MD, as the “Judge Robert Bernard Watts, Sr. Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4448 designates the facility of the U.S. Postal Service located at 3500 Dolfield Avenue in Baltimore, MD, as the “Judge Robert Bernard Watts, Sr. Post Office Building.” Judge Watts graduated with honors from Morgan State College in 1943. He joined the Army and served until 1945. After military service he earned a law degree from the University of Maryland in 1949. Judge Robert was deeply involved with the Civil Rights Movement and worked closely with the NAACP. He was instrumental in desegregating numerous theaters, restaurants, department stores, hotels, and the Gwynn Oak Amusement Park. Judge Robert Bernard Watts was the first African-American to be appointed full time to the Bench of the Municipal Court of Baltimore

City and was the first judge in Maryland to open hundreds of adoption records.

*c. Legislative status.*—Representative Cummings introduced H.R. 4448 on May 15, 2000. The bill was cosponsored by all members of the House delegation from the State of Maryland. The bill was referred to the Committee on Government Reform on May 15, 2000, and to the Subcommittee on the Postal Service on May 17, 2000. On September 6, 2000, Representative Morella moved to suspend the rules of the House and pass the bill. At the conclusion of debate, the yeas and nays were demanded and ordered. Pursuant to the provisions of clause 8, rule XX, the Chair announced that further proceedings on the motion would be postponed; it was considered as unfinished business. The motion to suspend the rules and pass the bill was agreed to by the yeas and nays (404–0). The motion to suspend the rules laid on the table was agreed to without objection. The Senate received the bill on September 7, 2000, and it was read twice and referred to the Committee on Governmental Affairs. On September 12, 2000, the bill was referred to the Subcommittee on International Security, Proliferation, and Federal Services. The Committee on Governmental Affairs ordered the bill to be reported favorably on September 27, 2000. On September 29, 2000, the bill was placed on the Senate Legislative Calendar No. 872. It passed the Senate by unanimous consent on October 6, 2000, and was cleared for the White House. It was presented to the President on October 12, 2000, and was signed by the President on October 19, 2000, when it became Public Law No. 106–334.

*d. Hearings.*—No hearing was conducted on H.R. 4448.

43. *H.R. 4449, to designate the facility of the U.S. Postal Service located at 1908 North Ellamont Street in Baltimore, MD, as the “Dr. Flossie McClain Dedmond Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4449 honors Dr. Flossie McClain Dedmond by naming a post office for her at 1908 North Ellamont Street in Baltimore. Dr. Dedmond earned a bachelor’s degree in English from Fisk University, a master’s degree from Columbia University and she pursued postgraduate studies in English and speech at Ohio State University and Catholic University of America, respectively. Dr. Dedmond taught and held administrative positions at Allen University, Benedict College, Knoxville College, Morgan State University and Coppin State College, where she spent 31 years in various posts, including Professor of English, Head of the English Department and chair of numerous committees, and Director of the Summer/Evening College. She retired as Dean of the Arts and Sciences Division. The first residence hall at Coppin State College was named “The Flossie M. Dedmond Center for Living and Learning.” Dr. Dedmond was bestowed the honor of “Dean Emeritus” when she retired from Coppin State. Dr. Dedmond passed away in September 1998.

*c. Legislative status.*—Representative Cummings introduced H.R. 4449 on May 15, 2000. The bill was cosponsored by all members of the House delegation from the State of Maryland. The bill was referred to the Committee on Government Reform on May 15, 2000, and to the Subcommittee on the Postal Service on May 17,

2000. On September 6, 2000, Representative Morella moved to suspend the rules of the House and pass the bill. The motion to suspend the rules and pass the bill was agreed to by voice vote. The motion to suspend the rules laid on the table was agreed to without objection. The Senate received the bill on September 7, 2000, and it was read twice and referred to the Committee on Governmental Affairs. On September 12, 2000, the bill was referred to the Subcommittee on International Security, Proliferation, and Federal Services. The Committee on Governmental Affairs ordered the bill to be reported favorably on September 27, 2000. On September 29, 2000, the bill was placed on the Senate Legislative Calendar No. 872. It passed the Senate by unanimous consent on October 6, 2000, and was cleared for the White House. It was presented to the President on October 12, 2000, and was signed by the President on October 19, 2000, when it became Public Law No. 106-335.

*d. Hearings.*—No hearings were conducted on H.R. 4449.

44. *H.R. 4975, to designate the post office and courthouse located at 2 Federal Square, Newark, NJ, as the “Frank R. Lautenberg Post Office and Courthouse.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4975 designates the post office and courthouse located at 2 Federal Square, Newark, NJ, as the “Frank R. Lautenberg Post Office and Courthouse.” Frank Lautenberg is the Senator from New Jersey who was appointed to complete the unexpired term of Senator Brady and was reelected in 1988 and 1994 for the term ending January 3, 2001. He is the son of an immigrant silk mill worker. He served with distinction in the U.S. Army Signal Corps from 1942 until 1946. Senator Lautenberg received his BS degree from Columbia University School of Business in New York in 1949 and served as commissioner of the Port Authority of New York and New Jersey from 1978 to 1982.

*c. Legislative status.*—Representative LoBiondo introduced H.R. 4975 on July 26, 2000. The bill was supported by the entire New Jersey congressional delegation. The bill was referred to the House Committee on Transportation and Infrastructure on July 26, 2000. The Committee on Transportation discharged it on September 14, 2000, and it was then referred to the House Committee on Government Reform. On September 19, Representative Barr moved to suspend the rules of the House and pass the bill. The motion was agreed to by voice vote and the motion to reconsider was laid on the table without objection. The bill was received in the Senate on September 20, 2000, and read twice. It passed the Senate by unanimous consent on October 6, 2000 and was cleared for the White House. H.R. 4975 was presented to the President on October 12, 2000, and signed by the President on October 23, 2000, when it became Public Law No. 106-347.

*d. Hearings.*—No hearing was conducted on this measure.

45. *H.R. 4625, to designate the facility of the U.S. Postal Service located at 2108 East 38th Street in Erie, PA, as the “Gertrude A. Barber Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4625 designates the facility of the U.S. Postal Service located at 2108 East 38th Street in Erie, PA, as the “Gertrude A. Barber Post Office Building.” Dr. Barber was a nationally and internationally known advocate for the developmentally disabled and a teacher by profession. President Kennedy appointed her as a delegate to the White House Conference on Children and Youth and as a member of his taskforce on mental retardation. In 1952 Dr. Barber opened a center, which now bears her name, for people with mental retardation and related development disabilities. The Barber Center later opened other group homes in Philadelphia and Pittsburgh. Dr. Barber died at the age of 80 in April 2000.

*c. Legislative status.*—H.R. 4625 was introduced by Representative English on June 9, 2000, and cosponsored by all members of the House delegation from the State of Pennsylvania. The bill was referred to the House Committee on Government Reform and referred to the Subcommittee on the Postal Service on June 20, 2000. The subcommittee considered and marked-up the bill on June 29, 2000, and forwarded it to the committee by voice vote. On September 19, 2000, Representative Barr moved to suspend the rules of the House and pass the bill. The motion was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. The bill was received in the Senate, read twice, and referred to the Committee on Governmental Affairs on September 20, 2000. The committee discharged the bill by unanimous consent and the Senate passed the bill by unanimous consent on October 24, 2000, when it was also cleared for the White House. It was presented to the President on October 26, 2000, and signed by the President on November 6, 2000, when it became Public Law No. 106-440.

*d. Hearings.*—No hearing was held on this legislation.

46. *H.R. 4786, to designate the facility of the U.S. Postal Service located at 110 Postal Way in Carrollton, GA, as the “Samuel P. Roberts Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4786 honors Samuel P. Roberts by naming a post office after him at 110 Postal Way in Carrollton, GA. Sam Roberts was born in 1937 in Rome, GA, and obtained a degree in insurance management from Georgia State University in 1963. He ran his own insurance agency for several years and decided to run for the Georgia State Senate, winning the seat in 1996. He was reelected in 1998, but his second term was cut short by his untimely death in January 2000.

*c. Legislative status.*—Representative Barr introduced H.R. 4786 on June 29, 2000. It was referred to the Committee on Government Reform on June 29, 2000, and then to the Subcommittee on the Postal Service on August 11, 2000. All members of the House delegation from the State of Georgia cosponsored the legislation. On September 19, 2000, Representative Barr moved to suspend the rules of the House and pass the bill. The motion was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. H.R. 4786 was received in the Senate, read twice, and referred to the Committee on Governmental Affairs

on September 20, 2000. The committee discharged the bill by unanimous consent on October 24, 2000, and the Senate passed the bill by unanimous consent the same day and cleared it for the White House. It was presented to the President on October 26, 2000, and signed by the President on November 6, 2000, becoming Public Law No. 106-441.

*d. Hearings.*—No hearing was conducted on this measure.

47. *H.R. 4450, to designate the facility of the U.S. Postal Service located at 900 East Fayette Street in Baltimore, MD, as the “Judge Harry Augustus Cole Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4450 designates the facility of the U.S. Postal Service located at 900 East Fayette Street in Baltimore, MD, as the “Judge Harry Augustus Cole Post Office Building.” Judge Harry August Cole was a man of many firsts. He was the first African American Assistant Attorney General in Baltimore City; the first African American to be elected to the State Senate of Maryland; the first chairman of the Maryland Advisory Committee to the U.S. Civil Rights Commission; and the first African American to be named to the Maryland Court of Appeals. Judge Cole was a veteran of World War II. He graduated from the University of Maryland School of Law and practiced criminal and civil rights law.

*c. Legislative status.*—Representative Cummings introduced this legislation on May 15, 2000. It was referred to the Committee on Government Reform and on May 17, 2000, it was referred to the Subcommittee on the Postal Service. All members of the House delegation of the State of Maryland cosponsored H.R. 4450. On September 19, 2000, Representative Barr moved to suspend the rules of the House and pass the bill. The motion to pass the bill was agreed to by voice vote, and the motion to reconsider laid on the table was agreed to without objection. H.R. 4450 was received in the Senate on September 20, 2000, read twice and referred to the Committee on Governmental Affairs. The committee discharged the bill by unanimous consent on October 24, 2000, and the Senate passed the bill by unanimous consent. It was cleared for the White House the same day and presented to the President on October 26, 2000. The President signed the bill on November 6, 2000, and it became Public Law No. 106-438.

*d. Hearings.*—No hearing was conducted on this bill.

48. *H.R. 4451, to designate the facility of the U.S. Postal Service located at 1001 Frederick Road in Baltimore, MD, as the “Frederick L. Dewberry, Jr. Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4451 designates the U.S. Postal Service facility located at 1001 Frederick Road in Baltimore, MD, as the “Frederick L. Dewberry, Jr. Post Office Building.” Frederick L. Dewberry, Jr., was born and raised in Baltimore City. He received his undergraduate degree from Loyola College and his law degree from the University of Baltimore. Mr. Dewberry served with distinction during World War II. He became the chairman of the Baltimore County Council in 1964 and he was then appointed Dep-

uty Secretary of the Maryland Department of Transportation from 1979 to 1984.

*c. Legislative status.*—Representative Cummings introduced H.R. 4451 on May 15, 2000. All members of the House delegation from the State of Maryland cosponsored the legislation. The bill was referred to the Committee on Government Reform on May 15, 2000. On September 25, 2000, Representative Biggert moved to suspend the rules of the House and pass the bill. The motion was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. H.R. 4451 was received in the Senate on September 26, 2000, read twice and referred to the Committee on Governmental Affairs. The committee discharged the measure by unanimous consent on October 24, 2000. The same day, the Senate passed the bill by unanimous consent and it was cleared for the White House. It was presented to the President on October 26, 2000, and signed by the President on November 6, 2000, becoming Public Law No. 106-439.

*d. Hearings.*—No hearing was conducted on this measure.

49. *S. 1295, a bill to designate the U.S. Post Office located at 3813 Main Street in East Chicago, IN, as the "Lance Corporal Harold Gomez Post Office."*

*a. Report number and date.*—None.

*b. Summary of measure.*—S. 1295 designates the U.S. Post Office located at 3813 Main Street in East Chicago, IN, as the Lance Corporal Harold Gomez Post Office." Harold Gomez was born in 1946 in East Chicago, IN. After graduating from high school he enlisted in the U.S. Marine Corps in 1965. Following basic training in San Diego, CA, he was sent to Vietnam in March 1966. Corporal Gomez was a fire team leader in a rifle company of the third Marine Division when, in 1967, a landmine explosion in South Vietnam killed him. He was the first citizen from northwest Indiana to die of casualties in the Vietnam War. Corporal Gomez received numerous awards, including the Purple Heart, the Combat Action Ribbon, the Presidential Unit Citation, the National Defense Service Medal, the Vietnam Service Medal, RVN Military Merit Medal, RVN Gallantry Cross Medal, the Vietnam Campaign Medal, and the Rifle sharpshooters Badge. Corporal Gomez was posthumously awarded the Silver Star Medal for his courageous leadership and heroism.

*c. Legislative status.*—This bill was introduced by Senator Lugar on June 28, 1999. (This legislation is identical to H.R. 2358, introduced by Representative Visclosky on June 24, 1999.) S. 1295 was read twice and referred to the Committee on Governmental Affairs on June 28, 1999. It was referred to the Subcommittee on International Security on July 15, 1999. On November 3, 1999, the Committee on Governmental Affairs ordered the bill to be favorably reported. It was placed on the Senate Legislative Calendar No. 398 under general orders. The Senate passed the bill by unanimous consent on November 19, 1999, and it was received in the House on November 22, 1999, and held at the desk. On January 27, 2000, S. 1295 was referred to the House Committee on Government Reform and on February 4, 2000, it was referred to the Subcommittee on the Postal Service. On September 27, 2000, Chairman McHugh moved that the House suspend the rules and pass the bill. The mo-

tion was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. S. 1295 was cleared for the White House on September 27, 2000 and was presented to the President on September 29, 2000. The President signed the legislation on October 10, 2000, which became Public Law No. 106–289.

*d. Hearings.*—No hearing was held on this bill.

50. *H.R. 5229, to designate the facility of the U.S. Postal Service located at 219 South Church Street in Odum, GA, as the “Ruth Harris Coleman Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5229 designates the facility of the U.S. Postal Service located at 219 South Church Street in Odum, GA, as the “Ruth Harris Coleman Post Office.” Ruth Coleman was a schoolteacher and played a dynamic role in the activities of Odum as the originator and director of Odum Day. She was named Odum’s Citizen of the Year in 1998, and was the former Chair of the Wayne County chapter of the AARP. She was a member of the Wayne Memorial Hospital Auxiliary and chaired the American Red Cross Blood Drive in Wayne County for many years. She also served as Chair of the Harris Family Reunion and was the organizer of the Odum Sunlighters. Ruth Harris Coleman passed away in 1998 at age 70.

*c. Legislative status.*—Representative Kingston introduced H.R. 5229 on September 20, 2000. The bill was referred to the Committee on Government Reform and on October 4, 2000, it was referred to the Subcommittee on the Postal Service. All members of the House delegation from the State of Georgia cosponsored this measure. Representative Morella moved to suspend the House rules and pass the bill on October 10, 2000. The motion was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. The bill was received in the Senate on October 11, 2000, and read twice. H.R. 5229 passed the Senate by unanimous consent on October 24, 2000, and it was cleared for the White House. The legislation was presented to the President on October 26, 2000, and the President signed it on November 7, 2000. It became Public Law No. 106–454.

*d. Hearings.*—No hearing was conducted on the bill.

51. *H.R. 4831, to redesignate the facility of the U.S. Postal Service located at 2339 North California Street in Chicago, IL, as the “Roberto Clemente Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4831 designates the U.S. Postal Service facility located at 2339 North California Street in Chicago, IL, as the “Roberto Clemente Post Office.” Roberto Clemente was born in 1934 in Carolina, Puerto Rico, the son of a foreman of a sugar cane plantation and grocery store operator. He played softball as a youngster and then played with a professional, major-league caliber team until 1953 when his .356 batting average came to the attention of the Brooklyn Dodgers. The Dodgers gave Roberto a bonus and sent him to the Montreal Royals, ordering that he should not play because another team may draft him. He was,

however, drafted by the Pittsburgh Pirates after an observant Pirate scout spotted him. Roberto Clemente played for several years as their star outfielder until 1972 when he met his untimely and tragic death when he was only 38 years old. He was thought by many as the greatest and most complete player but he was also the victim of dual discrimination for being Black and Hispanic. 28 years after the fatal plane crash while on a mission of mercy, taking humanitarian supplies to the victims of an earthquake in Nicaragua, he is no longer the invisible player. Roberto Clemente led the Pirates to World Series victories in 1960 and 1971; he was the National League batting champion in 1961, 1964, 1965, and 1967; he was awarded 12 gold gloves; he established a major league record by leading the National League in assists five times, and he was inducted into the Baseball Hall of Fame at Cooperstown, the first Latin player so honored.

*c. Legislative status.*—Representative Gutierrez introduced H.R. 4831 on July 12, 2000. It was referred to the House Committee on Government Reform and then, on July 21, 2000, it was referred to the Subcommittee on the Postal Service. The legislation was co-sponsored by the entire House delegation from the State of Illinois. The subcommittee considered and marked-up the bill on October 4, 2000, and forwarded it to the committee, as amended, by voice vote. Representative Morella moved to suspend the House rules and pass the bill, as amended, on October 10, 2000. The motion was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. The title of the measure was amended and agreed to without objection. The Senate received the bill on October 11, 2000, and it was read twice. On October 24, 2000, the Senate passed the bill by unanimous consent and cleared it for the White House. The bill was presented to the President on October 26, 2000. On November 7, 2000, the President signed the bill and it became Public Law No. 106-452.

*d. Hearings.*—No hearing was held on this measure.

52. *S. 2686, a bill to amend chapter 36 of title 39, United States Code, to modify rates relating to reduced rate mail matter, and for other purposes.*

*a. Report number and date.*—Senate Report 106-468.

*b. Summary of measure.*—S. 2686 provides relief to the category of mail that provides educational magazines for students in kindergarten through high school. The legislation provides that nonprofit periodicals and classroom publication receive the same treatment. It ensures that future rate increases for both categories are predictable. The report language strongly recommends that the rates be monitored to evaluate the impact postal rates have on the economic capability of these mailers to determine if there is a need for more fundamental resolution to the rate concerns of classroom publishers. This legislation contains a provision to alleviate the impact of the changes on regular-rate payers in the postal rate case before the Postal Rate Commission. Under this provision, the estimated reduction in postal revenue from Nonprofit Standard (A) mail case by the enactment of the new ratemaking rules is to be treated as a reasonably assignable cost of the Postal Service to be apportioned among the various classes of mail and types of postal service in ac-



cordance with existing provisions in title 39 of the United States Code.

*c. Legislative status.*—S. 686 was introduced by Senator Cochran on June 7, 2000. It was read twice and referred to the Committee on Governmental Affairs. It was referred to the Subcommittee on International Security, Proliferation and Federal Services on June 20, 2000. The Committee on Governmental Affairs ordered the legislation to be reported favorably on September 27, 2000. The Committee on Governmental Affairs passed the bill with a written report No. 106-468 on October 3, 2000. It was placed on the Senate Legislative Calendar No. 917 under general orders. It passed the Senate with an amendment by unanimous consent. The bill was received in the House on October 1, 2000, and referred to the House Committee on Government Reform. The committee discharged the bill on October 11, 2000. Chairman McHugh asked unanimous consent to discharge from committee and consider the bill. The bill passed without objection and the motion to reconsider laid on the table was agreed to without objection. The bill was cleared for the White House on October 11, 2000. It was presented to the President on October 19, 2000. The President signed the bill on October 27, 2000. It became Public Law No. 106-384.

*d. Hearings.*—No hearing was scheduled on this legislation.

53. *H.R. 4853, to redesignate the facility of the U.S. Postal Service located at 1568 South Glen Road in South Euclid, OH, as the "Arnold C. D'Amico Station."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4853 designates the U.S. Postal Service facility located at 1568 South Glen Road in South Euclid, OH, as the Arnold C. D'Amico Station. Mr. D'Amico was born in Warren, OH. He served in the Army during World War II and then attended and graduated from Kent State University with a degree in business administration. He became the Comptroller of the Alenbrah Park Center of the Aging in Beachwood, OH, in 1968. He then was elected to the South Euclid City Council in 1968, and in 1972 he was elected mayor of South Euclid. He became the city's first full time mayor in 1976. He was president of the Cuyahoga County Mayors Association, chairman and treasurer of the Regional Income Tax Authority and Service on the Cuyahoga County Planning Commission and the Ohio Municipal League. He was also a member of the American Legion, Little Italy Retirees, Italian Sons and Daughters of America and served on the Board of the Advisors of Notre Dame College of Ohio.

*c. Legislative status.*—H.R. 4853 was introduced by Representative Stephanie Tubbs Jones on July 13, 2000, and it was referred to the Committee on Government Reform. The bill was cosponsored by the entire House delegation of the State of Ohio. It was referred to the Subcommittee on the Postal Service on July 21, 2000. The subcommittee considered and marked up the bill on October 4, 2000. It was forwarded to the committee, as amended, by voice vote. On October 12, 2000, Chairman McHugh asked unanimous consent to discharge the legislation from the Committee on Government Reform and to consider the measure under unanimous consent. Mr. McHugh offered an amendment in the nature of a sub-

stitute (H. Amdt. 1055), and the House agreed to the McHugh amendment without objection. The legislation passed without objection and the motion to reconsider laid on the table was agreed to without objection. The title was amended and agreed to without objection. H.R. 4853 was received in the Senate on October 13, and read twice. It passed the Senate by unanimous consent on October 24, 2000, and was cleared for the White House. It was presented to the President on October 26, and was signed by the President on November 7, 2000. It became Public Law No 106-453.

*d. Hearings.*—No hearing was scheduled on this measure.

54. *H.R. 5143, to designate the facility of the U.S. Postal Service located at 3160 Irvin Cobb Drive, in Paducah, KY, as the "Morgan Station."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5143 designates the U.S. Postal Service facility located at 3160 Irvin Cobb Drive in Paducah, KY, as the "Morgan Station." Fred Morgan, who is being honored, grew up in the Littleville community of Paducah's southside in Kentucky. Mr. Morgan served in the General Assembly of Kentucky for most of his 30 year span in public service. He devoted his time to improving education, and helping the poor and downtrodden.

*c. Legislative status.*—This legislation was introduced by Representative Whitfield on September 7, 2000. It is cosponsored by the entire House delegation of the State of Kentucky. The legislation was referred to the Committee on Government Reform and then referred to the Subcommittee on the Postal Service on September 13, 2000. On October 4, 2000, the subcommittee considered and marked-up the bill and forwarded it to the committee by voice vote. On October 24, 2000, Representative LaTourette moved to suspend the rules of the House and pass the bill. The motion was agreed to and the bill passed by voice vote. The motion to reconsider laid on the table and was agreed to without objection. The bill was received in the Senate on October 25, 2000.

*d. Hearings.*—No hearing was scheduled on H.R. 5143.

55. *H.R. 5144, to designate the facility of the U.S. Postal Service located at 203 West Paige Street, in Tompkinsville, KY, as the "Tim Lee Carter Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5144 designates the U.S. Postal Service facility located at 203 West Paige Street, in Tompkinsville, KY, as the "Tim Lee Carter Post Office Building." Representative Tim Carter was born in Tompkinsville in 1910. He graduated from Western Kentucky University in 1934 and earned a medical degree from the University of Tennessee. He spent 3½ years as a combat medic in World War II. He was elected to Congress and gained national attention as the first Republican Congressman to seek withdrawal from Vietnam; however, he never wavered in his support for the troops fighting in that theater. He was known as a defender of President Nixon during the impeachment hearing of 199784, but he was also allied with President Johnson's Great Society programs to improve our Nation's poorest districts to improve schools, water systems, libraries, airports, roads, and recreation; he supported

taxes to pay for these programs. He was the only practicing physician during much of his 16 years service in the House. He said that the passage of a law that provided preventative medical care for poor children was his most important legislative achievement. He was an early advocate of National Insurance for catastrophic illness. When he retired from Congress, Dr. Carter returned to the practice of medicine and his farm on the Cumberland River. Dr. Carter died in 1987.

*c. Legislative status.*—H.R. 5144 was introduced by Representative Whitfield on September 7, 2000. All members of the House delegation from the State of Kentucky cosponsored the bill. The legislation was referred to the Committee on Government Reform. On September 15, 2000, the bill was referred to the Subcommittee on the Postal Service. The subcommittee considered and marked up the bill on October 4, 2000, and forwarded it to the committee by voice vote. On October 24, Representative LaTourette moved to suspend the rules of the House and pass the bill. The bill was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. The legislation was received in the Senate on October 25, 2000.

*d. Hearings.*—No hearings were scheduled on this legislation.

56. *H.R. 5068, to designate the facility of the U.S. Postal Service located at 5927 Southwest 70th Street in Miami, FL, as the “Marjory Williams Scrivens Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5068 designates the facility of the U.S. Postal Service located at 5927 Southwest 70th Street in Miami, FL, as the “Marjory Williams Scrivens Post Office.” Marjory Scrivens started working for the U.S. Postal Service in 1970 and in 1972, she was one of the first women to deliver mail in the Miami-Dade County area in Florida. Ms. Scrivens died in 1999.

*c. Legislative status.*—Representative Meek introduced this legislation on July 27, 2000. All members of the House delegation from the State of Florida cosponsored this legislation. The bill was referred to the Committee on Government Reform on July 27, 2000, and to the Subcommittee on the Postal Service on August 11, 2000. On October 24, Representative LaTourette moved to suspend the House rules and pass the bill. The motion to suspend the rules and pass the bill was agreed to by voice vote. The motion to reconsider laid on the table was agreed to without objection. The legislation was received in the Senate on October 25, 2000.

*d. Hearings.*—No hearings were scheduled on the bill.

57. *H.R. 5210, to designate the facility of the U.S. Postal Service located at 200 South George Street in York, PA, as the “George Atlee Goodling Post Office Building.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5210 designates the facility of the U.S. Postal Service located at 200 South George Street in York, PA, as the “George Atlee Goodling Post Office Building.” George Goodling was born in Loganville, PA in 1896. He attended public schools in York County, York Collegiate Institute, and Bellefont Academy. He graduated from Pennsylvania State University with a BS de-

gree in 1921. During World War I, he served as a Seaman, Second Class with the U.S. Navy. Mr. Goodling also held positions as director of a bank, motor club, and insurance company. In 1943, Mr. Goodling was elected to the Pennsylvania House of Representatives and served until 1957. He also served as a school director from 1933 to 1961. Mr. Goodling was elected to serve in the 87th and 88th Congresses and was again elected to the 90th and to three succeeding Congresses. After retirement from Congress in 1975, he lived in Loganville and tended his fruit orchards that have been in his family for more than a century. Representative George Goodling lived in Loganville, York County, PA, until his death in October 1982.

*c. Legislative status.*—Representative Goodling introduced this legislation on September 19, 2000. All members of the House delegation of the State of Pennsylvania cosponsored H.R. 5210. The bill was referred to the Committee on Government Reform on September 19, 2000. On October 17, 2000, Representative Ose moved to suspend the rules and pass the bill. The bill was agreed to by voice vote and the motion to reconsider laid on the table was agreed to without objection. The legislation was received in the Senate and read twice on October 18, 2000. The Senate passed the bill by unanimous consent on December 14, 2000, and sent a message to the House on its action.

*d. Hearings.*—No hearing were scheduled on this legislation.

58. *H.R. 5016, to redesignate the facility of the U.S. Postal Service located at 514 Express Center Drive in Chicago, IL, as the "J.T. Weeker Service Center."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5016 designates that the facility of the U.S. Postal Service located at 514 Express Center Drive in Chicago, IL, as the "J.T. Weeker Service Center." John Thomas "J.T." Weeker was born in New York, NY, in 1947 and grew up in Webster, NY. He graduated from Cornell University in 1969 and commenced his career with the Postal Service in Akron, OH, in 1972 as District Director, Employee Relation. He served in a number of management positions with the Postal Service throughout the Nation. In 1988 he was appointed General Manager and Postmaster of the Albany, NY Field Division. In 1993 he was appointed District Manager for the Albany District. Mr. Weeker was noted for his innovative leadership style and team building abilities. Mr. Weeker died at the age of 52 in January 2000.

*c. Legislative status.*—H.R. 5016 was introduced by Representative Blagojevich on July 7, 2000. All members of the House delegation from the State of Illinois cosponsored the measure. The bill was referred to the House Committee on Government Reform on July 27, 2000, and to the Subcommittee on the Postal Service on August 11, 2000. The legislation was considered and marked up by the subcommittee on October 4, 2000, and forwarded to the committee, as amended, by voice vote. On October 17, 2000, Representative Ose moved to suspend the rules of the House and pass the bill, as amended. The motion to pass the bill, as amended, was agreed by voice vote and the motion to reconsider laid on the table was agreed to without objection. H.R. 5016 was received in the

Senate on October 18, 2000, and read twice. The Senate passed the bill by unanimous consent on December 14, 2000, and sent a message to the House on its action.

*d. Hearings.*—No hearing was scheduled for this legislation.

59. *H.R. 5903, to designate the facility of the U.S. Postal Service located at 2305 Minton Road in West Melbourne, FL, as the "Ronald W. Reagan Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 5903 designates the postal facility at 2305 Minton Road in West Melbourne, FL, as the "Ronald W. Reagan Post Office Building." Mr. Reagan was our 40th President. He won a landslide victory in 1980 and was easily reelected 4 years later. Ronald Wilson Reagan came from humble beginnings. He was born in Tampico, IL, the son of an unsuccessful salesman with a serious drinking problem. His mother was a devout member of the Disciples of Christ Church. After moving to various locations the family settled in Dixon, IL, where his father became part owner of a shoe store, and his mother did occasional work to supplement the family's meager income. Young Ronald Reagan excelled in sports and received a scholarship to attend Eureka College. Even with a scholarship, he had to work hard at several jobs to stay in college. He graduated with a BA in economics and sociology, the first person in his family to attend college. He showed an early interest in politics but did not participate. He became a very popular sportscaster in Iowa and soon thereafter he went to Hollywood. He brought his parents to live with him in California. Though he wasn't an instant star, he was a steady worker and became the president of the Screen Actors Guild [SAG] in 1947. His activities with SAG aroused his latent interest in politics. He helped his longstanding friend, Barry Goldwater, in his bid to win Presidency and soon afterwards, Mr. Reagan was persuaded to run for Governor of California, a race he won by a landslide over a popular incumbent Governor. He won reelection in 1970. Ronald Reagan was nominated for President in 1980, supporting issues of family, work, neighborhood, peace, and freedom. He became the oldest President to be elected in our Nation's history. Two months after his election, he was the victim of an assassination attempt, but made a remarkable recovery. In 1994, after several years of writing, travelling, and silence, former President Reagan—who was known as the Great Communicator—wrote a handwritten letter informing the Nation that he had early stages of Alzheimer's disease.

*c. Legislative status.*—This bill was introduced by Representative Dave Weldon on September 26, 2000. All members of the House delegation of the State of Florida cosponsored it. The bill was referred to the House Committee on Government Reform on September 26 and to the Subcommittee on the Postal Service on October 12, 2000. On October 26, 2000, Chairman McHugh moved to suspend the rules of the House and pass the bill. At the conclusion of the debate, the chair put the question on the motion to suspend the rules. Ms. Brown (FL) objected to the vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed until October 27, 2000. The point of no quorum as withdrawn. On October 27, 2000, H.R. 5309 was considered as unfin-

ished business. The motion to suspend the rules and pass the bill was agreed to by a recorded vote (376–8). The motion to reconsider laid on the table was agreed to without objection. The bill was received in the Senate on October 27, 2000.

*d. Hearings.*—No hearing was conducted on this bill.

60. *S. 3194, a bill to designate the facility of the U.S. Postal Service located at 431 George Street in Millersville, PA, as the “Robert S. Walker Post Office.”*

*a. Report number and date.*—None.

*b. Summary of measure.*—S. 3194 designates the U.S. Postal Service facility located at 431 George Street in Millersville, PA, as the “Robert S. Walker Post Office.” Robert Walker represented the people of Millersville and the people of the 16th District of Pennsylvania for 20 years in the U.S. House of Representatives before he decided to retire from the House. He became a member of the Republican leadership early in his career and was known as a strategist, tactician, and expert on parliamentary process. He was the floor manager, chairman of the Republican Leadership, and Chief Deputy Minority Whip. For more than a decade he was a major player in all the major decisions made by the House GOP. When the Republican gained a majority in the House, he became the chairman of the House Science Committee and the vice-chairman of the Budget Committee. NASA awarded him its highest honor, the Distinguished Service Medal, in 1996 for his leadership in advancing the Nation’s space program, particularly commercial space endeavors. He was the first sitting House Member to receive this award. Though he retired from the House, he remains a strategist, and continues his interest and participation in public policy. Among his numerous activities, Mr. Walker also serves on the Board of Trustees of the Aerospace Corporation, the U.S. Capitol Historical Society, and the U.S. Space Foundation.

*c. Legislative status.*—S. 3194 was introduced by Senator Santorum on October 12, 2000. It was read twice and referred to the Committee on Governmental Affairs. The committee discharged the measure by unanimous consent on October 24, 2000, and it passed the Senate by unanimous consent. The House received the legislation the next day and it was referred to the Committee on Government Reform. On October 26, 2000, Chairman McHugh moved to suspend the rules of the House and pass the bill. At the conclusion of debate the chair put the question on the motion to suspend the rules. Ms. Brown (FL) objected to the vote on the grounds that a quorum was not present. Further proceeding on the motion were postponed until October 27, 2000. The point of no quorum was withdrawn. On October 27, 2000, the motion to suspend the rules and pass the bill was agreed to by recorded vote (379–7). The motion to reconsider laid on the table was agreed to without objection. The bill was cleared for the White House on October 27, 2000, and presented to the President on November 14, 2000. The President signed the measure on November 22, 2000 and it became Public Law No. 106–535.

*d. Hearings.*—No hearing was scheduled on S. 3194.

61. *H.R. 4339, to designate the facility of the U.S. Postal Service located at 440 South Orange Blossom Trail in Orlando, FL, as the "Arthur 'Pappy' Kennedy Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4339 designates the facility of the U.S. Postal Service located at 440 South Orange Blossom Trail in Orlando, FL, as the "Arthur 'Pappy' Kennedy Post Office Building." Mr. Arthur Kennedy was elected to the Orlando City Council in 1972. He was the first African-American commissioner of that city. Arthur Kennedy, fondly known as "Pappy," attended Bethune-Cookman College. He worked tirelessly as an advocate for the poor and underprivileged and is associated with many organizations, including the NAACP, Meals on Wheels, and the United Negro College Fund. Arthur Kennedy died in 2000.

*c. Legislative status.*—Representative Brown introduced H.R. 4339 on May 9, 2000. It was referred to the Committee on Government Reform and further referred to the Subcommittee on the Postal Service on May 12, 2000. All members of the House delegation from the State of Florida cosponsored the legislation. On October 26, 2000, Chairman McHugh moved to suspend the rules and pass the bill, as amended. At the conclusion of the debate, the chair put the question on the motion to suspend the rules. Mr. McHugh objected to the vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed until October 27, 2000. The point of no quorum was withdrawn. The measure was considered as unfinished business on October 27, 2000. The motion to suspend the rules and pass the bill, as amended, was agreed to by voice vote. The motion to reconsider laid on the table was agreed to without objection and the title of the measure was amended and agreed to without objection. The bill was received in the Senate on October 27, 2000.

*d. Hearings.*—No hearing was scheduled on this bill.

62. *H.R. 4400, to designate the facility of the U.S. Postal Service located at 1601-1 Main Street in Jacksonville, FL, as the "Eddie Mae Steward Post Office Building."*

*a. Report number and date.*—None.

*b. Summary of measure.*—H.R. 4400 designates the U.S. Postal Service facility located at 1601-1 Main Street in Jacksonville, FL, as the "Eddie Mae Steward Post Office Building." Ms. Steward's single-handed efforts lead to court-ordered desegregation of the schools in Duval County, FL. Ms. Steward was a graduate of Edward Waters College in Jacksonville. Ms. Steward was a dedicated civil rights activist who served as Florida State President of the NAACP from 1973-1974, and as the secretary of the Duval County Democratic Executive Committee. Ms. Steward passed away in March 2000.

*c. Legislative status.*—H.R. 4400 was introduced by Representative Brown on May 9, 2000. All members of the House delegation of the State of Florida cosponsored the measure. It was referred to the Committee on Government Reform and further referred to the Subcommittee on the Postal Service on May 12, 2000. On October 26, 2000, Chairman McHugh moved to suspend the rules and pass the bill, as amended. At the conclusion of the debate, the chair put

the question on the motion to suspend the rules. Mr. McHugh objected to the vote on the grounds that a quorum was not present. Further proceedings on the motion were postponed until October 27, 2000. The point of no quorum was withdrawn. The measure was considered as unfinished business on October 27, 2000. The motion to suspend the rules and pass the bill, as amended, was agreed to by voice vote. The motion to reconsider laid on the table was agreed to without objection and the title of the measure was amended and agreed to without objection. The bill was received in the Senate on October 27, 2000.

*d. Hearings.*—There were no hearings on H.R. 4400.

## B. REVIEW OF LAWS WITHIN COMMITTEE'S JURISDICTION

### FULL COMMITTEE

Hon. Dan Burton, *Chairman*

#### *1. Review of the Implementation of the Government Performance and Results Act of 1993, Public Law 103-62.*

The Committee on Government Reform has primary jurisdiction over a series of important accountability laws, primarily the Government Performance and Results Act of 1993, the Chief Financial Officers Act of 1990, the Clinger-Cohen Act of 1996, and the Inspector General Act of 1980. These laws require Federal agencies to provide Congress with performance information regarding their programmatic, financial, and information systems. With this information, the quality of Federal agency decisionmaking is enhanced and Congress is better able to hold government accountable to the American taxpayers.

Prior to enactment of the Government Performance and Results Act [Results Act], congressional policymaking, spending decisions, and oversight had been severely handicapped by a lack of clear program goals and inadequate program performance and cost information. The goal of the Results Act was to remedy that situation by requiring agencies to clarify their missions, set clear goals, and report on their progress.

The Results Act is designed to provide policymakers and the public with systematic, reliable, information about Federal programs and activities. This law is an important part of the legislative framework enacted by Congress during the last decade to hold agencies accountable for improvements in the way they manage their programs, finances, and information technology.

As described in the section on "Review of Laws Within the Committee's Jurisdiction," the Government Reform Committee has worked closely with the House Republican leadership to educate and involve all congressional committees in the successful implementation of the Results Act. Part of that educational process has included several subcommittee hearings, highlighting the act as a tool for more productive oversight and ultimately better-informed policy decisions.

During the 106th Congress, the committee continued its review of the implementation of the Results Act. In March 1999, Chairman Burton and Chairman Bill Young of the House Appropriations Committee sent a letter to agency heads urging them to develop



“specific and measurable annual performance targets” to deal with their management problems and to address these issues in appropriations hearings.

On March 31, 2000, agencies’ first performance reports were required by the Results Act. The purpose of performance reports is to describe an agency’s performance relative to its goals, and steps an agency would take to achieve goals that were not met.

On October 27, 2000, the House passed S. 2712, the Reports Consolidation Act of 2000. The bill provides permanent and enhanced authority for the consolidation of financial and performance management reports; the most significant of these reports is the Results Act Annual Performance Report. It also contains several enhancements designed to make the reports more useful to Congress, the executive branch, and the public. For example, the bill changed the deadline for Annual Performance Reports to March 1st effective 2002 in order to make the reports more useful for the budget cycles.

The bill was sponsored jointly by Chairman Fred Thompson of Senate Governmental Affairs Committee and Ranking Minority Member Joe Lieberman. The legislation passed the Senate on July 19, 2000. It was signed by the President and became law on November 22, 2000 (Public Law 106–531).

In July 2000, the Subcommittee on Government Management, Information, and Technology held a hearing entitled, “Seven Years of GPRA, Has the Results Act Provided Results?” Testimony addressed the quality and use of fiscal year 1999 performance reports, performance plans, and the use of results-related information in budgeting and appropriations processes. Chairman Burton submitted testimony stating that one way to further implement the Results Act in the executive branch was through performance agreements.

In November of 2000, GAO released a study entitled, “Managing for Results: Emerging Benefits From Selected Agencies’ Use of Performance Agreements” requested by Chairman Dan Burton. The report focused on the efforts of three agencies, Veterans Health Administration, the Department of Transportation, and the Department of Education’s Office of Student Financial Assistance.

These agencies established performance agreements between their top leadership and senior political and career executives. The agencies use performance agreements with their top executives to define accountability for goals, monitor progress during the year, and then evaluate executive performance at the end of the year. The GAO report concluded that these performance agreements clearly benefit the agencies, as well as the executives.

More work needs to be done by agencies and Congress in order for this law to be successfully implemented. For example, many problems persist within agencies due to non-validated and non-verifiable data. General Accounting Office reports and congressional reviews indicate that many agencies still do not use results-oriented goals and measures. Also, many Results Act goals and measures do not reflect an agency’s day to day management activities.

Although, the 106th Congress has shown that more work needs to be done in this area, it also has proven that there is a growing

interest in using results-oriented information in authorizations, oversight, and appropriations by Congress.

#### SUBCOMMITTEE ON THE CENSUS

Hon. Dan Miller, *Chairman*

1. *Title 13, United States Code, Committee Print 105-C, January 1998.*

On January 25, 1999, the U.S. Supreme Court handed down its decision in *Department of Commerce, et al. v. United States House of Representatives, et al.*, 119 S. Ct. 765 (1999). The court held that the Census Act prohibits statistical sampling in determining the population for purposes of apportionment of the U.S. House of Representatives. This decision was a culmination of two lawsuits brought to challenge the Census Bureau's proposed plan to use statistical sampling to determine the population for purposes of apportionment of the U.S. House of Representatives. Two separate lawsuits, *United States House of Representatives v. Department of Commerce, et al.*, 11 F. Supp.2d 76 (D.D.C 1998) and *Glavin, et al. v. Clinton, et al.*, 19 F. Supp.2d 543 (E.D. Va. 1998) challenged the legality and constitutionality of the Census Bureau's plans. Convened as three-judge courts, both the District Court for the District of Columbia and the District Court for the Eastern District of Virginia held that the Census Act, 13 U.S.C. § 1 *et seq.*, prohibited statistical sampling in the apportionment census. *United States House of Representatives*, 11 F. Supp.2d at 104; *Glavin*, 19 F. Supp.2d at 552–53. Further, both courts ordered that the Department of Commerce and the Census Bureau were permanently enjoined from using any form of statistical sampling, including their program for nonresponse follow-up and integrated coverage measurement, to determine the population for purposes of apportionment. *Id.* As the statutory interpretation was dispositive of the sampling issue, both courts declined to decide the constitutional question. *Id.*

a. *Justice O'Connor Delivered the Opinion of the Court*

The U.S. Supreme Court began its analysis with whether the *Glavin* plaintiffs had satisfied article III standing. The court noted that to establish standing, “[a] plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *Id.* at 772 (citations omitted). Furthermore, “a plaintiff must establish that there exists no genuine issue of material fact as to justiciability or the merits” in order to prevail on a motion for summary judgment. *Id.* Though the lower court did not consider whether there was any genuine issue of material fact, the court affirmed the lower court’s finding of article III standing because the record supported the plaintiffs’ position. *Id.* at 773.

The court found article III standing on two grounds. First, the Indiana plaintiff successfully showed that under the Department’s proposed plan, Indiana would lose a seat in the U.S. House of Representatives, thereby diluting the votes of Indiana residents. This threat of vote dilution was “concrete and >actual or imminent, not conjectural or hypothetical.” *Id.* at 774. Furthermore, this injury

was traceable to the use of sampling and the requested relief, an injunction against the use of sampling, would redress the alleged injury. *Id.*

The plaintiffs also established standing on the expected effects of sampling on intrastate redistricting. *Id.* at 774. The court noted that many State laws require the use of Federal decennial census population numbers for State redistricting. The plaintiffs who live in those States “have a strong claim that they will be injured by the Bureau’s plan because their votes will be diluted vis-a-vis residents of counties with larger ‘undercount’ rates. . . . [T]his expected intrastate vote dilution satisfies the injury-in-fact, causation, and redressibility requirements.” *Id.* at 775.

On the merits, the court began with an examination of the historical background of the census, as well as the Census Act, 13 U.S.C. § 1, et seq. Until 1957, enumerators were required to collect all census information through personal visits to every household. *Id.* at 776. At the Secretary of Commerce’s request, Congress enacted § 195 to authorize the use of sampling in gathering nonapportionment census information, much of which is collected today through the “long form” questionnaire. *Id.* In 1964, Congress repealed the law requiring that information be obtained through personal visits. This permitted the Census Bureau to replace the personal visit with a mailed census questionnaire to be returned by the U.S. Postal Service. *Id.*

Then, in 1976 Congress revised both §§ 141 and 195. Section 141 was amended to provide for the use of sampling procedures and special surveys in collecting a range of demographic data during the decennial census. *Id.* at 776–77. However, this broad grant of authority was not necessarily an authorization to use sampling when collecting all the information for a census. Further examination of the Census Act revealed § 195’s prohibition on the use of sampling in matters related to apportionment. *Id.* at 777. The court held that the amended § 195 did not alter this prohibition. *Id.*

Justice O’Connor disagreed with Justice Stevens’ conclusion that the 1976 amendments had no purpose if not to change the prohibition on sampling to determine the apportionment population. *Id.* at 778. While the decennial census is the only census used for apportionment purposes, it also “serves as ‘linchpin of the federal statistical system by collecting data on the characteristics of individuals, households, and housing units throughout the country.’” *Id.* Justice O’Connor concluded that the amendment required the use of sampling to collect this data, but only if the Secretary considered it “feasible.” *Id.*

Justice O’Connor also disagreed with Justice Breyer’s analysis that § 195 permitted the use of sampling as a “supplement” to traditional enumeration methods. Justice O’Connor argued that whether sampling was used as a “supplement” or a “substitute,” it was still “determining” the population. *Id.* at 779. “Under the proposed plan, the population is not ‘determined,’ not decided definitively and firmly, until the NRFU [nonresponse follow-up] and ICM [Integrated Coverage Measurement] are complete.” *Id.*

As a result of the court’s conclusion that the Census Act prohibited the proposed use of statistical sampling for apportionment, the court did not reach the constitutional question presented. *Id.* at

779. Furthermore, because the decision resolved the substantive issues presented by *Department of Commerce, et al. v. United States House of Representatives*, the appeal was dismissed. *Id.*

*b. Concurring and Dissenting Opinions*

Justice Scalia wrote his concurring opinion to respond to Justice Stevens' analysis that a reading of § 195, as prohibiting sampling for apportionment purposes, contradicted § 141(a). *Id.* at 780. The phrase "decennial census of population" in § 141(a) referred to more than just the apportionment census. *Id.* at 780; 13 U.S.C. § 141(g). Justice Scalia reasoned that the authorization to use sampling was not a blanket authorization in all aspects of the decennial census, nor an authorization of all sampling techniques. *Id.* The remainder of the Census Act will "determine what techniques, and what aspects of the decennial census, the authorization covers." *Id.*

Justice Scalia acknowledged that the "statutory intent to permit [the] use of sampling for apportionment purposes is at least not clear. In these circumstances, it is our practice to construe the text in such fashion as to avoid serious constitutional doubt. It is in my view unquestionably doubtful whether the constitutional requirement of an 'actual Enumeration' is satisfied by statistical sampling." *Id.* at 781 (citations omitted). Justice Scalia then proceeded to cite several dictionaries that were roughly contemporaneous with the drafting of the Constitution, to establish that "enumeration" and "enumerate" required an actual counting and not an estimation of the number. *Id.* He also pointed out the longstanding history of Congress prohibiting an estimation of the population for purposes of the apportionment census. *Id.* Further, Justice Scalia believed that sampling injected political manipulation into the process. "To give Congress the power, under the guise of regulating the 'Manner' by which the census is taken, to select among various estimation techniques having credible (or even incredible) 'expert' support, is to give the party controlling Congress the power to distort representation in its own favor. In other words, genuine enumeration may not be the most accurate way of determining population, but it may be the most accurate way of determining the population with the minimal possibility of partisan manipulation." *Id.* at 782. Justice Scalia believed that a strong case could be made that a sampled apportionment census would not satisfy the constitutional requirement of an "actual Enumeration." *Id.*

In his dissent, Justice Breyer held that § 195 did not prohibit the use of statistical sampling as proposed by the Census Bureau. He noted that the Census Bureau has a practice of using sampling in the decennial census. *Id.* at 783. This practice included conducting a quality check on the headcount, and the use of an estimation process called "imputation" to fill in the gaps in a headcount. *Id.* In addition, the 1970 headcount was adjusted to add 0.5 percent to the total population to account for mistakenly assuming that a significant portion of housing units were vacant. *Id.* at 783–84. Justice Breyer stated that § 195's prohibition on sampling was only as to a "substitute" for traditional enumeration methods, and not for a "supplement" of those methods. *Id.* at 782. As the Secretary's plan for the 2000 Census (namely, Integrated Coverage Measurement [ICM]) would only "supplement" a traditional headcount, it would

achieve the basic purpose of the statutes, which was a more accurate census. *Id.* at 784. Justice Breyer acknowledged that earlier attempts at ICM-like adjustments failed to make the census more accurate, but accepted the current proposal because the Secretary believed it would be more accurate. *Id.* Although more difficult to justify, Justice Breyer also held that the nonresponse follow-up program, the use of sampling to determine the last 10 percent of the population in each census tract, could be considered a “supplement” because its impact upon the headcount was too small to fall within § 195’s except clause. *Id.* at 785. Justice Breyer also gave considerable weight to the Secretary’s discretionary authority in using sampling to determine 10 percent of the population. “The Secretary’s decision to draw the line at the last 10%, rather than at the last 5% or 1%, of each census tract’s population may well approach the limit of his discretionary authority. But I cannot say that it exceeds that limit.” *Id.* at 785–86.

In his dissent, Justice Stevens argued that the Census Act, as amended in 1976, authorized the Secretary to use sampling procedures when taking the decennial census. *Id.* at 786. The Census Act contains an unlimited authorization in § 141(a) and a limited mandate in § 195. *Id.* He found that the limitation in § 195 is that the Secretary need not use sampling when determining the population for apportionment purposes, and he need not use it unless he considers it feasible. *Id.* While § 195 did not require the Secretary to use sampling, it also did not prohibit its use for determining the population for apportionment purposes. *Id.* Furthermore, if there were any conflict between the two sections, § 141(a) would prevail because it specifically refers to the decennial census, whereas § 195 referred to both the mid-decade and the decennial census. *Id.* Justice Stevens found the text of both to be very clear: “They authorize sampling in both the decennial and the mid-decade census, but they only command its use when the determination is not for apportionment purposes.” *Id.* Furthermore, Justice Stevens believed that the words “actual Enumeration” required the apportionment to be based on actual counts and not mere speculation, “but they do not purport to limit the authority of Congress to direct the ‘Manner’ in which such counts should be made.” *Id.* at 788. Justice Stevens held that the goal of equal representation was best served by a “Manner” that provided for the most complete and accurate census. *Id.* at 789. Finally, Justice Stevens held that the U.S. House of Representatives would have had article III standing to challenge a process used to determine the size of each State’s congressional delegation. *Id.*

Justice Ginsburg wrote a dissenting opinion because she would not have found article III standing for the *Glavin* plaintiffs on the expected effects of the sampling plan on intrastate redistricting. *Id.*

## SUBCOMMITTEE ON THE CIVIL SERVICE

Hon. Joe Scarborough, *Chairman*

*1. Statutes reviewed in connection with the Defense Authorization Acts, S. 1059, Public Law 106-65, and H.R. 4205, Public Law 106-398.*

The subcommittee reviewed laws within its jurisdiction in both sessions of this Congress in connection with its examination of various provisions in those bills relating to civilian personnel matters.

The following statutes were examined in the first session in connection with the Defense Authorization Act for fiscal year 2000, S. 1059, Public Law 106-65:

a. 5 U.S.C. Chapter 55 and section 6101.—These statutes were reviewed in connection with provisions that the Secretaries of the military departments may establish salary schedules and work schedules for academic faculty at the military academies.

b. 5 U.S.C. Chapters 83 & 84.—These statutes were reviewed in connection with provisions that reformed National Guard and Reserve military technician retirement.

c. 5 U.S.C. Chapter 84, subchapter III.—These statutes were reviewed in connection with provisions that allow military personnel to participate in the Thrift Savings Plan.

d. 5 U.S.C. Chapter 89.—These statutes were reviewed in connection with provisions to exempt FEHBP contracts from the Cost Accounting Standards issued under 41 U.S.C. 422(f).

e. 5 U.S.C. § 5373.—This statute was reviewed in connection with provisions that (1) equalizes the pay cap applicable to senior executives at nonappropriated fund instrumentalities and the cap for the Senior Executive Service and (2) exempt salary schedules for faculty and staff of the Uniformed Services University of the Health Sciences from the limitations established in section 5373.

f. 5 U.S.C. § 5532.—This statute was reviewed in connection with a provision that repealed it to allow retired military officers to accept Federal employment without losing a part of their retired pay.

g. 5 U.S.C. §§ 5595, 5597, and 8905.—These statutes were reviewed in connection with provisions to allow the Department of Defense to continue to provide certain benefits during workforce reductions and restructuring. Sections 5595 and 8905 were also reviewed in connection with provisions that authorized the Department of Energy to make lump sum payments of severance pay and to continue coverage of health benefits to employees affected by the establishment of the National Nuclear Security Administration.

h. 5 U.S.C. § 6304.—This statute was reviewed in connection with a provision to restore leave to certain Department of Defense employees who deploy to a combat zone.

i. 5 U.S.C. § 6323.—This statute was reviewed in connection with a provision that allows (1) dual status technicians performing active duty without pay while on leave from technician employment to receive a per diem in lieu of subsistence and quarters and (2) expands the purposes for which military reserve technicians may use leave provided under subsections (a)(1) and (d)(1).

j. 5 U.S.C. § 8336 and section 1109 of Public Law 105-261.—These statutes were reviewed in connection with provisions to ac-

celerate the implementation of authority for the Department of Defense to authorize voluntary early retirement authority and to authorize the Department of Energy to offer such retirements to employees during the period while it is undergoing a major reorganization as a result of the establishment of the National Nuclear Security Administration.

k. Section 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (as contained in section 101(f) of division A of Public Law 104-208) and 5 U.S.C. § 5597.—These statutes were reviewed in connection with provisions to extend the authority of the Department of Energy to offer buyouts.

l. 42 U.S.C. § 2201(d).—This statute was reviewed in connection with a provision that authorizes the Administrator of the National Nuclear Security Administration to appoint and fix the compensation of no more than 300 scientific, engineering, and technical positions.

The following statutes were examined in the second session in connection with, H.R. 4205, Public Law 106-398, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001:

a. 5 U.S.C. § 5379(a)(2).—This statute was amended to set forth the authority to repay student loans and provide incentives for potential employees.

b. 10 U.S.C. § 1596.—This statute was amended to give the Secretary of Defense authority to award special pay to those employees who are certified to be proficient in a foreign language. The special pay will not exceed 5 percent of the employee's rate of basic pay. The employee must be assigned duties requiring proficiency in the foreign language during contingency operations supported by the armed forces.

c. 10 U.S.C. § 1745(a)(2).—This statute is amended by extending the authority for tuition reimbursement to defense acquisition personnel to September 30, 2010 from September 30, 2001.

d. 5 U.S.C. Chapter 47.—This section requires the Secretary of Defense to adopt work safety models currently being used in the private sector. The demonstration program will be implemented at no "fewer than two installations of each of the Armed Forces" (not including the Coast Guard.) The demonstration program will terminate on September 30, 2002.

e. 5 U.S.C. § 3161.—Chapter 31 of Title 5 is amended by adding a new subsection to govern pay and benefits of employees of temporary organizations.

f. 5 U.S.C. § 3502(f)(5).—This statute extends DOD's authority to allow employees to volunteer for reductions in force from September 30, 2001 to September 30, 2005.

g. 5 U.S.C. § 4302.—This statute is amended to permit the head of an agency to electronically maintain a performance appraisal system.

h. 5 U.S.C. § 4502.—This statute is amended to permit the Secretary of Defense to unilaterally grant a cash award over \$10,000 without seeking OPM approval.

i. 5 U.S.C. § 6305 (c)(2).—This statute is amended to create an exception to the prohibition against a lump-sum payment arising from a leave of absence granted to an "employee serving aboard an oceangoing on an extended voyage." This section pertains to "Civil

service marines of the Military Sealift Command on temporary promotion aboard ship.”

j. 5 U.S.C. § 8702.—This statute is amended to provide life insurance for employees designated emergency essential who previously submitted a notice of an intent not to be insured, if an election is made within 60 days of date of designation.

k. Title V, Chapter 47 Generally.—This section requires the Secretary of Defense to perform a study to examine various personnel services relating to civilian personnel in the Department of Defense. Specifically, the study is to analyze how the performance of personnel services would be affected by conducting competition between the public and private sector.

l. 5 U.S.C. § 3104 note.—This statute is amended to increase the “experimental personnel program for scientific and technical personnel” in the Defense Advanced Research Projects Agency. It extends the length of the experimental program for 2 years, to October 16, 2005, and allows the defense laboratories to participate in the personnel flexibilities provided by this program. The number of positions subject to this provision are limited to 40 at the Defense Advanced Research Projects Agency, 40 at the laboratories of each military service and 10 in National Imagery and Mapping Agency and the National Security Agency.

m. Public Law 103–337; 108 Stat. 2721.—This statute is amended to give the Defense Department the authority to manage a Personnel Demonstration Project as opposed to the current situation that gives the Director of OPM final authority.

n. 5 U.S.C. § 4107. This statute is amended to permit DOD to pay for classes leading to a degree when it is part of a DOD-approved training program.

o. 10 U.S.C. § 10218.—This statute is amended to extend the mandatory retirement age for certain military reserve technicians to 60. It also allows the appropriate Secretary to reinstate certain previously separated reserve technicians.

p. 42 U.S.C. § 2000e-16.—This section requires the Secretary of Defense to implement a pilot program to streamline the resolution of Equal Employment Opportunity disputes filed by DOD employees. The Secretary is permitted to extend the pilot program for a 3 year period. Employee participation in the pilot program would be voluntary. The House bill’s provision was limited to the Navy’s EEO program. The conference agreement provides that at least one military department and two defense agencies will carry out the pilot program.

q. 5 U.S.C. §§ 5754(b), 6303, 8905a.—These sections were reviewed in connection with Section 3133 of the Defense Authorization Bill and authorize the Secretary of Energy to provide employees of closure project facilities with compensation incentives. Under these changes, employees may accumulate specified amounts of annual leave, and receive lump-sum retention allowances in excess of 25 percent of the employee’s basic rate of pay; volunteer for a reduction in force and continue to receive an employee FEHBP contribution if they are separated because of a facility closure.

r. Public Law 103–337; 42 U.S.C. § 7231 note. This statute is amended to extend the authority for appointment of certain scientific, engineering, and technical personnel to September 30, 2002.



s. 5 U.S.C. § 8440 note; Public Law 106–65; 113 Stat. 673.—This statute is amended to enable military personnel to participate in the Thrift Savings Plan.

t. 5 U.S.C. § 5597(b). This statute is amended to permit the Air Force to conduct workforce reshaping among its civil service employees by providing limited authority for the use of buyouts and voluntary early retirements during fiscal years 2001 through 2003.

2. *Statutes reviewed in connection with the American Inventors Protection Act of 1999 (H.R. 1907).*

a. 5 U.S.C. Chapter 53.—These statutes were reviewed in connection with provisions setting the compensation of the Commissioner for Patents and the Commissioner for Trademarks.

b. 5 U.S.C. § 5574.—This statute was reviewed in connection with a provision requiring the Patent and Trademark Office to submit to the Congress a proposal to provide incentive to retain retirement-eligible patent and trademark examiners of the primary examiner grade or higher for the sole purpose of training patent and trademark examiners.

3. *Statutes reviewed in connection with the Treasury, Postal Service, and General Government Appropriations Acts, H.R. 2490, and H.R. 4985.*

The subcommittee reviewed laws within its jurisdiction in both sessions of this Congress in connection with its examination of various provisions in those bills relating to civilian personnel matters.

The following statutes were examined in the first session in connection with the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 2000, H.R. 2490, Public Law 106–58:

a. 5 U.S.C. §§ 5303, 5304.—These statutes were reviewed in connection with provisions establishing a 4.8 percent pay increase for employees under the General Schedule.

b. 5 U.S.C. Chapter 89.—These statutes were reviewed in connection with a provision exempting FEHBP contracts from the Cost Accounting Standards issued under 41 U.S.C. § 422(f).

c. Section 636 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (as contained in section 101(f) of Public Law 104–208).—This statute was reviewed in connection with a provision requiring agencies to subsidize liability insurance for certain Federal employees.

The following statutes were examined in the first session in connection with the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 2001, H.R. 4985:

a. 5 U.S.C. Chapters 83 & 84.—These statutes were examined in connection with provisions regarding retirement for certain police officers at the Metropolitan Washington Airports Authority.

b. 5 U.S.C. § 5304.—This statute was examined in connection with a pilot project on the use of alternative data in determining comparability pay.

c. 5 U.S.C. Chapter 73.—These statutes were examined in connection with a provision requiring the removal of law enforcement officers who commit a felony.

d. 5 U.S.C. Chapters 83 & 84.—These statutes were examined in connection with provisions to reduce employees' retirement contributions.

e. 5 U.S.C. §§ 5546 and 8114.—These statutes were examined in connection with a provision to the treatment of overtime for firefighters in calculating workers' compensation.

f. 5 U.S.C. § 6323.—This statute was examined in connection with a provision to amend it to establish a minimum charge for military leave.

g. 5 U.S.C. Chapter 53.—This statute was examined in connection with a provision to establish a pay rate for administrative appeals judges at the Social Security Administration.

4. *Statutes reviewed in connection with Commerce, Justice, State Appropriations Act, 2000 (H.R. 3421) (as contained in section 1000(a)(1) of the Consolidated Appropriations Act for 2000 (H.R. 3194)).*

a. 5 U.S.C. § 5542.—This statute was reviewed in connection with a provision that prohibits the payment of overtime to attorneys at the Department of Justice.

5. *Statutes reviewed in connection with the Department of Interior and Related Agencies Appropriations Act, 2000 (H.R. 3423) (as contained in section 1000(a)(3) of the Consolidated Appropriations Act for 2000 (H.R. 3194)).*

a. 5 U.S.C. § 3105.—This statute was reviewed in connection with a provision that would have permitted the Department of the Interior to appoint administrative law judges to hear Indian probate cases without regard to the provisions of title 5 of the United States Code.

6. *Statutes reviewed in connection with the National Transportation Safety Board Amendments Act of 1999 (H.R. 2910).*

a. 5 U.S.C. § 5542.—This statute was reviewed in connection with a provision that establishes special overtime rates for accident investigators.

7. *Statutes reviewed in connection with S. 2915.*

a. 5 U.S.C. Chapters 87 and 89.—These statutes were reviewed in connection with provisions relating to the retirement of judges of the Court of Federal Claims.

8. *Statutes reviewed in connection with H.R. 809.*

a. 5 U.S.C. Chapters 53, 83, and 84.—These statutes were reviewed in connection with provisions related to the pay and retirement benefits of GSA police officers.

9. *Statutes reviewed in connection with H.R. 4642 (Public Law 106–303).*

a. 5 U.S.C. §§ 8336(d) and 8414.—These statutes were reviewed in connection with provisions to provide the Comptroller General with certain flexibilities in conducting voluntary early retirements.

b. Section 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (5 U.S.C. § 5597 note).—These

statutes were reviewed in connection with provisions to provide the Comptroller General with certain flexibilities in offering buyouts to GAO employees.

c. 31 U.S.C. Chapter 7, Subchapter III.—These statutes were reviewed in connection with provisions to provide the Comptroller General with certain personnel flexibilities related to reductions-in-force, senior-level positions, and experts and consultants.

#### SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

Hon. Thomas M. Davis, *Chairman*

1. *District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93–198.*

An act to reorganize the government structure of the District of Columbia, to provide a charter for local government in the District of Columbia, to provide a charter for local government in the District of Columbia subject to the acceptance of the majority of the registered qualified electors in the District of Columbia, to delegate certain recommendations of the commission on the organization of the government of the District of Columbia, and for other purposes.

2. *District of Columbia Financial Responsibility and Management Act, Public Law 104–8.*

To eliminate budget deficits and management inefficiencies in the government of the District of Columbia through the establishment of the District of Columbia Financial Responsibility and Management Assistance Authority, and for other purposes.

3. *Balanced Budget Act of 1997, Public Law 105–33, Title XI.*

“National Capital Revitalization and Self-Government Improvement Act of 1997.”

4. *District of Columbia College Access Act, Public Law 106–98.*

To establish a program to afford high school graduates from the District of Columbia the benefits of in-state tuition at State colleges and universities outside the District of Columbia, and for other purposes.

#### SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

Hon. Stephen Horn, *Chairman*

1. Chief Financial Officers Act of 1990, 104 Stat. 2838, Public Law 101–576 (see section II.A.2.)

2. Clinger-Cohen/ITMRA, 110 Stat. 679, 40 U.S.C. 759, Public Law 104–106 (see sections II.B. 1 and 2; and sections IV.A. 3, 4, and 5.)

3. Competition in Contracting Act of 1984, 98 Stat. 1175, 41 U.S.C. 251 et seq., 41 U.S.C. 253 (see sections II.B.6 and IV.A.2.)

4. Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104–134 (see sections II.B.4 and IV.A.6.)

5. Federal Financial Management and Improvement Act of 1996, 110 Stat. 3009–389, 31 U.S.C. 3512 note (see section II.A.2.)

6. Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, 40 U.S.C. 475 et. seq. (see section II.B.20.)
7. Freedom of Information Act, 80 Stat. 250 (see section II.A.1.)
8. Government in the Sunshine Act, 90 Stat. 1241, 5 U.S.C. 5526 (see section II.A.1.)
9. Government Management and Reform Act of 1994, 108 Stat. 3410, Public Law 103-356 (see section II.A.2.)
10. Government Performance and Results Act, 107 Stat. 285, Public Law 103-62 (see section II.B.8.)
11. Inspector Generals Act of 1978, as amended, 92 Stat. 1101-1109, 102 Stat. 2515-2530, Public Law 95-452 (see section II.A. 2 and 3; section II.B. 1, 4, 6 and 12.)
12. Office of Federal Procurement Policy Act, 41 U.S.C. § 1-34 (see section IV.A.1.)
13. Office of Government Ethics Amendment Act of 1996, 5 U.S.C.A. 405 (see section III.A.5.)
14. Privacy Act of 1974, as amended, 5 U.S.C. 552a (see section II.B.10.)
15. Single Audit Act of 1984, as amended, 98 Stat. 2327, 31 U.S.C. 75, Public Law 104-156 (see section IV.A.7.)

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL  
RESOURCES, AND REGULATORY AFFAIRS

Hon. David McIntosh, *Chairman*

1. *Paperwork Reduction Act of 1995, Public Law 104-13, May 22, 1995, and Paperwork Reduction provision within the appropriation for the Office of Management and Budget in the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, October 21, 1998.*

The Paperwork Reduction Act of 1995 furthers the goals of the Paperwork Reduction Act of 1980, including making the Federal agencies more responsible and publicly accountable for reducing the burden of Federal paperwork on the public. Under this law and Executive Order No. 12866 (and its predecessor orders), the Office of Management and Budget's [OMB's] Office of Information and Regulatory Affairs [OIRA] is responsible for paperwork and regulatory reviews of agency paperwork and regulatory plans and proposals. The Paperwork Reduction provision in the Treasury and General Government Appropriations Act for 1999 directed OMB to submit a report by March 31, 1999 that identifies specific paperwork reduction accomplishments expected, constituting annual 5 percent reductions in paperwork expected in fiscal year 1999 and fiscal year 2000.

2. *Congressional Review Act, Public Law 104-121, March 29, 1996 and the Congressional Review Act provision within the appropriation for the Office of Management and Budget in the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, October 21, 1998.*

The Congressional Review Act [CRA] requires the agencies to file certain reports with Congress for each new rule before that rule can legally take effect. If a rule is not reported, it is an illegal rule.

The CRA restored accountability to regulation by giving Congress the opportunity to review and, if necessary, disapprove any new rule or regulation. The CRA provision in the Treasury and General Government Appropriations Act for 1999 directed OMB to issue guidance by March 31, 1999 on certain specific provisions of the CRA and a standard new rule reporting form for submissions for Congressional review under the CRA.

SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS, AND  
INTERNATIONAL RELATIONS

Hon. Christopher Shays, *Chairman*

1. *National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85.*

This law requires the Office of Management and Budget establish a reporting system for executive agencies on government-wide spending for counterterrorism programs. The law also requires a report be developed and submitted to Congress describing such expenditures. The administration requested over \$11 billion in funding for fiscal year 2000. The subcommittee examined administration spending on terrorism-related programs. The subcommittee will continue to oversee the process of developing funding priorities and agency coordination shortfalls.

2. *The Prompt Payment Act of 1982, as amended in 1988.*

The act requires agencies, in accordance with regulations prescribed by the Director of Office of Management and Budget, to pay interest to contractors and vendors for any late payments for goods or services. General Accounting Office and private auditors highlighted the severity of DOD's payment problems. The subcommittee examined the Department of Defense's application of the Prompt Payment Act, and determined what reforms may be required to improve the payment process.

3. *Defense Against Weapons of Mass Destruction [WMD] Act of 1996, Public Law 104-201.*

The act mandates implementation of a program to provide civilian personnel of Federal, State, and local agencies with training and expert advice regarding emergency responses to a use or threatened use of a WMD or related material. Department of Defense was initially designated lead agency to administer the program. The subcommittee examined the status and implication of the proposed transfer of the Domestic Preparedness Program to the Department of Justice.

4. *The Persian Gulf War Veterans Health Act of 1998, Public Law 105-277.*

The act establishes in law the presumption of service-connection for illnesses associated with exposure to toxins present in the war theater. The Veterans Administration is required to accept the findings of an independent scientific body as to the illnesses linked with actual and presumed toxic exposures. The subcommittee takes

an active role in overseeing the legislation will continue to closely monitor its implementation.

*5. National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160.*

The act mandates the coordination and integration of all Department of Defense [DOD] chemical and biological programs. Each year the Secretary of Defense is required to submit to Congress a report assessing and describing plans to improve readiness to survive, fight, and win in a nuclear, biological, and chemical environment. This assessment also includes a description of coordination and integration of the DOD Chemical and Biological Defense Program [CBDP]. The General Accounting Office found the CBDP lacked specific goals and the program was not being evaluated according to its impact on defensive or operational capabilities. The subcommittee examined the management and oversight structure of the CBDP.

SUBCOMMITTEE ON THE POSTAL SERVICE

Hon. John M. McHugh, *Chairman*

*1. The Postal Reorganization Act of 1970, Public Law 91-375, August 12, 1970, 84 Stat. 719.*

The Subcommittee on the Postal Service has legislative jurisdiction and oversight over the U.S. Postal Service, U.S. Postal Rate Commission, and the U.S. Postal Inspection Service. These entities operate under the authority granted pursuant to the Postal Reorganization Act of 1970 [PRA] which traces congressional authority for postal services to Article I, Section 8 of the U.S. Constitution, which directs Congress “(t)o establish Post Offices and Post Roads.” An 11-member Board of Governors governs the U.S. Postal Service. Nine Governors are appointed by the President and confirmed by the Senate. They in turn employ a Postmaster General and Deputy Postmaster General who also become members of the Board.

The U.S. Postal Service handles more than 40 percent of the worlds mail volume. It processed more than 200 billion pieces of mail in fiscal year 1999 or about 650 million pieces of mail per day and delivered to 130 million addresses 6 days a week. To carry out this work, the Postal Service employs 792,041 career employees or 1 out of every 170 Americans. The total revenue for the U.S. Postal Service is \$62.6 billion in 1999.

The U.S. Postal Rate Commission functions independently from the U.S. Postal Service. It is governed by five, full-time, Presidentially appointed and Senate-confirmed Commissioners. It is responsible for hearing requests of the U.S. Postal Service for an increase in postage rates, reclassification of its postage schedule and for making a recommended decision upon such a request. The Postal Rate Commission also hears complaints from outside parties regarding postal rates or services.

The Postal Inspection Service is the law enforcement branch of the U.S. Postal Service and is responsible for enforcing the Mail Fraud Act, Mail Order Consumer Protection Amendments on 1983, Drug and Household Substance Mailing Act of 1990, and for enforce-

ing the Private Express Statutes which give the Postal Service its letter-mail monopoly. It is also entrusted with insuring the security and safety of postal facilities and employees.

The subcommittee continues its in-depth oversight of the operations of these entities.





## IV. Other Current Activities

### A. GENERAL ACCOUNTING OFFICE REPORTS

#### FULL COMMITTEE

Hon. Dan Burton, *Chairman*

1. *"Financial Management: Federal Financial Management Improvement Act Results for Fiscal Year 1998," October 1, 1999, AIMD-00-3.*

*a. Summary.*—Pursuant to a legislative requirement, GAO reviewed Federal agencies' efforts to implement the Federal Financial Management Improvement Act [FFMIA], focusing on: (1) compliance of chief financial officer [CFO] agencies' financial systems with FFMIA's requirements; (2) whether CFO agencies' financial statements have been prepared in accordance with applicable accounting standards; and (3) agencies' plans to ensure that their systems comply with FFMIA requirements.

*Findings.*—GAO noted that: (1) as a result of the audits of CFO agencies' financial statements and FFMIA's requirements, agencies are more aware of their financial management weaknesses and have started addressing them; (2) however, in terms of agency auditors' assessments of compliance with FFMIA, there has been little discernible progress since last year; (3) for the agencies whose fiscal year 1998 audit reports had been issued as of September 14, 1999, those whose financial management systems were not in compliance with FFMIA in fiscal year 1997 were still not in compliance in fiscal year 1998; (4) issues GAO identified in its report last year under FFMIA proved to be continuing significant challenges to agencies; (5) for fiscal year 1998, auditors for 17 of 20 CFO agencies reported that the agencies' financial systems did not comply substantially with FFMIA's requirements; (6) although the statutory reporting deadline is March 1, the remaining four CFO agencies, as of September 14, 1999, had not yet issued their audited financial statements for fiscal year 1998; (7) all four of the agencies were found by their auditors to be noncompliant with FFMIA for fiscal year 1997; (8) auditors reported that the financial systems of 11 of these 17 agencies found to be noncompliant in fiscal year 1998 were noncompliant with all three FFMIA requirements—Federal financial management systems requirements, applicable Federal accounting standards, and the Standard General Ledger; (9) auditors for 16 of the 17 agencies had reported for fiscal year 1997 that the agencies likewise did not comply with FFMIA; (10) the 17th agency was reported as complying with the requirements of FFMIA in fiscal year 1997 but was found to be noncompliant with systems requirements in fiscal year 1998 due to auditors' interpretations of what constitutes substantial compliance; (11) further, in

some agencies, factors that contributed to systems being found non-compliant increased, in part because agencies had problems implementing new accounting standards that became effective in fiscal year 1998; (12) GAO's audit of the financial statements for the U.S. Government for fiscal year 1998 also showed that many agencies did not meet applicable accounting standards; (13) GAO issued a special series of reports this year that discusses major management challenges and program risks that must be addressed to improve the performance, management, and accountability of Federal agencies; and (14) significant time and investment are needed for agencies to address and correct long-standing financial management systems problems.

2. *"Anthrax Vaccine: Safety and Efficacy Issues," October 12, 1999, T-NSIAD-00-48.*

a. *Summary.*—Pursuant to a congressional request, GAO discussed the results of its ongoing examination of the safety and efficacy of the anthrax vaccine, focusing on the: (1) need for a six-shot regimen and annual booster shots; (2) long- and short-term safety of the vaccine; (3) efficacy of the vaccine; (4) extent to which problems the Food and Drug Administration [FDA] found in the vaccine production facility in Michigan could compromise the safety, efficacy, and quality of the vaccine; and (5) effects of the anthrax vaccine on children, pregnant women or lactating women.

*Findings.*—GAO noted that: (1) no studies have been done to determine the optimum number of doses of the anthrax vaccine; (2) although annual boosters are given, the need for a six-shot regimen and annual booster shots have not been evaluated; (3) the long-term safety of the licensed vaccine has not been studied; (4) however, the Department of Defense [DOD] is designing studies to examine the vaccine's long-term effects; (5) data on the prevalence and duration of short-term reactions to the vaccine are limited but suggest that women experience a higher rate of adverse reactions than do men; (6) FDA's system for collecting data on adverse events associated with the vaccine, which DOD uses, relies on vaccine recipients or their health care providers to report adverse events; (7) studies have shown that such systems may not accurately reflect the incidence of events due to underreporting; (8) however, data from two recent DOD efforts to identify the prevalence of adverse events associated with anthrax vaccine show that a higher proportion of women reported both local and systemic reactions to the vaccine than their male counterparts; (9) in addition, more than twice the proportion of women reported that they missed one or more duty shifts after their vaccinations than did males; (10) a study on the efficacy of the earlier vaccine concluded that it provided protection to humans against anthrax penetrating the skin but did not provide information to determine the effectiveness against inhalation anthrax; (11) in the 1980's, DOD began testing the efficacy of the licensed vaccine in animals, focusing on its protection against inhalation anthrax; (12) the studies showed that the vaccine protected some animals against inhalation anthrax; (13) however, the level of protection varied for different species and the results cannot be extrapolated to humans; (14) DOD recognizes that correlating the results of animal studies to humans is nec-

essary and told GAO that it is planning research in this area; (15) DOD also plans to develop a second generation anthrax vaccine and, as part of this effort, will need to address whether strains of deliberately engineered or naturally occurring anthrax can overcome the protective immunity of such a vaccine; and (16) FDA's inspections of the vaccine production facility in 1997 and 1998 found a number of deficiencies.

3. *"Human Capital: Key Principles From Nine Private Sector Organizations," January 31, 2000, GGD-00-28.*

*a. Summary.*—Pursuant to a congressional request, GAO identified the private sector's key principles for strategically and effectively managing their human capital to provide Federal agencies with information and examples to help them improve their human capital management.

*Findings.*—GAO noted that: (1) each of the nine private sector organizations that GAO reviewed implemented human capital strategies and practices that were designed to directly support the achievement of their specific missions, strategic goals, and core values; (2) GAO identified 10 underlying and interrelated principles of human capital management that are common to the nine organizations and viewed as the foundation for their ongoing success and viability: (a) treat human capital as being fundamental to strategic business management by integrating human capital considerations with the organization's mission, strategic goals, core values, and operational policies and practices; (b) integrate human capital functional staff into management teams and expand the strategic role of the staff beyond providing traditional personnel administration services; (c) supplement internal human capital staff's knowledge and skills with outside expertise from consultants, professional associations, and other organizations, as needed; (d) hire, develop, and sustain leaders according to leadership characteristics identified as essential to achieving specific missions and goals; (e) communicate a shared vision that all employees, working as one team, can strive to accomplish by promoting a common understanding of the mission, strategic goals, and core values toward which all employees are directed to work as a team to achieve; (f) hire, develop, and retain employees according to competencies—knowledge, skills, abilities, and behaviors—needed to achieve high performance of mission and goals; (g) provide incentives, including pay and other meaningful incentives, to link performance to results and hold employees accountable for contributing to the achievement of mission and goals; (h) support and reward teams to achieve high performance by fostering a culture in which individuals interact and support and learn from each other as a means of contributing to the high performance of their peers, units, and the organization as a whole; (i) integrate employee input into the design and implementation of human capital policies and practices to develop responsive policies and practices; and (j) measure the effectiveness of human capital policies and practices by evaluating and making fact-based decisions on whether human capital policies and practices support high performance mission and goals; and (3) Federal agencies need only to adopt and adapt to these principles, if necessary, to give

human capital higher priority as they implement performance-based management to achieve success and higher performance.

4. *"Managing for Results: Challenges Agencies Face in Producing Credible Performance Information," February 4, 2000, GGD-00-52.*

*a. Summary.*—Pursuant to a congressional request, GAO identified some of the challenges agencies face in producing credible performance information and how those challenges may affect performance reporting, focusing on: (1) whether the weaknesses identified in agencies' performance plans imply challenges for the performance reports; (2) some of the challenges agencies face in producing credible performance data; and (3) how performance reports can be used to address data credibility issues.

*Findings.*—GAO noted that: (1) it appears unlikely that agencies consistently will have for their first performance reports the reliable performance information needed to assess whether performance goals are being met or specifically how performance can be improved; (2) over the past several years GAO has identified limitations in agencies' abilities to produce credible data and identify performance improvement opportunities; (3) these limitations are substantial, long-standing, and will not be quickly or easily resolved; (4) they are likely to be reflected in agencies' initial performance reports as they have been in the performance plans to date; (5) in administering programs that are a joint responsibility with State and local governments, Congress and the executive branch continually balance the competing objectives of collecting uniform program information to assess performance with giving States and localities the flexibility needed to effectively implement intergovernmental programs; (6) the relatively limited level of agencies' program evaluation capabilities suggests that many agencies are not well positioned to undertake necessary evaluations; (7) program evaluations are important to providing information on the extent to which an agency's efforts contributed to results and to highlight opportunities to improve those results; (8) long-standing weaknesses in agencies' financial management capabilities make it difficult for decisionmakers to effectively assess and improve many programs' financial performance; (9) in order to help agency managers select appropriate techniques for assessing, documenting, and improving the quality of their performance data, some agencies proposed or adopted reasonable approaches to verify and validate performance information; (10) these approaches include senior management actions, agencywide efforts, and specific program manager and technical staff activities, which could be used, where appropriate, to improve the quality, usefulness, and credibility of performance information; (11) performance reports provide agencies with an opportunity to show the progress made in addressing data credibility issues; (12) the Government Performance and Results Act requires agencies to describe in their annual performance plans how they will verify and validate the performance information that will be collected; and (13) including information in performance reports describing the quality of the reported performance data and the implications of missing data can be equally important and can

provide key contextual information to Congress and other users of the performance reports.

5. *“Marine Pollution: Progress Made to Reduce Marine Pollution by Cruise Ships, but Important Issues Remain,” February 28, 2000, RCED-00-48.*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the actions being taken by Federal regulators and the cruise ship industry to prevent future illegal discharges of waste, focusing on: (1) the nature and extent of reported illegal discharge cases for foreign-flagged cruise ships from 1993 through 1998; (2) Federal agencies’ efforts to prevent, detect, investigate, and prosecute illegal discharges from foreign-flagged cruise ships; (3) the actions cruise ship companies with proven illegal discharge violations have taken to prevent future illegal discharges; and (4) the views of relevant Federal agencies and third-party interest groups regarding the actions that cruise ship companies have taken, and what issues, if any, they believe require further attention.

*Findings.*—GAO noted that: (1) Federal data indicate foreign-flagged cruise ships were involved in 87 confirmed illegal discharge cases in U.S. waters from 1993 through 1998; (2) overall, the number of confirmed illegal discharge cases by cruise ships in U.S. waters generally declined during this period; (3) oil or related chemicals were discharged in 81 cases and 6 cases involved discharges of garbage or plastic; (4) GAO determined that about three-fourths of these cases were accidental, while the remainder were either intentional or their cause could not be determined; (5) the Coast Guard, the Department of Justice, and other agencies undertake a variety of efforts to prevent, detect, investigate, or prosecute illegal marine discharges by foreign-flagged cruise ships; (6) the Coast Guard inspects ships in port, watches them as part of aircraft surveillance in the open sea, investigates reported incidents and adjudicates cases under its civil penalty procedures; (7) however, the Coast Guard’s ability to detect and resolve violations is constrained by the narrow scope of its routine inspections, a significant reduction in aircraft surveillance for marine pollution purposes, and a breakdown of the process for identifying and resolving alleged violations referred to flag states; (8) 12 cruise ship companies that have been involved in nonaccidental pollution cases have implemented new or updated environmental plans designed to enhance ship safety and prevent pollution; (9) the plans, which were prepared pursuant to new international standards or were mandated by U.S. district courts after the companies pled guilty to pollution violations, call for such steps as regular third-party verification of ships’ compliance with environmental procedures; (10) officials from the Coast Guard, the Department of Justice, and the Center for Marine Conservation said that cruise ship companies were making progress toward changing a maritime culture that once permitted discharges of garbage and oil from ships before international standards and U.S. laws to control such discharges were adopted; (11) however, cruise ship companies must demonstrate a sustained commitment to eliminate illegal discharges at sea; and (12) some officials expressed concern about the large volume of

wastewater from sinks, showers, drains, and sewage systems that cruise ships legally discharge at sea and the possible effects of these discharges on sensitive marine life.

6. *"Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children," March 14, 2000, RCED-00-40.*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on issues related to the safety of children who may be exposed to pesticides in agricultural settings, focusing on: (1) what Federal requirements govern the safe use of pesticides, particularly as they relate to protecting children in agricultural settings; (2) what information is available on the acute and chronic effects of agricultural pesticide exposure, particularly on children; and (3) what the Environmental Protection Agency [EPA] has done to ensure that its Worker Protection Standard considers the needs of children and is being adequately implemented and enforced.

*Findings.*—GAO noted that: (1) two laws principally govern the safe use of pesticides: (a) the Federal Insecticide, Fungicide, and Rodenticide Act, which requires that pesticides be approved by EPA for specified uses; and (b) the Federal Food, Drug, and Cosmetic Act, which regulates the residues of pesticides on or in foods; (2) in 1996, the Food Quality Protection Act amended these two laws, requiring EPA to reevaluate the amount of pesticide residues allowed on or in food, taking into account consumers' aggregate exposure from other sources, including residential exposures; (3) EPA is generally required to apply an additional margin of safety in setting limits on pesticide residues to ensure the safety of food for infants and children; (4) EPA must also consider any available information concerning "major identifiable subgroups of consumers" in reevaluating the amount of pesticide residues that can remain on or in foods; (5) in October 1998, the Natural Resources Defense Council and others petitioned EPA to identify children living on and near farms as a major identifiable subgroup for the purposes of the Food Quality Protection Act; (6) in its initial response, EPA said it was funding several studies aimed at assessing the effects of farm children's exposure to pesticides; (7) comprehensive information on acute and chronic health effects due to pesticide exposure does not exist, and data sources to track acute—short term—pesticide illnesses are incomplete and have limitations that result in the underestimation of both the frequency and the severity of such illnesses; (8) a number of federally sponsored studies are under way related to the chronic effects of pesticide exposure, but it will be many years before conclusive results from these studies are known; (9) EPA implemented the Worker Protection Standard to reduce farmworkers' exposure to pesticides; (10) according to EPA, one of the most important protections afforded by the standard is the time intervals between when the pesticides are applied and when workers may enter treated areas; (11) these entry intervals were designed for adults and children 12 years and older; (12) EPA has little assurance the protections in the standard are being provided at all; and (13) GAO found EPA regions have been inconsistent in whether they set goals for the number of worker protection inspections States should conduct, in defining what constitutes a worker protection inspection, and in the extent to which they

oversee and monitor States' implementation and enforcement of the standard.

7. *"Financial Audit: Independent Counsel Expenditures for the Six Months Ended September 30, 1999," March 31, 2000, AIMD-00-120.*

*a. Summary.*—Pursuant to a congressional request, GAO audited the expenditures of eight offices of independent counsel [OIC] for the 6 months ended September 30, 1999.

*Findings.*—GAO noted that: (1) the statements of expenditures for OIC were fairly presented in all material respects; (2) GAO's consideration of internal controls, which was limited for the purpose of determining GAO's procedures for auditing the statements of expenditures disclosed no material weaknesses; and (3) GAO's audits included limited tests of compliance with laws and regulations that disclosed no reportable instances of noncompliance with the laws and regulations GAO tested.

8. *"Telecommunications: GSA's Estimates of FTS2001 Revenues Are Reasonable," April 14, 2000, AIMD-00-123.*

*a. Summary.*—Pursuant to a congressional request, GAO reviewed the General Services Administration's [GSA] estimates of the Federal Technology Service [FTS] 2001 revenues and the implications of allowing other service providers to compete in the FTS 2001 market, focusing on: (1) the percentage of FTS 2001 contracts that are minimum revenue guarantees [MRG]; (2) when MRGs are likely to be satisfied; (3) the factors that could significantly alter the estimates of total program revenue and corresponding timeframes for satisfying MRGs; and (4) how competition could affect the estimates.

*Findings.*—GAO noted that: (1) GAO found that GSA's revenue estimation process, which relies on historical and known agency requirements for FTS 2001-offered services, produced a reasonable estimate of program revenues; (2) GAO's independent, high-level estimate, which used the most currently available traffic forecasts and pricing information, produced essentially the same estimate—\$2.3 billion in revenue over the life of the FTS 2001 program, assuming all 4 of the contracts' option years are exercised; (3) during GAO's review, GAO identified a number of technical issues with regard to GSA's revenue estimation process that did not affect the integrity of its revenue estimates; (4) the MRGs—a total of \$1.5 billion—represent about two-thirds of current estimated program revenues over 8 years; (5) according to the results of both GSA's and GAO's analysis, the FTS 2001 MRGs are expected to be satisfied for both contractors during fiscal year 2004; (6) three primary factors could significantly alter estimates of total program revenue and corresponding timeframes for satisfying the MRGs: (a) pricing; (b) agency demand for FTS 2001 services; and (c) transition progress; (7) additional competition could yield price reductions, cause further transition delays, and reduce demand for services from the two existing FTS 2001 contractors; (8) in turn, these factors would decrease program revenues and lengthen the time needed to satisfy the MRGs; (9) in regard to the potential benefits of reduced prices and transition costs, it is difficult to quantify the ef-

fect on estimates without knowing an added competitor's prices or the specifics of related transition costs; (10) however, two factors would have to be considered in such an analysis; (11) savings in transition costs would occur only if the new competitor was an incumbent FTS 2000 provider and only to the extent that transition costs have not yet been incurred; (12) reductions in revenues to current FTS 2001 contractors would increase the timeframe for satisfying the MRGs; and (13) if MRGs are not satisfied during the contracts' term, GSA may be liable for additional payments to the contractors.

9. *"Bid Protests: Characteristics of Cases Filed in Federal Courts," April 17, 2000, GGD/OGC-00-72.*

*a. Summary.*—Pursuant to a legislative requirement, GAO provided information on small business bid protests that have been filed in district courts and the United States Court of Federal Claims [COFC] since the Administration Dispute Resolution Act took effect on December 31, 1996, focusing on the: (1) number of bid protest cases filed in the U.S. district courts and COFC between January 1, 1997, and April 30, 1999, that were filed by small businesses, the type of agencies involved, and the amount of the procurement at issue; (2) perceived advantages and disadvantages for small businesses filing bid protest cases in each judicial forum; and (3) characteristics of district court and COFC bid protest cases, particularly those filed by small businesses, that could be used to assess these perceived advantages and disadvantages.

*Findings.*—GAO noted that: (1) between January 1, 1997, and April 30, 1999, at least 66 bid protest cases were filed in U.S. district courts; (2) during the period January 1, 1997, through August 1, 1999, 118 bid protest cases were filed in COFC; (3) on the basis of available data, using an inclusive definition of small business, GAO found about half of the cases in both district courts and COFC were filed by small businesses; (4) defense procurements were the subject of the majority of small business protests in both district courts and COFC; (5) for those cases for which the value of the procurement was available, the majority of the small business procurements in district courts and COFC were for \$10 million or less; (6) the case data available provide a limited basis for assessing the perceived advantages and disadvantages of retaining district court jurisdiction for bid protest cases, therefore, GAO draws no conclusions based on these data; (7) proponents of retaining district court jurisdiction assert that small businesses may be able to reduce the costs of filing a protest case in Federal court by filing in their local district court using counsel from those local districts; (8) requiring small businesses to file all their judicial protest cases with COFC could raise their protest costs, perhaps prohibitively; (9) GAO found that more small businesses filed in COFC than filed in district courts; (10) of the 33 small business cases filed in district courts, 18 were filed in the protesters' local district courts; (11) with regard to potential jurisdictional issues associated with bid protest cases, GAO found that the legal issues raised in the bid protest cases filed in district courts and COFC fell into the same general categories; (12) in both forums, the issue raised most frequently was the propriety of agency evaluation of proposals; (13)



in both district courts and COFC, the results of bid protests were mixed; (14) it was not clear that small businesses were more likely to prevail in district courts than COFC; (15) the courts usually denied injunctive relief to protesters regardless of whether they were small businesses or not; (16) in 30 district court cases and 29 COFC cases, the courts dismissed the cases on the voluntary motion of the protester or the protester and government jointly; (17) in some cases the voluntary dismissal was because the parties had reached a settlement that responded to the protester's claims; and (18) in actions other than granting motions for voluntary dismissal, the courts generally ruled against the protester, with only one district court ruling in the protester's favor.

10. *“Welfare Reform: Improving State Automated Systems Requires Coordinated Federal Effort,” April 27, 2000, HEHS-00-48.*

*a. summary.*—GAO reviewed States' efforts to meet the information needs associated with welfare reform, with a focus on Temporary Assistance for Needy Families [TANF], focusing on the: (1) extent to which automated systems in selected States meet key information needs of programs that help low-income individuals with children obtain employment and become economically independent; (2) approaches States are using to develop or modify their automated systems to better meet these information needs; and (3) major obstacles States have encountered in working to improve their automated systems as well as the potential role of the Federal Government in helping overcome these obstacles.

*Findings.*—GAO noted that: (1) although automated systems in the States GAO examined support welfare reform in many ways, a number of these systems have major limitations in one or more of three key areas; (2) with respect to information needs for case management, the major shortcoming is an inability to obtain data on individual TANF recipients from some of the agencies serving them, including job assistance agencies; (3) this situation makes it difficult for TANF case managers to arrange needed services, ensure that the services are provided, and respond quickly when problems arise; (4) officials in the States, especially those at the local level, said that it is sometimes difficult or impossible to query automated systems to obtain information for planning service strategies for their overall TANF caseloads, such as information on the number of adults with no prior work experience; (5) automated systems have shortcomings for program oversight purposes, specifically, they do not provide enough information to support enforcement of the 5-year TANF time limit and to monitor the employment progress of TANF recipients overall in some instances; (6) States' automated systems projects embody a range of approaches to expanding the ability of system users to obtain and analyze data from multiple sources; (7) some projects are designed primarily to support TANF case managers and other frontline workers in providing more coordinated delivery of services; (8) other projects, geared more to improving the ability of program managers to collect and analyze data from different programs, involve developing new query tools and databases that are expected to help program managers with key tasks, such as determining program results and assessing the performance of service providers; (9) States face a

number of obstacles to improving their automated systems, such as the magnitude of changes in the mission and operations of welfare agencies due to welfare reform, the inherent difficulties associated with successfully managing information technology projects, competition with the private sector to recruit and retain information technology staff, and the complexity of obtaining Federal funding for systems projects that involve multiple agencies; (10) the Federal Government could take various actions to help overcome such obstacles, such as providing more information on best practices for managing information technology; and (11) in this way, the Federal Government could serve a facilitative role, in addition to its regulatory role, in helping States improve automated systems for social programs.

11. *“Women’s Health: NIH Has Increased Its Efforts to Include Women in Research,” May 2, 2000, HEHS-00-96.*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the National Institutes of Health’s [NIH] efforts to include women in clinical research, focusing on: (1) the extent to which women are being included in clinical research that NIH funds; (2) the activities and accomplishments of the NIH Office of Research on Women’s Health [ORWH] in promoting women’s health research at NIH; and (3) how much funding NIH has allocated to research on health issues that affect women.

*Findings.*—GAO noted that: (1) NIH has made significant progress in implementing a strengthened policy on including women in clinical research; (2) NIH issued guidelines to implement the 1993 NIH Revitalization Act and conducted extensive training for scientists and reviewers; (3) the review process for extramural research now treats the inclusion of women and minorities as a matter of scientific merit, which affects a proposal’s eligibility for funding, and it appears that NIH staff and researchers are working to ensure that, when appropriate, study findings will apply to both women and men; (4) NIH implemented a centralized inclusion tracking data system that is an important tool for monitoring the implementation of the inclusion policy; (5) NIH has made less progress in implementing the requirement that certain clinical trials be designed and carried out to permit valid analysis by sex, which could reveal whether interventions affect women and men differently; (6) more than 50 percent of the participants in clinical research studies that NIH funded in fiscal year 1997 were women, according to NIH; (7) minority women were well represented, especially black and Asian and Pacific Islander women, however, the proportion of Hispanic women enrolled was below their proportion in the general population; (8) ORWH has lead responsibility for ensuring that women and minorities are included in clinical research that NIH funds; (9) its budget grew from \$9.4 million in fiscal year 1993 to about \$20 million in fiscal year 2000; (10) ORWH uses its budget to leverage increased funding for research on women’s health by the institutes and centers; (11) it has carried out extensive training and education on the inclusion policy for staff members, investigators, and institutional review boards; (12) however, ORWH has not conducted updated training on the data tracking system to ensure that its data are accurate and consistent; (13)

NIH annually reports how much it spends on women's health, men's health, and conditions that affect both women and men; (14) however, the nature of scientific inquiry makes it impossible to predict how research will affect specific populations, especially with regard to the basic research that receives a substantial portion of NIH resources, and GAO found inconsistencies in the methods NIH staff use to produce its expenditure estimates; (15) according to NIH, spending on women's health conditions grew by 39 percent between fiscal years 1993 and 1999; and (16) NIH's total spending on diseases and conditions unique to or more prevalent in women grew more rapidly than NIH's overall spending from fiscal year 1993 to fiscal year 1999.

12. *"Federal Lobbying: China Permanent Normal Trade Relations (PNTR) Lobbying Activities," GGD-00-130R.*

a. *Summary.*—Pursuant to a congressional request, GAO reviewed efforts by the White House China Trade Relations Working Group and selected agencies to garner support for permanent normal trade relations [PNTR] with China, focusing on: (1) whether these efforts may be in violation of 18 U.S.C. 1913; and (2) applicable appropriations provisions that prohibit the expenditure of appropriated funds for publicity or propaganda purposes or to lobby Congress.

*Findings.*—GAO noted that: (1) some agencies provided preliminary information pertaining to PNTR activities at initial meetings with GAO; (2) the bulk of the material that GAO has received to date was provided during the week of May 1, 2000; (3) this material included speeches, talking points, fact sheets, and electronic mail (e-mail) messages; (4) because of time constraints, GAO instructed the White House and other agencies in GAO's initial discussions to provide the requested documents on a continual, rolling basis, rather than waiting until all documents are compiled and ready for GAO's review, and they have done so; (5) GAO has not yet obtained all requested data for China PNTR-related travel; (6) GAO's review of documents received to date—for example, speeches, talking points, fact sheets, e-mail messages—show extensive outreach and coordination by the administration with outside groups such as public corporations and trade coalitions; (7) GAO has not yet received all of the information requested and have not been able to completely review what has been received; (8) therefore, GAO is not in a position at the present time to say that the criminal lobbying provision at 18 U.S.C. 1913 or the applicable appropriations restrictions have been violated; and (9) GAO expects that the agencies will provide additional information on a continuing basis.

13. *"Foster Care: HHS Should Ensure That Juvenile Justice Placements Are Reviewed," June 9, 2000, HEHS-00-42.*

a. *Summary.*—Pursuant to a congressional request, GAO provided information on the Department of Health and Human Services' [HHS] approval of the Social Security Act's title IV-E reimbursements for foster care placements, focusing on: (1) the number of title IV-E foster care placements made by juvenile justice agencies in fiscal year 1998 and the amount of Federal care funding ex-

pending for these placements; (2) how selected States ensure that title IV–E funds are not used for placements in detention facilities and ensure that procedural requirements to protect the welfare of children in title IV–E funded juvenile cases are met; and (3) HHS’ processes for ensuring the appropriate use of funds and compliance with these procedural requirements in title IV–E funded juvenile justice placements.

*Findings.*—GAO noted that: (1) in fiscal year 1998, about \$300 million in title IV–E funds was used to support foster care placements of children in the juvenile justice system; (2) almost half of the States used some portion of their title IV–E funds in this way; (3) nearly 60 percent of the total amount of title IV–E funding used for juvenile justice placements was used by California; (4) the \$300 million used for children in the juvenile justice system is 10 percent of all fiscal year 1998 title IV–E expenditures; (5) to ensure that title IV–E funds are not being used for placements in detention facilities, the 10 States that used the largest amount of such funding in fiscal year 1998 rely primarily on the requirements that a facility must meet in order to be licensed as a child care institution; (6) licensing regulations in those States establish standards designed primarily to ensure a healthy and safe physical environment for the children; (7) in some States, these regulations allow a facility to engage in some restrictive practices that have been associated with detention; (8) State licensing regulations also play a role with regard to meeting title IV–E procedural requirements intended to protect the welfare of children in foster care cases—namely, that case plans be developed, administrative case reviews be conducted, and procedural safeguards be in place; (9) States enforce their licensing regulations through periodic on-site visits and facility inspections; (10) in addition to their licensing regulations, the two States whose procedures GAO examined more closely have administrative regulations for protecting children in foster care, which address in detail the title IV–E procedural requirements; (11) HHS has acknowledged that States have sometimes encountered difficulty in determining whether the facilities in which juvenile justice system children are placed qualify to receive title IV–E funding and in meeting procedural requirements in these cases; (12) HHS conducts two broad oversight reviews in each State, a title IV–E eligibility review and a child and family services [CFS] review; (13) title IV–E eligibility reviews primarily verify children’s and foster care providers’ eligibility for title IV–E funding in random sample of title IV–E funded foster care placements in each State; and (14) CFS reviews assess systems States use to determine the eligibility of foster care providers for title IV–E funding and systems States use to ensure that procedural requirements are met in title IV–E funded placements.

14. *Federal Rulemaking: Agencies’ Use of Information Technology to Facilitate Public Participation,* June 30, 2000, GGD-00-135R.

*a. Summary.*—Pursuant to a congressional request, GAO reviewed how Federal agencies are using information technology [IT] to facilitate public participation in the rulemaking process, focusing on the: (1) potentially beneficial uses of IT in the rulemaking proc-

ess that have not yet been adopted by Federal agencies; and (2) benefits and drawbacks of standardizing innovative uses of IT across multiple agencies.

*Findings.*—GAO noted that: (1) all five of the regulatory agencies that GAO examined were using some form of IT to notify the public about opportunities to participate in rulemaking and to facilitate the receipt of public comments; (2) all of these agencies had Web sites that conveyed rulemaking information to the public or maintained some rulemaking records in electronic form, and all of them accepted electronic comments for at least some of their proposed rules; (3) however, the specific features and uses of IT differed significantly between and sometimes within the agencies; (4) for example, the Department of Transportation [DOT] had established an Internet Web site that housed regulatory information for every agency within DOT and was searchable in a variety of ways; (5) other agencies either had no such information electronically available or the nature of the information available varied from one part of DOT to another; (6) some of the agencies were beginning to use targeted, proactive notifications of forthcoming rules, and some were experimenting with interactive comment processes; (7) the individuals and organizations with whom GAO spoke did not identify any potentially beneficial IT-based public participation applications that had not been adopted by at least one of the regulatory agencies that GAO examined; (8) however, some of them indicated that certain IT practices should be more widely used; (9) several individuals and organizations suggested that agencies move to a more consistent organization, content, and presentation of information to allow for a more common “look and feel” to agencies’ IT-based public participation mechanisms in rulemaking; (10) although some of the individuals and organizations that GAO contacted said that standardization of IT-based public participation innovations across agencies could lead to more participation in the rulemaking process, the agency representatives that GAO contacted generally did not believe that cross-agency standardization was either necessary or appropriate; (11) they said that each agency needed to develop systems appropriate for their particular circumstances and that there were no data indicating that the lack of standardization was a problem, or that standardization would improve either the quantity or the quality of the participation that agencies receive during the rulemaking process; and (12) they also said that standardization would require substantial resources and that those resources might be better used in other endeavors.

15. *“Information Technology: Selected Agencies’ Use of Commercial Off-the-Shelf Software for Human Resources Functions,” July 31, 2000, AIMD-00-270.*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the use of commercial off-the-shelf [COTS] software applications to improve human resource [HR] functions within Federal agencies, focusing on: (1) how five Federal agencies were using COTS systems/applications to improve their HR functions; and (2) for these five agencies, identify the agencies’ reported estimated costs and expected benefits from using HR COTS systems.

*Findings.*—GAO noted that: (1) the Department of Defense [DOD], the General Services Administration, the Centers for Disease Control and Prevention [CDC], the Department of Labor, and the Department of Veterans Affairs [VA] all have efforts underway to use COTS systems and applications to improve their HR functions; (2) quantifiable benefits expected included requiring fewer employees to perform H.R. functions, reducing manager time for transactions and data analysis, eliminating duplicative or multiple systems, and implementing self-service HR functions, such as employee changes to health and life insurance benefits; (3) nonquantifiable benefits expected included a more user-friendly environment, easier manager/employee access, better decisionmaking and data analysis, improved data accuracy, and better information sharing; (4) despite these expectations, four of the five agencies' systems efforts have encountered delays, while three of the four agencies have increased cost estimates; and (5) to date, three of the five agencies—DOD, Labor, and VA—have reportedly achieved quantifiable benefits, such as full-time equivalent reductions from their HR COTS systems or related efforts.

16. *“Office of Personnel Management: Health Insurance Premium Conversion,” August 7, 2000, AIMD-00-270.*

*a. Summary.*—Pursuant to a legislative requirement, GAO reviewed the Office of Personnel Management's [OPM] new rule on health insurance premium conversion.

*Findings.*—GAO noted that: (1) the interim rule enables Federal employees to pay Federal Employees Health Benefits premiums with pre-tax dollars, as provided by statutory law; and (2) OPM complied with applicable requirements in promulgating the rule.

17. *“Medicare: HCFA Could Do More to Identify and Collect Overpayments,” September 7, 2000, HEHS/AIMD-00-304.*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on efforts to recover Medicare's overpayments, focusing on: (1) how the Health Care Financing Administration [HCFA] and its contractors identify potential overpayments, and whether techniques used by recovery auditors would improve overpayment identification; (2) how well HCFA and its contractors collect overpayments once they are identified, and whether the services of recovery auditors would improve HCFA collection efforts; and (3) what challenges HCFA would face if it were required to hire recovery auditors to augment its overpayment identification and collection activities.

*Findings.*—GAO noted that: (1) despite HCFA's efforts to pay claims correctly in its \$167 billion fee-for-service Medicare program, several billions of dollars in Medicare overpayments occur each year; (2) it is therefore critical that HCFA undertake effective postpayment activities to identify overpayments expeditiously; (3) HCFA's claims administration contractors use several postpayment techniques to identify overpayments; (4) these include medical review to ensure reports for providers that are paid on the basis of their costs, and reviews to determine if another entity besides Medicare has primary payment responsibility; (5) the contractors identify and collect billions of dollars through these activities, but

how well each contractor performs them is not clear because HCFA lacks the information it needs to measure the effectiveness of contractors' overpayment identification activities; (6) while recovery auditors may also save money for clients, such as State Medicaid agencies, by identifying overpayments, the identification techniques they use are generally similar to those already used by HCFA and its contractors; (7) this does not mean that HCFA could not benefit from a stronger focus on specific postpayment activities; (8) however, doing so may require additional program safeguard funding so as not to shift funds away from HCFA's other efforts, such as prepayment review to prevent overpayments; (9) Congress has given HCFA assured funding for program safeguard activities; (10) however, the funding level is about one-third less than it was in 1989 and, although it will increase until 2003, it will only keep pace with expected growth in Medicare expenditures; (11) for fiscal year 1999, based on HCFA estimates, the Medicare Integrity Program saved the Medicare program more than \$17 for each \$1 spent—about 55 percent from prepayment activities and the rest from postpayment activities; (12) because these activities can bring a positive return, GAO suggests that Congress consider increasing HCFA's funding to bolster its postpayment review program; (13) HCFA plans to expand its pilot projects from some to all of its claims administration contractors; and (14) however, it has established minimum thresholds for referrals for collection that are higher than the Department of the Treasury and debt collection center will accept because HCFA says that it does not have the resources needed to pursue collection on the large volume of debt below its thresholds.

18. *"Financial Audit: Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2000," September 29, 2000, AIMD-00-310.*

. *Summary.*—Pursuant to a congressional request, GAO audited the expenditures of seven offices of independent counsel and one office of special counsel for the 6 months ended March 31, 2000.

*Findings.*—GAO noted that: (1) the statements of expenditures presented for the offices of seven independent counsel and one special counsel were fairly presented in all material respects; (2) GAO's consideration of internal controls disclosed no material weaknesses; and (3) GAO's audits included limited tests of compliance with laws and regulations that disclosed no reportable instances of noncompliance with the laws and regulations GAO tested.

19. *"Program Evaluation: Studies Helped Agencies Measure or Explain Program Performance," September 29, 2000, GGD-00-204.*

. *Summary.*—Background: Pursuant to a congressional request, GAO reviewed how Federal agencies used evaluation studies to report on their achievements, focusing on: (1) how program evaluation studies or methods served in performance reporting; and (2) circumstances that led agencies to conduct evaluations.

*Findings.*—GAO noted that: (1) evaluations helped the agencies improve their measurement of program performance or under-

standing of performance and how it might be improved—some studies did both; (2) to help improve their performance measurement, two agencies used the findings of effectiveness evaluations to provide data on program results that were otherwise unavailable; (3) one agency supported a number of studies to help States prepare the groundwork for and pilot-test future performance measures; (4) another used evaluation methods to validate the accuracy of existing performance data; (5) to better understand program performance, one agency reported evaluation and audit findings to address other, operational concerns about the program; (6) four agencies drew on evaluations to explain the reasons for observed performance or identify ways to improve performance; (7) three agencies compared their program's results with estimates of what might have happened in the program's absence in order to assess their program's net impact or contribution to results; (8) two of the evaluations GAO reviewed were initiated in response to legislative provisions, but most of the studies were self-initiated by agencies in response to concerns about the program's performance or about the availability of outcome data; (9) some studies were initiated by agencies for reasons unrelated to meeting Government Performance and Results Act requirements and thus served purposes beyond those they were designed to address; (10) in some cases, evaluations were launched to identify the reasons for poor program performance and learn how that could be remedied; (11) in other cases, agencies initiated special studies because they faced challenges in collecting outcome data on an ongoing basis; (12) one departmentwide study was initiated in order to direct attention to an issue that cut across program boundaries and agencies' responsibilities; (13) as agencies governmentwide update their strategic and performance plans, the examples in this report might help them identify ways that evaluations can contribute to understanding their programs' performance; and (14) these cases also provide some examples of ways agencies might leverage their evaluation resources through: (a) drawing on the findings of a wide array of evaluations and audits; (b) making multiple use of an evaluations findings; (c) mining existing databases; and (d) collaborating with State and local program partners to develop mutually useful performance data.

20. *“Financial Management: Federal Financial Management Improvement Act Results for Fiscal Year 1999,” September 29, 2000, AIMD-00-307.*

*a. Summary.*—Pursuant to a legislative requirement, GAO provided information on the implementation of the Federal Financial Management Improvement Act [FFMIA] in fiscal year 1999, focusing on: (1) compliance of the Chief Financial Officers [CFO] Act agencies' financial systems with FFMIA's requirements; (2) agencies' plans to bring their systems into compliance; and (3) other efforts to improve the government's financial management systems.

*Findings.*—GAO noted that: (1) for fiscal year 1999, auditors for 21 of the 24 CFO Act agencies reported that the agencies' financial systems did not comply substantially with FFMIA's requirements—Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard



General Ledger [SGL]; (2) as a result, the vast majority of agencies' financial management systems fall short of the CFO Act and FFMIA goal to provide reliable, useful, and timely information on an ongoing basis for day-to-day management and decisionmaking; (3) reasons for systems' noncompliance include: (a) nonintegrated systems; (b) inadequate reconciliation procedures; (c) noncompliance with the SGL; (d) lack of adherence to accounting standards; and (e) weak security over information systems; (4) although the financial management systems of most agencies do not yet comply with FFMIA's requirements, the number of agencies receiving "clean" or unqualified audit opinions is increasing; (5) 15 of the 24 CFO Act agencies received unqualified audit opinions on their financial statements for fiscal year 1999, up from 12 in fiscal year 1998 and 11 in fiscal year 1997; (6) auditors of 12 of the 15 agencies that received unqualified opinions reported that the agencies' financial systems did not comply substantially with FFMIA's requirements in fiscal year 1999; (7) through the rigors of the financial statement audit process and the requirements of FFMIA, agencies have gained a better understanding of their financial management weaknesses and the impetus to resolve problems caused by those weaknesses; (8) at the same time, agencies are slowly making progress in addressing their problems; (9) while an increasing number of agencies are receiving "clean" audit opinions on their financial statements, the continued widespread noncompliance with FFMIA shows that there is still a long way to go to having systems, processes, and controls that routinely generate reliable, useful, and timely information for managers and other decisionmakers; and (10) many leading finance organizations have a goal to reduce the time spent on routine accounting activities, such as financial statement preparation, so that financial management staff can spend more time on activities such as business performance analysis or cost analysis.

21. *"Federal Lobbying: China Permanent Normal Trade Relations [PNTR] Lobbying Activities and Costs," September 29, 2000, GGD-00-199R.*

*a. Summary.*—Pursuant to a congressional request, GAO reviewed the efforts of the White House China Trade Relations Working Group, focusing on: (1) whether such efforts violated the antilobbying provisions of 18 U.S.C. 1913 or any applicable appropriations statutes; and (2) how much the administration has spent on its efforts to garner support for China Permanent Normal Trade Relations [PNTR].

*Findings.*—GAO noted that: (1) after reviewing the documents that the White House and agencies represented on the Working Group provided to GAO through August 31, 2000, GAO has not found any further violations of the antilobbying restrictions, aside from the one violation GAO already reported; (2) the administration spent at least an estimated \$1.6 million on its China PNTR efforts through about May 24, 2000, when the House of Representatives voted on China PNTR; (3) GAO computed this amount on the basis of estimates that the White House and agencies associated with the Working Group provided to GAO; (4) these estimates included the cost of personnel working full-time or part-time on

China PNTR, trips associated with the PNTR effort, developing the Working Group's Internet Web site, and printing charts, booklets, and other documents; (5) of the \$1.6 million, an estimated \$1.3 million was for personnel costs; (6) a number of different Federal organizations provided personnel for the China PNTR effort; (7) the time period covered by the White House and two agencies' personnel costs included the period from the Working Group's establishment on February 1, 2000, through May 24, 2000, when the House voted on H.R. 4444; (8) for three agencies, the time period was slightly different, all three began January 1 and individually ended on April 7, May 3, and May 31; (9) the White House and four agencies reported 21 trips within the United States and to China at an estimated cost of about \$299,000; (10) the travel cost estimate does not include the cost of military airfare for a trip to China sponsored by the Department of Agriculture, which was paid for by the Department of State; (11) one agency, the State Department, has not provided travel data; (12) a limitation to the travel cost data is that the trips were not always exclusively devoted to China PNTR; (13) according to agency officials, a large number of trips were related to the specific agency's mission and were planned prior to the emphasis on China PNTR; (14) other costs related to the China PNTR effort, such as printing and the "China Trade Relations Working Group" Web site, totalled about \$61,000; (15) all of the reported costs were borne by the Department of Commerce; (16) the bulk of the costs, about \$58,000 was for the printing of such items as booklets, briefing books, and State reports; and (17) the design and development of the Web site cost \$3,000.

22. *"Anthrax Vaccine: Preliminary Results of GAO's Survey of Guard/Reserve Pilots and Aircrew Members," October 11, 2000, GAO-01-92T.*

a. *Summary.*—This testimony discusses the Department of Defense's [DOD] Anthrax Vaccine Program. Many questions have been raised about the program since DOD began vaccinating its 2.4 million active duty and reserve members in 1998. A major concern has been the program's effect on the National Guard and Air Force Reserve's retention of trained and experienced personnel. A questionnaire sent to 1,253 randomly selected Guard and Reserve pilots and others revealed that the anthrax immunization was a key reason these individuals left or otherwise changed their military status. Since September 1998, an estimated 25 percent of the pilots and aircrew members of the Guard and Reserve in this population transferred to another unit, left the military, or moved to inactive status.

23. *"Managing for Results: Emerging Benefits From Selected Agencies' Use of Performance Agreements," October 30, 2000, GAO-01-115.*

a. *Summary.*—The Veterans Health Administration, the Department of Transportation, and the Office of Student Financial Assistance have begun to use results-oriented performance agreements to align agency expectations with organizational goals. Each agency developed and implemented agreements that reflected their specific organizational priorities, structures, and cultures. GAO identified

the following five common emerging benefits: (1) better alignment of results-oriented goals with daily operations; (2) collaboration across organizational boundaries; (3) opportunities to use performance information to improve Federal programs; (4) results-oriented basis for individual accountability; and (5) continuity of program goals during leadership transitions. The three agencies' experiences show that effective implementation of performance agreements can encourage communication about progress toward agency goals. Their experiences also indicate that performance information should be provided to executives and managers in a timely fashion and in a useful format.

24. *"Drug Prices Paid by DOD and VA Are, on Average, Lower Than Those Certified to HCFA as Best Price," October 31, 2000, GAO-01-175R.*

a. *Summary.*—GAO compares the drug prices paid by the Department of Defense [DOD] and the Department of Veterans Affairs [VA] with the prices paid by the Health Care Financing Administration [HCFA]. On average, for the sample of drug prices analyzed by GAO, HCFA's prices were higher than those of either DOD or VA.

#### SUBCOMMITTEE ON THE CENSUS

Hon. Dan Miller, *Chairman*

1. *"Formula Grants: Effects of Adjusted Population Counts on Federal Funding to States," February 1999, GAO/HEHS-99-69.*

a. *Summary.*—Proponents of sampling in the 2000 census have often cited a total dollar amount of "lost" Federal funding for each person that was not enumerated in the 1990 census. A hypothetical example would be a mayor who would claim the 1990 census missed 5,000 people in his city and the direct result was a loss of \$10 million from federally funded programs. To clarify this matter the subcommittee asked the General Accounting Office to determine which Federal programs use the 1990 population figures in determining their disbursements. The study calculated the Federal program disbursements using the Census Bureau's 1990 post enumeration survey [PES] figures and the official 1990 population figures.

*Summary of results.*—The GAO found that 22 of the 25 large formula grant programs rely, at least in part, on data derived from the decennial census to apportion funding among States and units of local government. Medicaid was the single largest program, representing 63 percent of the \$167 billion in fiscal year 1998 obligations under the 25 programs that were reviewed. For the 15 programs included in their detailed analysis, they determined that the use of adjusted population figures would reallocate a total of \$449 million among the 50 States and the District of Columbia, or 0.33 percent of apportioned by formula in their detailed analysis. The report detailed the following:

California accounted for about 20 percent of the adjusted population and would receive nearly half of the total reallocation of Federal funds, or \$223 million of the \$449 million.

The four States that border Mexico (California, Arizona, New Mexico, Texas) accounted for over one third of the adjusted population and would receive nearly 75 percent of the total reallocation, or \$336 million.

The largest dollar reduction would occur in Pennsylvania (\$110 million), and the largest percentage reduction would occur in Rhode Island (1.8 percent).

Medicaid accounted for 90 percent of funds reallocated.

Funding would generally shift from Northeastern and Midwestern States to the Southern and Western States.

The GAO found that 22 of the 25 large programs use decennial census data, at least in part, to apportion grant funding. The 22 programs represent 97 percent of fiscal year 1998 obligations for the largest 25 programs included in our analysis. The remaining 3 programs accounted for \$5.2 billion. They also concluded that the use of adjusted population counts based on the 1990 PES in the 15 formula grants analyzed by the GAO would result in 23 States receiving less Federal funding and 27 States and the District of Columbia receiving more.

*b. Benefits.*—The great benefit of this report was to finally establish which programs use population counts to determine their allocations and roughly what the dollar amounts are. The report was often used by the subcommittee to clarify who would lose or gain Federal funds based on the sampling counts.

2. *“Census 2000: Analysis of Fiscal Year 2000 budget Amendment,” September 1999, GAO/GGD-99-291.*

*a. Summary.*—At the request of Subcommittee Chairman Dan Miller, the General Accounting Office [GAO] was asked to review the \$1.7 billion supplemental budget request submitted by the Clinton administration. The request asked GAO to (1) provide an overall analysis of the key changes in assumptions resulting in the \$1.7 billion requested increase, (2) provide details on the components of this increase (3) explain which changes, according to the Census Bureau, are attributable to its inability to use statistical sampling, and which were not (4) describe the process the Census Bureau used for developing the increase in the original fiscal year 2000 budget request and the amended budget request.

*Background.*—The GAO reported that for the 2000 census, the Census Bureau planned to augment the traditional census methodology with statistical estimation to develop a unified census count. In November of 1997, in the Commerce Justice State Appropriations Act for 1998, the Congress questioned the constitutionality of using statistical sampling and directed the Census Bureau to plan to implement a census in 2000 without using statistical methods. The Census Bureau reported to the Congress on possible components in a traditional census plan in April 1998.

However, the Census Bureau did not begin detailed budgeting for a nonsampling-based census until after the Supreme Court ruled that the Census Act prohibited the use of statistical sampling for purposes of determining the population count used to apportion the House of Representatives. As recently as August 1997, the Census Bureau estimated that without sampling, the cost of the 2000 census would increase from \$675 million to \$800 million and would be

less accurate than the 1990 census. Prior to the Supreme Court decision the administration had requested \$2.8 billion for decennial activities in fiscal year 2000.

**Results.**—The GAO found that the net \$1.7 billion supplemental resulted primarily from changes in assumptions relating to a substantial increase in workload, reduced employee productivity, and increased advertising. According to GAO, under the nonsampling design, census costs will increase because the Census Bureau expects to follow-up on more nonresponding households than it would have in a sampling-based census. It also plans to use additional programs to improve coverage. These changes are due to the fact it cannot rely on statistical methods to adjust for undercounting and other coverage errors.

The Census Bureau assumed an increased workload because the housing units that the Census Bureau expects to visit increased from an estimated 30 million to 46 million.

The increase of 16 million housing units includes visiting 12 million additional nonresponding housing units and 4 million additional housing units that the Postal Services says are vacant or nonexistent. Also contributing to the workload increase were a number of programs that were not in the original budget. These programs were primarily aimed at improving the accuracy of the 2000 census through quality control operations, such as reinterviewing households that had been previously visited by an enumerator. However, it is unclear whether these additional programs will result in a 2000 census that is more accurate than the 1990 census. This increased workload, which increased costs for most Census Bureau program activities, relates primarily to additional salaries, benefits, travel, data processing, infrastructure, and supplies.

The GAO also reported another key factor which substantially increased the fiscal year 2000 budget request was the Census Bureau's reduction of the assumed productivity rate of its enumerators by 20 percent from the original to the amended budget requests—from 1.28 to 1.03 households per hour. This reduction relates to all enumerator employees for nonresponse follow-up—both those employees to be hired to visit the 30 million nonresponding housing units in the original budget request as well as those for the 16 million additional housing units. In essence the productivity rate was reduced across the board not just for the hard to enumerate. The Census believes that the productivity of all their workers will suffer. The Census Bureau did not provide any documented internal or external quantitative analysis or other analysis to support the initial or revised productivity rates. This reduction was primarily based on senior management judgments, which the Census Bureau acknowledges are very conservative, that the Census Bureau could have difficulty hiring a sufficient number of quality temporary workers in such a tight labor market.

Due to the assumed increase in workload and reduction in productivity, the total number of temporary field positions increased from 780,000 in the original budget to 1,350,000 in the amended budget request (note: a position does not always equate to an employee; many employees will hold more than one position). The 570,000 new positions included 200,000 for following up on non-

responding households, 120,000 for enumerator activities such as counting people in homeless shelters, and 220,000 related to additional coverage improvement and quality control programs.

The Census Bureau also included nearly \$72 million for advertising purposes in the amended budget request to increase public awareness and hopefully increase response rates for mailed questionnaires. However, the Census Bureau's amended budget request did not assume any cost savings from the increased advertising dollars in the form of increased response rates and, accordingly, a reduced workload.

According to the Census Bureau, about \$1.6 billion of this increase was related to the inability to use statistical sampling and \$100 million is not. As discussed above, the additional costs were due to primarily increased workload, reduced productivity, and increased advertising. The items unrelated to the sampling issue included costs not included in the original budget request and revisions of previously submitted estimates. For example, the Census Bureau did not include \$52 million for rent and long distance telephone service in the original budget for Local Census Offices.

The Census Bureau developed its \$4.5 billion amended budget request for fiscal year 2000 using a cost model consisting of a series of interrelated software spreadsheets. The original and amended budget requests were developed using this cost model, with each estimate being developed independently using different versions of the cost model. The Census Bureau derived the \$1.7 billion requested increase by calculating the net difference between the original budget request of \$2.8 billion and the amended budget request of \$4.5 billion.

*b. Benefits.*—This report was used to shed light on the \$1.7 billion supplemental budget request by the Census Bureau. The report provided critical insight into how the Census Bureau developed key budget assumptions and helped to highlight key areas where both the appropriations and oversight subcommittees should focus attention during the upcoming fiscal year.

The subcommittee highlighted several areas of the GAO report that were of serious concern: Ignoring the 1997 congressional mandate to prepare on a dual track until after the Supreme Court decision in January 1999, making \$1 billion in budget assumptions outside the cost models, lowering productivity rates without justification, and failing to calculate any benefit or costs savings in increased mail response rates from the additional \$72 million in advertising.

Ignoring the 1997 congressional mandate to prepare on a dual track until after the Supreme Court decision in January 1999.—The subcommittee had always suspected that the Census Bureau was not putting in a full faith effort in preparing for a full enumeration. Although they had submitted some rudimentary outlines of their plan, they had not detailed the specifics of how they planned to conduct a full enumeration. The GAO confirmed the subcommittee's fears, saying, "the Census Bureau reported to the Congress on possible components in a traditional census plan in April 1998. However, the Census Bureau did not begin detailed budgeting for a nonsampling-based census until after the Supreme Court ruled that the Census Act prohibited the use of statistical

sampling for purposes of determining the population count used to apportion the House of Representatives.”

The Census Bureau made \$1 billion in budget assumptions outside costs models.

GAO said, “Of the \$4.5 billion amended budget request, about \$1.05 billion (23 percent) was calculated outside the [cost] model. This \$1.05 billion includes costs for headquarters activities and contracts. The assumptions are developed by program managers and are generally based on either third party evidence, such as independent studies, or senior management’s judgement.” The GAO and the House/Senate appropriations staff raised serious concerns about this budget approach. In fact, the Census Bureau had told the appropriators that all of their budget numbers had been developed within cost models.

Lowering productivity rates without justification. GAO reported “a significant factor increasing the Census Bureau’s budget request is a 20 percent reduction in the assumed productivity rate for temporary employee enumerators—in the original budget request, the Census Bureau used an average productivity rate of about 1.28 households per hour, which was reduced in the amended budget request to about 1.03.” The Census Bureau told GAO that the lowered productivity estimate was the result of the potential difficulty in hiring quality employees due to the low unemployment rate. However, the GAO noted that “the Census Bureau did not provide any documented internal or external quantitative analysis or other analysis that supported the original or the revised productivity rate. Consequently, the 20 percent reduction in productivity is based on senior management judgments, which the Census Bureau acknowledges are very conservative.”

Failing to calculate any benefit or costs savings in increased mail response rates from the additional \$72 million in advertising. GAO reported, “the bureau included nearly \$72 million for advertising intended to increase questionnaire responses, including advertising that will be targeted to hard-to-enumerate communities.” Chairman Miller has been very supportive of the advertising campaign and, in fact, recommended increasing funding for the program. However, the chairman remains concerned that the Census Bureau apparently sees no cost savings as a result of an increased mail response rate. It costs significantly less to enumerate someone by mail than to enumerate him or her in the field. The GAO noted “the Census Bureau has no data available to support how much, if any, the increased advertising will increase the response rate. As a result, the Census Bureau’s assumed average questionnaire response rate of 61 percent in the original budget request did not increase in the amended budget request. Thus, the Census Bureau has assumed no cost savings in the form of increased response rate and resultant reduced workload from the increased advertising dollars.”

These areas of concern gave Chairman Miller a heightened sensitivity to how the Census Bureau intends to spend its \$4.5 billion appropriation in 2000. Furthermore, the chairman may, at some point, ask for a full agency audit of the Census Bureau.

3. *"2000 Census: Information on the Implications of a Post Census Local Review Program," October 13, 1999, GAO/GGD-00-9R.*

a. *Summary.*—Background: A hearing and mark-up was held on February 11, 1999 on H.R. 472, the Local Census Quality Act of 1999. This bill would re-enact a 1990 census program, with several enhancements, called post census local review [PCLR]. This program was popular with many cities and towns because it represented the last opportunity for local and tribal governments to check the Census Bureau's work for errors before the census was completed.

Members of the subcommittee and various census stakeholders were concerned that the Census Bureau's staunch opposition to this program was unfounded. The Census Bureau stated that a post census local review would interfere with their planned accuracy and coverage evaluation [ACE], and give local and tribal governments a chance to slow down the census process and possibly cause the Census Bureau to miss statutory deadlines to produce data. In 1990 the Census Bureau was in the field an additional 4 to 6 weeks longer than they had anticipated for non-response follow-up and were still able to conduct post census local review, not to mention meeting the statutory guidelines for data products.

In his letter dated, April 8, 1999, Chairman Miller asked the Honorable David M. Walker, Comptroller General of the General Accounting Office [GAO] a series of questions regarding the implementation of an enhanced post census local review to census 2000 plans, and what consequences that it may bring.

The GAO issued an official response on October 13, 1999 to questions posed by Chairman Miller on the implications of including the post census local review program to census 2000. The response to Chairman Miller's letter is entitled, "GAO Responses to Questions From Chairman Miller on the Use of a Post Census Local Review in the 2000 Census." The official response from the GAO and answers to the questions contained in the aforementioned letter took longer than anticipated because the Secretary of Commerce demanded that his written comments on the release of the GAO's findings be included. The Secretary stated that he had fundamental concerns about the position the GAO was taking in response to Chairman Miller's questions.

Question #1: What effect will the implementation of a PCLR program have on the implementation of other programs already scheduled for census 2000?

In response, the GAO stated, "The extent to which a PCLR program would affect other operations already scheduled for the 2000 Census is unclear." The GAO also suggested that the effect of PCLR on the quality of the ACE estimates would be minimal. Furthermore, based on the Bureau's experience in 1990, the Census Bureau's contention that PCLR must be completed prior to starting the ACE matching and reconciliation process was too rigid.

Question #2: Will the implementation of a PCLR program increase or decrease the accuracy of the census counts before any adjustment is applied due to a coverage and evaluation survey?

The GAO contended that based on lessons learned from the 1990 census, PCLR could add small numbers of housing units and people to the count and make a contribution the overall accuracy of census



2000. The Census Bureau stated that evaluations of 1990 late census data showed that a majority of these additions had a high rate of error.

Question #3: If the Bureau projects any such decrease in accuracy, are there any specific scientific studies that back this assertion?

The Census Bureau has not studied the effect that post census local review could have on census 2000.

Question #4: Given the fact that the ACE (accuracy and coverage evaluation) will only be conducted in 10,000 out of 5 million populated census blocks and significant PCLR corrections for missed housing units should only be reported for a fairly small number of blocks (somewhere around 50,000 to 100,000 out of 5 million blocks), what effect will a PCLR have on the timely field implementation and analysis of the ACE?

The GAO was unable to get to the root of this question because, according to Census Bureau officials, information on the extent of overlap between 1990 post enumeration survey [PES] and PCLR blocks was not available for comparison purposes. However, the GAO found that on the basis of 1990 evaluations, there would not be a significant reduction if the PES estimate of accuracy in the PCLR data were not used in the ACE.

Question #5: What are the actual overlaps between the two processes? (PCLR and ACE) The GAO found that there would be no overlaps in time between PCLR and ACE. The Census Bureau countered that if they were required to do PCLR for census 2000, they would have to delay the ACE matching and reconciliation process to accommodate for PCLR operations much as they did in 1990. The Census Bureau expressed concern that the PCLR process would keep them in the field longer and thus delay the ACE matching and reconciliation process by up to 6 weeks.

Question #6: Other than the cost factors that have already been projected by the Congressional Budget Office, what other benefits or problems do you envision with the incorporation of a PCLR in the 2000 decennial census?

*b. Benefits.*—The GAO list the following potential benefits of incorporating the post census local review program into census 2000:

PCLR could allow local government officials a last chance to review and correct housing unit counts within their jurisdictions before the census is over. In 1990, roughly 25 percent of eligible local governments participated.

PCLR could correct some errors in the Bureau's files showing the exact geographic location of an address (known as geocodes) and delete nonexistent housing units from the Census Bureau's master address list. In 1990, 198,347 housing units were geographically transferred, and 101,887 housing units were deleted from the Bureau's records.

PCLR could add people and housing units to the overall census count in the correct location.

PCLR could identify pockets of missed housing units as it did during the 1990 census.

The GAO also listed some of Post Census Local Review's potential problems:

PCLR has unknown implications for timely and accurate completion of other census operations because of an unknown volume of challenges from local governments. Based on the 1990 experience, the volume of challenges was low, but the Census Bureau is cautious for census 2000.

PCLR could create logistical problems. The GAO cites the example that the printing of maps and address lists on a random basis for local governments could be an added cost.

If PCLR follows the 1990 pattern, there may be lower participation by smaller local governments that lack the available resources of larger cities.

The GAO suggests that PCLR may be more expensive than some other post census day coverage improvement programs in terms of housing units and people added to the final census counts. In 1990, the Census Bureau spent \$9.6 million on PCLR, \$118.67 per housing unit added, or \$78.89 per person added. The GAO goes on to point out that when measured by the total number of corrections made, PCLR costs drop to \$25.19 per housing unit corrected. During the 1990 census, PCLR added 80,929 housing units, deleted 101,887 housing units, and corrected 198,347 geocoding errors for total housing unit corrections of 381,163.

4. *"Contingency Planning Needed to Mitigate Formidable Risks That Threaten the Census' Success," December 1999, GAO/GGD-00-6.*

a. *Summary.*—The 1990 census was the most costly census in U.S. history and data were less accurate than the 1980 census, leaving millions of Americans—especially members of minority groups—uncounted. Throughout this decade, the General Accounting Office [GAO] has reviewed the Bureau's preparations for the 2000 census and has expressed a growing sense of concern over the developmental and operational challenges surrounding key census taking operations. Per subcommittee request, this GAO report reviews the Bureau's progress in reducing the risks involved with two of their long-standing concerns for census 2000. The first is a need to boost the level of public participation in the census. The second is the Bureau's need to collect timely and accurate data from non-respondents. With less than 4 months remaining before census day (April 1, 2000), the GAO found that significant uncertainties regarding the Census Bureau's efforts in these matters still remained. Motivating the public to complete and mail back their census forms would prove to be a formidable task given a declining trend attributed to various demographic and attitudinal factors, as well as concerns over privacy, and mistrust of government. In addition, the field follow up efforts would be costly, and, due to time restraints and operational challenges, concerns existed that the non-response phase of census 2000 could produce unreliable data. Given the Bureau's history of staffing problems and the magnitude of the Bureau's staffing challenge for 2000, the GAO recommended that the Bureau develop contingency plans to mitigate the impact of a lower than expected response rate. This recommendation is consistent with suggestions GAO made in their 1992 summary assessment of the 1990 Census (GAO/GGD-92-94, June 9, 1992). The

GAO also suggested that Congress might wish to consider opportunities to expand the potential census applicant pool.

*b. Benefits.*—This report was used to highlight several areas of particular concern to GAO and the subcommittee regarding the readiness of the Census Bureau to conduct the 2000 census. The report provided critical insight into how the Census Bureau's failure to accept this subcommittee's recommendations may hurt the final success of the 2000 census. The subcommittee remains concerned that the failure to implement a second mailing and the Bureau's insistence on an abbreviated non-response follow up operation may affect coverage and accuracy.

5. *"New Data Capture System Progress and Risks," February 4, 2000, AIMD-00-61.*

*a. Summary.*—In preparation for census 2000, the largest peacetime mobilization in the Nation's history, the Census Bureau planned for staffing 1.35 million temporary field positions to capture 1.5 billion pages of data from about 119 million households. To meet this massive challenge, the Bureau relied heavily on information technology, including its new Data Capture System, DCS 2000. The system is operating at four data capture centers (Baltimore, MD; Jeffersonville, IN; Pomona, CA; and, Phoenix, AZ.) The DCS 2000 will check in, digitally image, and optically read the data handwritten onto census forms and convert these data into files that will be sent to Bureau headquarters for tabulation and analysis. At the request of Subcommittee Chairman Dan Miller, the General Accounting Office [GAO] was asked to write a report that discussed the state and quality of the DCS 2000 as well as the risks that the Bureau faced in successfully completing the system. The GAO report indicates that the Bureau made considerable progress on DCS 2000 (21 of the system's 23 planned application software releases had been completed in all 4 data capture centers as of January 7, 2000), although the Bureau delivering the final promised DCS 2000 capabilities remains at risk. The Bureau had less than 2 months remaining before data capture operations were to begin, leaving them little room for error. In addition, many development and test activities remained and would likely reveal more system defects thus compounding an uncertain picture of system maturation. GAO discussed the risks with DCS 2000 program officials, who agreed that delivering promised system capabilities on time is a risk. They subsequently provided evidence that they have (1) designated this as a high risk under the DCS 2000 risk management program and (2) defined and initiated proactive steps to mitigate the risk and its potential impact on the program.

*b. Benefits.*—This General Accounting Office report was used to shed light on risks associated with the readiness and quality of the DCS 2000 system. Through this report the subcommittee was able to have an interim account of this critical operation which afforded the opportunity to review testing and potential risks facing the system.

6. *“Actions Taken to Improve the Be Counted and Questionnaire Assistance Center Programs,” February 2000, GGD-00-47.*

*a. Summary.*—The Census Bureau created several initiatives aimed at increasing the accuracy and completeness of census 2000. These initiatives included a program called “Be Counted” as well as the opening of walk-in Questionnaire Assistance Centers [QACs]. The “Be Counted” program was designed to count people who believed that they did not receive a census questionnaire, or who believed they were otherwise not included in the census. Aimed at traditionally hard-to-enumerate population groups, the “Be Counted” program was to make its forms available in various public locations, such as community centers, churches, and businesses. QACs were designed to help people, especially those with little or no English speaking ability, complete their census questionnaires by providing assistance in various languages on a walk in basis. The centers are also intended to distribute “Be Counted” forms. This General Accounting Office [GAO] report provides information on the status of the “Be Counted” and Questionnaire Assistance programs and paid particular attention to the steps that the Bureau had taken to address certain shortcomings it had encountered during the 1998 dress rehearsal for the 2000 census. To obtain the information, the GAO: 1) interviewed Bureau officials from headquarters and local offices responsible for planning and implementing the two programs, as well as local government officials who helped the Bureau execute the dress rehearsal; 2) made on site inspections of “Be Counted” program locations and QACs at the three dress rehearsal sites; and 3) examined relevant Bureau documents and data, including the Bureau’s May 1999 evaluation of the “Be Counted” program. The GAO also received evaluations by the Department of Commerce Inspector General of how the dress rehearsal programs performed. GAO notes that the Bureau had taken several important steps to improve the “Be Counted” and QAC programs following the dress rehearsal. The actions were necessary because the Bureau found that although the “Be Counted” program added people to the population totals, the program sites were not well-targeted and people may have had trouble finding the “Be Counted” forms in the places where they were supposed to be available. The Bureau’s findings were consistent with GAO observations during the dress rehearsal in processes and procedures used to select staff and monitor site locations did not always achieve their intended results. This GAO report cites that if effectively implemented, the Bureau’s actions could address the operational shortcomings it encountered in the dress rehearsal in regard to these programs. Key among the remaining uncertainties, was whether the Bureau would open as many program sites as it originally planned and whether it has the ability to monitor and maintain them.

*b. Benefits.*—This report provided important information to the subcommittee regarding the procedures the Bureau would need to implement to make the “Be Counted” and QAC programs effective in the 2000 Census.

7. *"Information on Short and Long Form Response Rates," June 7, 2000, GAO/GGD-00-127R.*

*a. Summary.*—Due to concerns over the differential response rates between the short and long census questionnaire forms, the subcommittee asked the GAO to provide a report that would show the response rates for short and long forms in the 1998 Census Dress Rehearsal, the 1990 census and the 1988 census dress rehearsal. This request was also made in order to determine whether the short form/ long form differential in the 1998 dress rehearsal foreshadowed the difference in response rates that was occurring in the 2000 census. The GAO found that during the 1990 and 2000 census cycles, questionnaire response rates were higher for the short-form questionnaire than for the long-form questionnaire. However, their data also indicated that the gap between the two rates has widened over time from the 1990 census to the 2000 census. GAO reported that after the 1990 census, the Bureau expected a more difficult time obtaining public cooperation in census 2000 due to factors that include: concerns about privacy, lack of confidence in civic institutions, non-English speaking immigrants, and illiteracy rates. In response, the Bureau took several actions designed to boost response rates—including developing streamlined and simplified questionnaires, a paid advertising campaign, and partnerships with local governments and other organizations.

*b. Benefits.*—The questionnaire response rate data provides an indication of the scope of the Bureau's field follow-up operation with non-responding households. The overall (short and long form) initial response rate for 2000 was 65 percent—approximately what it was in 1990 and 4 percentage points above what the Bureau had anticipated. Nevertheless, the 1990 experience, the 1998 Dress rehearsal results and other demographic and societal trends that GAO and the Bureau have often noted throughout the decade suggested that there likely would continue to be a significant and perhaps growing, short- and long-form questionnaire differential mail response rate for the 2000 census.

8. *"Update on Data Capture Operations and System," September 29, 2000, GAO/AIMD-00-324R.*

*a. Summary.*—To address the concerns addressed in the previous GAO report on the readiness of its Data Capture System for Census 2000 (DCS 2000) (AIMD-00-61, 02/00), the Census Bureau adopted a two-phase approach to capturing household data. Under phase one, which the Bureau terms "first pass," only the data necessary to determine the reapportioning of seats in the House of Representatives, which the Bureau calls 100 percent data, are captured. Under the "second pass," the remaining data, which the Bureau calls sample data, are captured. To implement this two-pass approach, the Bureau had to modify the DCS 2000, so that during the first pass only the 100 percent data from the digitally-imaged census forms (short and long) would be optically read (and keyed) and so that the long-form images could be written to a mass storage device. Following the release of their last report, the Subcommittee on the Census asked GAO to periodically report (1) the Bureau's progress in performing first-pass data capture operations, including the performance of DCS 2000, and (2) the Bureau's

progress in modifying DCS 2000 to perform planned second-pass data capture operations.

The GAO concludes that the Bureau has made significant progress toward completing first-pass data capture operations as planned, and during these operations DCS 2000 has performed as intended. Similarly, the Bureau's development contractor has made significant progress toward modifying DCS 2000 to support second-pass data capture operations and has taken effective testing and risk management steps to ensure that the modified version of DCS 2000 is effectively implemented and performs as intended.

*b. Benefits.*—To conduct the 2000 census, the bureau is relying on 10 key systems. These systems enable the Bureau to develop and maintain address lists, maps and geographic reference files; collect census data through the Internet; scan and process household-completed paper forms; analyze census data; recruit and support temporary workers; facilitate follow-up surveys; and track costs and performance related to taking the census. The DCS 2000 is one of these key systems. It performs many of these high-level functions. Having periodic checks on these systems insures that the Census data is being collected efficiently.

9. *"Census Monitoring Board Disbursements, Internal Control Weaknesses, and Other Matters," September 29, 2000, GAO/AIMD-00-317.*

*a. Summary.*—Thursday, March 23, 2000, the National Journal published an investigative story stating that the State Department Inspector General's Office was investigating the financial affairs of former Census Monitoring Board Co-chair and Presidential appointee Tony Coelho with respect to his activities as U.S. Ambassador to the World's Expo in 1998. The article alleged that Mr. Coelho attempted to use Census Monitoring Board [CMB] funds for activities relating to his tenure as Ambassador. The subcommittee became concerned that there may have been misuse of funds for these and other activities on the part of Mr. Coelho and so it requested that GAO perform a complete audit on both sides of the CMB to ensure that proper procurement regulations and other standards under which the CMB is required to operate were being adhered to at all times. The CMB was created in 1998 and consists of two members appointed by the Speaker of the House, two members appointed by the Senate Majority Leader (the congressional CMB) and four members appointed by the President (the Presidential CMB), with each side having a co-chairman, an executive director and full staff. In general, the GAO found little documented evidence to substantiate possible improprieties in connection with seven specific matters that the subcommittee had identified in its request letters:

- No Presidential CMB funds were used to print reports for the 1998 World Exposition.
- Congressional CMB videotapes did not have a narrow political distribution.
- No CMB funds were used for political travel.
- Presidential CMB contracts for studies on census undercounting were not improperly procured.

- No evidence existed that former congressional CMB employees accessed protected census data.
- Two out of 27 questions in a congressional CMB contractor focus group study made some mention of political parties.
- Some verbal confrontation occurred between a congressional CMB contractor and Bureau of the Census employees, and the contract was terminated shortly thereafter for a variety of reasons.

The remaining GAO efforts focused on CMB documentation for expenditures and an assessment of the internal control environment established to ensure disciplined financial operations. The GAO found a pattern of significant CMB internal control weaknesses related to travel, personnel, and the procurement of services, some of which resulted in inappropriate and wasteful practices.

Weak internal controls allowed unreconciled payroll, benefits, and annual leave accounts; weak contract accounting; and disbursements without required approvals to pay. In addition, some CMB policies were inconsistent with Federal law, such as granting unlimited sick leave and two extra Federal holidays annually. More seriously, inadequate internal controls led to inappropriate practices such as employees (1) routinely arriving late and leaving early, (2) not recording annual leave when taken, and (3) being late in paying their government credit cards for official travel or not paying them at all. In addition, for the Presidential CMB, some individuals improperly used their own and other staff members' government credit cards for personal expenses, such as local restaurant bills, clothing purchases, and amusement park admission. The GAO also found uncontrolled personal telephone usage for the Presidential CMB. Additionally, GAO was not given key supporting documentation, such as vendor invoices and evidence that items were received for about \$119,000 of expenditures, all but about \$1,000 of which were related to the Presidential CMB. GAO noted that, while weaknesses related to travel, personnel, and procurement existed for both sides, the congressional and Presidential CMB operated in substantially different internal control environments. GAO found that the congressional CMB made a considerable effort to establish an internal control environment, including using written approvals, implementing recommendations based on a contract study to improve internal controls, and contracting for independent financial audits. The Presidential CMB operations were primarily characterized by weak or unenforced policies, oral authorizations, and poor records management, largely due to a lack of administrative leadership.

The GAO also identified transactions involving prior business relationships among CMB officials, including employer/employee or contractor affiliations. GAO found 13 congressional and 11 Presidential CMB related-party relationships involving about \$1 million in salaries and contracts for each side. GAO disclosure of related-party relationships and transactions does not imply any improprieties but is in response to the subcommittee request for the information.

*b. Benefits.*—The GAO recommended a number of actions to improve CMB policies, procedures, and internal controls. They also

proposed a matter for congressional consideration to avoid future problems with board filing of financial disclosure forms. As discussed in its response to a draft to this GAO report, CMB plans to implement all of their recommendations.

10. *“Headquarters Processing System Status and Risks,” October 17, 2000, GAO-01-1.*

*a. Summary.*—The accuracy of census 2000 depends in part on the proper functioning of 10 interrelated information systems, one of which is the Bureau’s headquarters (HQ) processing system. Given the criticality of this system, the Census Subcommittee asked GAO to (1) identify the nature and status of the HQ processing system and (2) assess the quality of the system and the risks facing the Bureau if effective quality controls are not in place. The GAO performed its work from July through September 2000 and briefed the subcommittee on its results on September 14, 2000. The GAO found that the Bureau lacks effective, mature software and system development processes to control development of its HQ processing system applications. They found that the HQ processing system relies on the efforts of individuals to deliver applications on time and within budget—an approach that increases the risk that the applications will not be available when needed and/or perform as intended. As a result, the Bureau lacks adequate assurance that the functions performed by the HQ processing system applications—such as ensuring accurate and complete address files and identifying the correct households for enumerators to contact—are properly executed. Given the short amount of time remaining before the results of the decennial census will be used, the Bureau will need to take immediate steps to mitigate the near-term risks it faces with the quality of the applications that these process weaknesses may have caused.

*b. Benefits.*—The GAO concluded that the Bureau does not have adequate assurance that the functions performed by the HQ processing applications—such as having accurate and complete address files and identifying the correct households for enumerators to contact—are properly executed. While Bureau management has implemented some practices to promote HQ processing application quality, the Bureau does not have effective and mature software and system development processes, such as those specified in the Software Engineering Institute’s Capability Maturity Model and the GAO test management guide. Instead, Bureau management is counting on the efforts of individuals to deliver quality applications on time and within budget. This approach unnecessarily increases the risk that these applications will not be available when needed and will not perform as intended.

The Bureau’s Director provided written comments on a draft of this GAO report, in which the Bureau agreed that its software and system development procedures do not provide the kind of rigor and discipline advocated in SEI and GAO guidance. The Bureau also agreed that decennial census operations could have benefited from earlier implementation of GAO recommendations and it stated that it welcomes the opportunity to work with GAO in enhancing the Bureau’s procedures prior to decennial census 2010 operations. The Bureau did, however, disagree on the GAO rec-



ommendations that it needs to take immediate steps to assess and understand the near-term risks that it faces with HQ processing system applications supporting decennial census 2000, and to thoroughly test these applications on the basis of the priorities established by this risk assessment. After responding to each of the Bureau's points of disagreement with their report, the GAO continues to question the Bureau's decision to not apply its staff and resources in a way that mitigates the risks of cited problems occurring.

#### SUBCOMMITTEE ON THE CIVIL SERVICE

Hon. Joe Scarborough, *Chairman*

1. *"IRS Personnel Administration: Use of Enforcement Statistics in Employee Evaluations," November 30, 1998, (GAO/GGD-99-11).*

*a. Summary.*—Although IRS policy and Federal tax law prohibit the use of tax enforcement results to evaluate personnel, the General Accounting Office discovered systemic weaknesses in the IRS' administration of this policy. During fiscal years 1996 and 1997, IRS' regional offices had reported 11 potential violations (in 368 quarterly certifications) and found 4 actual violations. GAO concluded, however, that there was confusion among IRS officials about what constituted violations, that IRS had provided inadequate guidance to identify violations, that the agency had failed adequately to integrate performance evaluations and the certification process, and that the agency had provided unclear guidance about the sanctions that could be applied against managers for misusing tax enforcement results or submitting false certifications.

In surveying examination and collections employees, GAO found widespread perceptions that managers considered enforcement results in preparing annual performance evaluations. Fully 75 percent of front-line employees and 81 percent of group managers believed that tax enforcement results had influenced their performance evaluations. These perceptions were based on comments at staff meetings and feedback provided by supervisors. Only 9 percent of written performance evaluations contained prohibited reference to enforcement results, but an estimated 69 percent of evaluations in the GAO sample contained allusions that reasonably could have referred to tax enforcement results. As a result of this report, the IRS revised its guidance to supervisors regarding the prohibition on the use of tax enforcement statistics, and implemented new performance appraisal procedures for its enforcement divisions. GAO contended that the agency should have provided stronger examples of prohibited language in performance evaluations, and clearer explanations of the prohibited practices.

*b. Benefits.*—This report contributed to the subcommittee's continuing oversight of performance management in the Federal workplace. In a Federal work environment that stresses the accumulation of information and evaluation of performance based on results, the agency will face serious challenges developing adequate performance management procedures in areas such as tax enforcement, where current law prohibits use of critical performance infor-

mation. As a result of the audit, IRS has substantially revised its management training regarding the use of its enforcement statistics, and is monitoring performance evaluations more closely to prevent the misuse of its data.

2. *“Medical Savings Accounts: Results from Surveys of Insurers,” December 31, 1998, (GAO/HEHS-99-34).*

a. *Summary.*—This study of medical savings accounts was required under the provisions of the Health Insurance Portability Act of 1996 that created a medical savings account [MSA] demonstration project. The efforts to conduct useful surveys of enrollees, employers, or financial institutions were impaired by the limited enrollment in MSAs. As a result, GAO only contracted for a survey of insurers. That survey reported that consumer demand for MSAs had been lower than the industry anticipated. Although more than 50 insurance carriers offered MSA products by the summer of 1997, that number declined to 48 during the next year, with little expectation in the industry that new carriers would enter this market. The insurers attributed low effort to market qualified plans and the limited acceptance of MSAs to limitations inherent in the demonstration project design. Premiums for qualifying plans have dropped in many cases, from the levels comparable to high-deductible plans where they were originally set. Nonetheless, sales of qualifying plans have remained well below the statutory caps, as few insurers have approached the market aggressively.

b. *Benefits.*—This report confirms concerns about the emergence of the MSA market under the demonstration project that the subcommittee heard during a 1998 field hearing at Ft. Monmouth, NJ. Although insurers continue to experience limited growth in MSA demand and sales, the survey concluded that the limitations of the demonstration project design hamper significant development in this market.

3. *“U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints,” January 29, 1999, (GAO/RCED-99-38).*

a. *Summary.*—Following the February 1997 report of the Department of Agriculture’s Civil Rights Action Team, the Department’s Office of Civil Rights had made the processing of civil rights complaints a priority. GAO learned that the Department was falling short of its goals for processing employment discrimination complaints, which adhere to the Federal sector EEOC procedures. As of October 1998, the Department had closed only 64 percent of more than 2,100 backlogged employment discrimination complaints, and the agency was missing interim milestones in its processing of new complaints. In addition to problems in these procedures which are common among Federal agencies, GAO reported that the Department was not making adequate use of alternative dispute resolution procedures that might facilitate case processing. Reorganization of the office, increases in staffing and resources had proven inadequate to resolve the backlogs of complaints. GAO claimed that the USDA’s record for processing employment discrimination complaints is among the worst in the Federal sector, with many complaints taking more than 3 years to resolve when

no EEOC hearing is required. The statutory limit for such cases is 270 days. GAO made several recommendations to revise processing of these complaints, and the Department agreed with the findings and accepted the recommendations.

*b. Benefits.*—This report complements oversight that the subcommittee has conducted regarding employment discrimination in the Federal workforce. The Department of Agriculture had been identified as a problem agency during September 9, 1997, subcommittee hearings, and this report confirms the limits of USDA's progress toward improving its procedures since the hearing.

4. *"Federal Retirement: Key Elements Are Included in Agencies' Education Programs," March 29, 1999, (GAO/IGD-99-27).*

*a. Summary.*—As Federal employees approach retirement, agencies sponsor retirement planning training that provide opportunities to understand key provisions of the employees' retirement programs, including differences between the Civil Service Retirement System and the Federal Employees Retirement System, requirements for withdrawal of Thrift Savings Plan benefits, provisions for survivor benefits, effects of court orders, health insurance, life insurance, and other issues of concern to Federal retirees. GAO reported that the retirement education programs sponsored by the agencies provide nearly all of the essential information. The report also noted that agencies provide the information in a variety of formats, using flexible design components to adapt the training to particular organizations' needs. Agency officials reported to GAO that retirement education is conducted when new employees join the Federal service, and provided intermittently during their careers. GAO reviewed agencies' programs, and concluded that most of them covered the material extensively. Accordingly, GAO made no recommendations in this report.

*b. Benefits.*—Sen. Carl Levin requested this report after learning of the series of retirement coverage errors that necessitated congressional action to address the inadequate mechanisms available to correct retirement coverage errors. Improved retirement education for Federal employees would enable them to identify potential retirement coverage errors before retirement dates, and reduce the difficulties that employees encounter under current procedures to "correct" retirement coverage errors. This report assisted in reassuring that agencies are taking steps to reduce the incidents of retirement coverage errors that led to H.R. 416, Federal Retirement Coverage Corrections Act.

5. *"Social Security Reform: Experience of the Alternate Plans in Texas," February 26, 1999, (GAO/HEHS-99-31).*

*a. Summary.*—In 1981, employees of Galveston, Matagorda, and Brazoria Counties, TX, withdrew from the Social Security system and were provided individual retirement accounts by their employer as an alternative retirement benefit. In light of financial challenges facing the Social Security system, GAO reviewed the status of the retirement program in these counties to compare the investment option—which is widely considered as a component of Social Security reform—with the projected financial needs of Social Security. Where Social Security is designed as a social insurance

program that is operated on a pay-as-you-go basis, the alternative plans in place in Texas collect contributions from employees and the employers that are capped at 13.915 percent of income. Those contributions are invested to fund future retirement benefits. Through computer simulations, GAO concluded that Social Security provided comparatively larger benefits for low-wage earners, single-earner couples, and individuals with dependents. Additionally, these projections showed that some median-wage employees might also receive higher benefits from Social Security 4 to 12 years after retirement as a result of Social Security being indexed for inflation. Under all simulations, employees who become disabled fared better under the alternative plans than they would have under Social Security. The alternative plans provide 60 percent of income at the time of injury to disabled employees, and only low-income employees would qualify for that replacement rate under Social Security's disability provisions. In commenting on this analysis, managers of the alternative plans reported that they were strengthening the benefits provided to employees, and that their investments had provided adequate funding for such enhancements. In contrast, the pay-as-you-go Social Security system is projecting negative cash flow in 2013 and exhaustion of resources by 2032 unless reforms—increased taxes, reduction of benefits, or a combination of both—are enacted.

*b. Benefits.*—Although based on simulations, this report indicates some of the opportunities that result from shifting retirement benefits from a cash-flow to a forward-funded basis. For employees above the median income level, and for employees who serve for brief periods in the system, forward-funding provides a more stable foundation for future retirement benefits. This report provides additional perspective for the Congress to consider in addressing proposed reforms of Social Security benefits and Federal employees' retirement benefits.

6. *“DOD Competitive Outsourcing: Questions About Goals, Pace, and Risks of Key Reform Initiative,” February 22, 1999, (GAO/NSIAD-99-46).*

*a. Summary.*—In reviewing support functions performed throughout the Department of Defense, the Department has increasingly used the competitive procedures authorized by Office of Management and Budget Circular A-76 to identify opportunities to reduce costs of commercial services. On request of the Subcommittee on Military Readiness of the House Committee on Armed Services, GAO reviewed recent A-76 activities to (1) identify competition and savings goals, (2) assess the accuracy of savings estimates provided to Congress, and (3) to evaluate the adequacy of planning to support commercial activities programs. The Department plans to subject 229,000 current positions to commercial competition during the period 1997 through 2003, with projected savings of \$6 billion within that period and \$2 billion annually thereafter. GAO concluded, however, that the estimates of competitive savings provided to Congress were overstated, and that DOD had not adequately included either the investment costs associated with these competitions nor the personnel separation costs associated with completing them. Although the Department had estimated the

costs of conducting cost comparisons at \$2,000 per position, that estimate was based on in-house estimates and omitted the costs of developing most efficient organization [MEO] models that would allow current employees to compete for their positions. When contractor support was factored in, and with full in-house costs associated with MEO development included, the costs of conducting competitions approached \$6,800 per position. GAO recommended that DOD slow down the pace of its plans to conduct cost comparisons to provide more complete and accurate assessments of current costs and projected savings.

*b. Benefits.*—This report continues GAO's oversight of contracting activities in the Federal sector, and provides additional data on the costs of human capital and the savings that can be realized through contractor support. GAO has previously testified before the Civil Service Subcommittee that the dynamics of competition, and changes in both the government agency and the contracting organization that occur after contracts are awarded, make it difficult to develop a reliable data base for comparing costs pre- and post-competition. GAO's oversight contributes to the analysis of factors relevant to an accurate understanding of the costs and benefits of Federal contracting.

7. *"DOD Competitive Sourcing: Results of Recent Competitions," February 23, 1999, (GAO/NSIAD-99-44).*

*a. Summary.*—In response to the Department of Defense's increased contracting, the Senate Armed Services Subcommittee on Readiness and Management Support requested that GAO (1) determine the number of sourcing competitions completed between October 1995 and March 1998, (2) compare these competitions with previous competitions in terms of costs, numbers of positions affected, kinds of functions performed, and projected savings, and (3) identify problems in implementing the results of competitions.

The Air Force had conducted 41 of the 53 competitions completed during this period, covering 85 percent of the positions affected by cost comparisons. Agencies had conducted these competitions in accord with OMB Circular A-76 to the extent that they resulted in only 10 appeals, and only one of those appeals was sustained against the Department. Private competitors won about 60 percent of the contracts (compared with 50 percent pre-1995), and these studies were completed in 18 to 30 months, in contrast to the 51 months required to conduct earlier competitions. GAO concluded that DOD data bases are still inadequate to track contract savings over time, and that the number of competitions was insufficient to provide accurate information about actual savings. GAO could not generalize about the requirements involved in implementing the contracts, concluding only that these varied substantially with the size and complexity of the contracts. DOD is complying with recommendations to improve the data bases used to administer its contracting competitions.

*b. Benefits.*—This study contributes to the larger perspective on competition and contracting, and assists the subcommittee's efforts to monitor the cost comparisons and to improve data supporting contracting for commercial services.

8. *"Year 2000 Computing Challenge: OPM Has Made Progress on Business Continuity Planning," May 24, 1999, (GAO/GGD-99-66).*

*a. Summary.*—GAO provided this report as part of its government-wide oversight of efforts to address computer programs that might be affected by flaws that result in an inability to distinguish 1900 and 2000 because the year is coded as a two-digit variable. GAO evaluated OPM's efforts to develop a planning strategy to ensure the continuity of operations, assess the impact and risks of systems failure on the agency's core business processes, prepare contingency plans that for continuing operations in the event of failure of critical systems, and tests of those plans to mitigate the effects of potential threats. GAO concluded that OPM had developed an effective planning process, with business continuity planning beginning in April 1998. OPM made effective contingency plans, centered around five core business processes, and involved senior managers in the development and oversight of planning efforts. The agency also developed extensive procedures to check for anticipated system failures. Although OPM hired a contractor to conduct independent verification of risks to its 109 mission-critical systems, that contractor will not provide a report of these risk assessments to the agency until November 1999, when it might be too late for the agency to take corrective measures before January 1, 2000. In response to this review, OPM accelerated the schedule for the delivery of these assessments. The agency has also instituted a "Zero Day" oversight process to intensify system monitoring at the change of the year.

*b. Benefits.*—This report contributed to the Congress' oversight of Y2K compliance among the agencies, with a special focus on programs, such as retirement and insurance benefit payments that have high priority for Federal employees. The report resulted in corrective action that will provide more timely risk assessment information to OPM to reduce its vulnerability to end-of-century computer program failures.

9. *"Small Business Administration: Review of Selected Personnel Practices," April 23, 1999, (GAO/GGD-99-68).*

*a. Summary.*—In response to the administration's efforts to "reinvent government," the Small Business Administration reduced its workforce by approximately 15 percent, with many of the reductions coming from the regional office, an intermediary management layer. GAO conducted this review at the request of the Senate Small Business Committee, which had received reports of political favoritism in hiring, improper salary-setting and reassignments, and other violations of merit system principles. GAO reviewed the selection of 46 District Director appointees, and found that 6 had been hired from outside of the agency, and 2 had previous political experience. Although the agency used a variety of procedures for selecting these officials, GAO found nothing procedurally amiss in the hiring procedures. It did conclude, however, that the agency had not provided sufficient justification for placing people above the first step of the salary grade at which they were hired. GAO also provided several recommendations to improve the agency's

ability to collect reimbursements from employees who are detailed to other locations.

*b. Benefits.*—This report provided intensified oversight of the personnel practices of an agency in transition, and addressed concerns about improper placement of political appointees and other abusive personnel practices. It resulted in recommendations that will provide additional reimbursements of unwarranted expenditures on details.

10. *“NPR’s Savings: Claimed Agency Savings Cannot All Be Attributed to NPR,” July 23, 1999, (GAO/GGD-99-120).*

*a. Summary.*—In publicizing its accomplishments, the administration has attributed more than \$137 billion in savings to reforms instituted as a result of the National Performance Review. GAO examined several of the recommendations for reforms at the Department of Agriculture, the Department of Energy, and the National Aeronautics and Space Administration to assess these claims. GAO concluded that, in estimating the savings in government since 1993, the Office of Management and Budget made no effort to distinguish between the NPR- (National Performance Review (or National Partnership for Reinventing Government) generated recommendations and initiatives in progress when the administration took office. In several instances, GAO concluded that OMB double-counted some of the savings, and in other instances omitted program costs associated with implementing the reforms. OMB’s program examiners usually did not retain documentation used to develop estimates of NPR’s savings. GAO reviewed six government-wide initiatives, and concluded that insufficient documentation was available to estimate some of the alleged savings, but estimated that OMB might actually have understated savings on two initiatives to the extent of approximately \$1.9 billion. The report concluded that the savings claimed could not be substantiated, and deficiencies in procedures made it impossible to replicate the information used to claim these savings.

*b. Benefits.*—This report provided useful confirmation of the limitations of Congress’s ability to monitor the claims attributed to a reform program in the absence of systematic data.

11. *“Results Act: Observations on the Office of Personnel Management’s Fiscal Year 2000 Annual Performance Plan,” July 30, 1999 (GAO/GGD-99-125).*

*a. Summary.*—GAO concluded that OPM’s fiscal year-2000 annual performance plan addressed OPM’s major programs and priorities at a general level. However, it lacks cost-based performance measures that would enable comparison of its performance with other agencies or that might measure the efficiency of unique operations, such as the payment of Federal retirement benefits. GAO noted improvements in comparison with the agency’s fiscal year-1999 performance plan, but observed that there is little data to provide a confidence that its performance information will be credible. GAO noted the changing character of the Federal workforce, and the dynamic environment of current Federal employment, and questioned whether this performance plan reflects an agency that is prepared to provide effective leadership to Federal agencies as

they face key human resources management questions. The report notes, "Although Congress has provided statutory frameworks for financial and information technology management and the Results Act for performance-based management practices, it has not addressed human capital management in a systematic fashion since the 1978 Civil Service Reform Act."

*b. Benefits.*—This report reflects continuing oversight of the implementation of the Government Performance and Results Act of 1993. It incorporated many of the concerns raised during congressional discussions with OPM, including concerns about the adequacy of survey measures to assess critical performance factors. This assessment provides important, independent support for the congressional oversight process.

12. *"Federal Workforce: Payroll and Human Capital Changes During Downsizing," August 13, 1999 (GAO/GGD-99-57).*

*a. Summary.*—Although the non-Postal Federal civilian workforce was reduced by more than 300,000 employees between 1991 and 1997 (or 13.8 percent), the costs of pay and benefits to Federal employees increased by 9.3 percent between the beginning of fiscal year-1993 and fiscal year-1997. Personnel compensation and benefits now constitute annual expenditures of \$102.4 billion for Federal agencies. GAO estimated that the costs of an average employee increased by \$11,600 during this period, with the annual pay adjustment intended to provide Federal employees' increases consistent with the civilian labor force leading to 58.9 percent of the increase. In estimating these costs, GAO included agencies' spending on voluntary separation incentives (buyouts) as part of compensation. Other leading factors in the increased costs of personnel include career step increases based on tenure and satisfactory performance (27.3 percent), increased benefit costs (13.6 percent). Increases in premium pay (overtime, night differentials, hazardous duty pay, et cetera) accounted for only 0.3 percent of the increased costs of personnel. GAO concluded that early buyout programs had contributed to the increased costs of personnel, and noted improvements in buyout programs following the adoption of strategic planning requirements in Public Law 104-208.

*b. Benefits.*—This report highlights the cost of human resources in the Federal sector, especially the cost factors that continue to increase without reference to the performance or skills of the employees. It also reaffirmed the importance of effective management planning in the administration of buyout programs. These concerns address issues raised by the subcommittee during more than 4 years of oversight of performance management in the Federal sector and the use of buyout programs by government agencies.

13. *"Background Investigations: Program Deficiencies May Lead DEA to Relinquish Its Authority to OPM," September 7, 1999 (GAO/GGD-99-173).*

*a. Summary.*—Although the Office of Personnel Management is responsible for ensuring that agencies require Federal employees and contractors to complete background investigations that evaluate their suitability and security for Federal employment or access to classified information, OPM has delegated that authority to



some agencies, including the Drug Enforcement Administration [DEA]. As of July 1999, DEA was considering relinquishing that authority as a result of several critical reviews of its background investigations, which were performed by contractors who acquired the business competitively. Senator Charles Robb and Representative Frank Wolf requested this review, noting that, if the delegation were withdrawn, the business would revert to OPM's contractor, a company that was established as an employee stock ownership program when OPM reduced its investigations workforce in 1996.

GAO concluded that OPM had been objective and independent in its reviews of DEA's performance of its delegated authority to conduct background investigations. DEA had been reviewed with the same frequency as other agencies with delegated background authority, even though these previous reviews had identified serious deficiencies in the program. OPM reported to GAO that it had not conducted more intensive oversight because of commitments made to congressional oversight committees at the time of the privatization of OPM's investigative workforce. GAO is continuing assessments of background investigations programs in light of other findings related to this assessment of delegations of authority over background investigations.

*b. Benefits.*—This report continues oversight begun when the Civil Service Subcommittee monitored OPM's privatization of its background investigations function. This oversight is essential to ensure that Federal agencies are supported by background investigations programs that ensure the suitability and security of Federal employees and contractors, and that appropriate corrective measures resolve any concerns about the adequacies of all investigative programs.

14. *Reports Related to EEOC Complaints: "Equal Employment Opportunity: Data Shortcomings Hinder Assessment of Conflicts in the Federal Workforce," May 4, 1999, (GAO/GGD-99-75); "Equal Employment Opportunity: Complaint Caseloads Rising, With Effects of New Regulations on Future Trends Unclear," August 16, 1999, (GAO/GGD-99-128); and "Equal Employment Opportunity: The Postal Service Needs to Better Ensure the Quality of EEO Complaint Data," September 28, 1999 (GAO/GGD-99-75).*

*a. Summary.*—In its May report on data shortcomings, GAO pointed out that relevant and reliable data about the bases and specific issues underlying complaints would assist decisionmakers and program managers. Such information would help them understand the nature and extent of conflict in the Federal workplace, as well as plan corrective measures and measure the results of interventions. Nevertheless, GAO found, EEOC does not collect and report data that would help answer fundamental questions about the nature and extent of workplace conflicts. Examples of basic data that is not available from EEOC include:

1. How many individuals filed complaints?
2. In how many complaints was each of the bases for discrimination alleged?

3. What were the most frequently cited issues in employees' discrimination complaints and in how many complaints was each of the issues cited?

GAO also found data EEOC collected from other agencies was unreliable. They report basis and issue data to EEOC in an inconsistent manner. They also did not report some of the data EEOC collected and reported some other data incorrectly. In addition, because EEOC did not have procedures that ensured the reliability of the data it collected, some of the data it published in its annual report on EEO complaint processing was unreliable. GAO recommended that EEOC collect the critical data that is currently uncollected and establish procedures to improve the reliability of the data it does collect.

GAO's September report on problems with the Postal Service's EEO data illustrates another aspect of the difficulty in obtaining reliable information. GAO found errors in statistics on the underlying bases for EEO complaints and on the Postal Service's backlog of EEO complaints. It also found that required data on issues raised in complaints were not completely reported. Among the errors found, was a computer programming error that vastly overstated the number of race-based complaints filed by whites. GAO reported that the Postal Service corrected most of the problems when they were discovered, but recommended that the Postal Service review its controls over the recording and reporting of the data that it submits to the EEOC.

GAO's August report on EEOC Federal sector caseloads and the effects of that agency's new complaint procedures found that the backlog of EEO complaints has continued to grow. From fiscal year 1991 to fiscal year 1998, complaint inventories at other agencies rose by about 114 percent. EEOC's hearing inventories increased by 280 percent and its appeals inventory shot up by 648 percent during the same period. The average age of EEO complaints at agencies and the EEOC also reached new highs. Both of these trends continued during fiscal year 1998 as EEOC and other agencies failed to keep pace with the influx of new cases. While the average processing time at other agencies declined by 7 days (from 391 to 384 days) in fiscal year 1998, EEOC's processing time increased significantly. The time EEOC required to process hearing requests rose from 277 to 320 days, and the length of appeals jumped from 375 to 423 days. Overall, GAO found, the average time it took a case to travel through the complete complaint process procedures, from initial filing with an employing agency to the EEOC's decision on appeal, increased by a full 3 months during fiscal year 1998. On average it now takes more than 3 years and 2 months to complete the entire complaint procedure. EEOC has implemented a new complaint procedure, but GAO could not project the impact on caseloads and processing times since the regulations did not take effect until November 9, 1999.

*b. Benefits.*—The subcommittee has closely monitored the appeals procedures available to Federal employees, including the procedures for processing EEO complaints. The information in these reports will assist the subcommittee in evaluating the current EEO process and assessing alternatives.

15. *“Human Capital: Key Principles From Nine Private Sector Organizations,” January 31, 2000 (GAO/GGD-00-28).*

a. *Summary.*—Each of the nine organizations reviewed implemented human capital strategies and practices that were designed to directly support the achievement of their specific missions, strategic goals, and core values. GAO identified 10 underlying and interrelated principles of human capital management that are common to the nine organizations and viewed as the foundation for their ongoing success and viability:

(a) treat human capital considerations with the organizations mission, goals, core values, and policies and practices;

(b) integrate human capital functional staff into management teams and expand the role of the staff beyond providing traditional personnel administration services;

(c) supplement internal human capital staff’s knowledge and skills with outside expertise;

(d) hire, develop, and sustain leaders according to essential leadership characteristics;

(e) communicate a shared vision that all employees, working as one team, can strive to accomplish;

(f) hire, develop, and retain employees according to competencies needed to achieve high performance of missions and goals;

(g) provide incentives to link performance to results and hold employees accountable for contributing to the achievement of mission and goals;

(h) support and reward teams that achieve high performance by fostering a culture in which individuals interact, support, and learn from each other;

(i) integrate employee input into the design and implementation of human capital policies and practices to develop responsive policies and practices;

(j) measure effectiveness of human capital policies and practices by evaluating and making fact-based decisions on whether human capital policies and practices support high performance mission and goals.

Federal agencies need only to adopt and adapt to these principles, if necessary, to give human capital higher priority as they implement performance-based management to achieve success and higher performance.

b. *Benefits.*—This report provides useful benchmarks for the subcommittee as it evaluates the performance of the Office of Personnel Management and of other agencies in managing the Federal workforce. The report will also assist the subcommittee to evaluate current statutes, regulations, and legislative proposals that affect the future human capital needs of the Federal Government.

16. *“Equal Employment Opportunity: Responses to Questions Related to Equal Employment Opportunity: Responses to Questions Related to Equal Employment Opportunity and Dispute Resolution Issues,” April 21, 2000 (GGD-00-123R).*

a. *Summary.*—This report is GAO’s response to a congressional request regarding GAO’s testimony on the Equal Employment Opportunity [EEO] complaint process for Federal employees, focusing on: (1) whether minorities are placed in positions that are “dead

end employment tracks;" (2) whether GAO studied the Navy's Pilot Dispute Resolution Program, which is used to resolve EEO complaints; (3) whether the Equal Employment Opportunity Commission's [EEOC] Comprehensive Enforcement Program will be able to measure progress toward its goal of eradicating discrimination in the Federal workplace; and (4) the prerequisites to a successful alternative dispute resolution [ADR] program. GAO noted that: (1) GAO has not done any work that specifically addresses the representation of minorities in the Federal workforce; (2) however, GAO reviewed data by the Office of Personnel Management [OPM] and EEOC; (3) these data show that from fiscal years 1993 through 1998, the proportion of the Federal workforce made up by minorities increased by 1.5 percentage points; (4) both the number and percentage of minority representation in mid- and senior-level Federal white-collar jobs increased; (5) however, these data also show that, proportionately, minorities are more likely than whites to hold General Schedule positions below Grade 13; (6) OPM reports that the average grade level of minority employees is lower than that of white Federal workers; (7) the Merit Systems Protection Board [MSPB] reported that although a large portion of the grade level differences between minorities and White men could be accounted for by differences in education and experience, even after controlling for these differences, MSPB found that there was generally a negative effect on the careers of minorities in professional and administrative positions because of their race or national origin; (8) GAO has not studied the Navy's Pilot Dispute Resolution Program; (9) although GAO has not examined initiatives under the Comprehensive Enforcement Program, GAO believes that they are clearly steps in the right direction; (10) however, sustained commitment and follow-through on the part of EEOC will be required if EEOC is to achieve meaningful results; (11) in order for EEOC to measure progress toward its goal of eradicating discrimination, there need to be reliable indicators and measures of discrimination in the Federal workplace; (12) measures could be developed that gauge the outcome of discrimination prevention efforts; (13) the strongest feature of the Comprehensive Enforcement Program, in GAO's opinion, is the changes to complaint program regulations that were implemented in November 1999, particularly the requirement for ADR to be used; and (14) based on GAO's report on employers' experiences with ADR in the workplace, the prerequisites to having a successful ADR program are the: (a) need for visible support by top management; (b) importance of involving employees in ADR program development; (c) importance of employing ADR processes early in a dispute before positions have solidified and underlying interests have been obscured; and (d) need to balance the desire to settle and close cases against the need for fairness to employees and managers alike.

*b. Benefits.*—This report was useful in evaluating some of the testimony received at the subcommittee's hearing on March 29, 2000, entitled, "EEO Data and Complaint Processing Problems." (See EEO Data and Processing Problems).

17. *"Federal Employees' Health Program: Reasons Why HMOs Withdrew in 1999 and 2000," May 2, 2000 (GAO/GGD-00-100).*

*a. Summary.*—This report analyzed the withdrawal of health maintenance organizations [HMO] from the Federal Employees' Health Benefits Program [FEHBP], focusing on: (1) changes in the number of HMOs participating in FEHBP from plan years 1994 to 2000; (2) the reasons why HMOs withdrew from FEHBP in plan years 1999 and 2000; and (3) FEHBP enrollment experiences for HMOs that withdrew from the program in 2000. GAO noted that: (1) for plan years 1999 and 2000, 136 HMOs withdrew from FEHBP; (2) while a limited number of new plans entered FEHBP in 1999 and 2000, the withdrawals, combined with plans that either merged, consolidated service areas, or left service areas reduced the number of HMOs participating in FEHBP from 476 in 1996 to 277 HMOs in 2000; (3) the growth or decline in the number of HMOs participating in FEHBP was not always the result of plans entering or withdrawing from the program; (4) some HMOs added new service areas, while others split their existing service areas; (5) in other cases, HMOs merged, consolidated service areas, or left service areas; (6) in any event, about 64,000 of the 4.1 million FEHBP enrollees were affected by HMOs' decisions to withdraw in 2000; (7) according to OPM officials and representatives from HMOs that left FEHBP, the factors most frequently cited for HMO withdrawals from the program in plan years 1999 and 2000 were insufficient enrollments, unpredictable plan utilization/excessive risk, and noncompetitive premium rates; (8) in addition to citing these as the major factors influencing plans' decisions to withdraw, these officials and representatives noted that oftentimes it was a combination of these factors, rather than a single factor, that caused a plan's withdrawal; (9) other factors that plan representatives cited for withdrawing from FEHBP included mergers, Federal mandates to provide selected benefits, OPM's administrative requirements, and saturated market areas; (10) however, plan representatives and others with whom GAO spoke generally agreed that mandates and administrative requirements would not have been major factors contributing to a plan's decision to withdraw; (11) an official from the Employee Benefit Research Institute told GAO that recent plan withdrawals from FEHBP represented a market correction in that plans with low FEHBP enrollments in areas dominated by large plans concluded that they could not compete effectively and therefore withdrew; (12) OPM plan enrollment information showed that 46 of the 62 HMOs that withdrew from FEHBP in 2000 actually increased enrollments between 1998 and 1999, 12 plans lost enrollment between 1998 and 1999, and 4 plans only had enrollment data for 1 year; (13) from 1998 to 1999, of the 46 HMOs that increased enrollments, these increases numbered less than 100 enrollees for 26 of these HMOs; and (14) in addition, of the 62 plans that withdrew in 2000, 26 had fewer than 300 enrollees.

*b. Benefits.*—The subcommittee regularly monitors policy directives OPM issues to plan carriers as well as the rate setting process for premiums. The subcommittee remains interested in minimizing mandates in order to permit as much market competition

among plans as possible. The withdrawal of plans is important to determine what negative impacts can be prevented on the program, as well as ensuring a minimal number of plans leave the program so Federal employees nationwide have a wide variety of healthcare options to choose from for themselves and their families.

18. *“Senior Executive Service: Retirement Trends Underscore the Importance of Succession Planning,” May 12, 2000 (GGD-00-113BR).*

*a. Summary.*—This report examined retirement trends in the Senior Executive Service [SES], focusing on: (1) trends for the SES’ workforce government-wide and for selected agencies and occupational series through fiscal year 2005 and how they compared with the trends over the 7-year period ending fiscal year 1998; and (2) the implications of SES retirement trends for SES succession planning. GAO noted that: (1) the proportion of career SES members employed in selected agencies and occupational series who will be eligible to retire by the end of fiscal year 2005 varies by agency and occupational series and differs from the government-wide rate of 71 percent; (2) the Department of Veterans Affairs [VA] will have the highest SES regular retirement eligibility rate of the 14 selected agencies in GAO’s review; (3) VA may have to replace a large number of its career SES members because 82 percent of those members and 81 percent of SES members in health system administration, who are primarily employed at VA, will be eligible to retire by September 30, 2005; (4) health system administration will have the second highest retirement eligibility rate of the eight selected occupational series included in GAO’s review—criminal investigation will have the highest; (5) conversely, the Environmental Protection Agency [EPA], the Nuclear Regulatory Commission, and attorneys will have the lowest SES retirement eligibility rates by September 30, 2005; (6) both EPA and the attorney series will experience the greatest increase in the proportion of the career SES workforce to attain retirement eligibility; (7) the SES retirement trends projected for the first few years of this decade illustrate that the SES is an aging workforce; (8) because individuals normally do not enter the SES until well into their careers, SES retirement eligibility generally is much higher than for the workforce in general, but SES retirement eligibility also is growing compared with eligibility early in the 1990’s; (9) these trends highlight the importance of SES succession planning because the SES retirements will result in a loss in leadership continuity, institutional knowledge, and expertise among the SES corps with the degree of the loss varying among agencies and occupations; (10) available evidence suggests that formal SES succession planning is not being done universally; (11) SES members from more than 24 agencies said their agencies do not have a formal succession planning program for the SES; (12) Office of Personnel Management officials said most agencies will not likely have formal, comprehensive succession plans; and (13) studies by the National Academy of Public Administration in 1994 and 1997 showed that formal SES succession planning generally was not being done in the Federal Government.

*b. Benefits.*—The report was beneficial to the subcommittee as it continues to oversee OPM and agency actions to develop sound suc-

cession plans for the SES. It has also been useful in evaluating whether or not legislative or regulatory changes are needed to maintain the SES as a highly-qualified executive corps of the Federal Government.

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

Hon. John L. Mica, *Chairman*

1. *"Drug Control: Update on U.S.-Mexican Counternarcotics Activities," March 1999, GAO/NSIAD-99-98.*

a. *Summary.*—This GAO report discussed the counternarcotics efforts of the United States and Mexico, focusing on: (1) Mexico's efforts in addressing the drug threat; and (2) the status of United States counternarcotics assistance provided to Mexico. The report found that: (1) while some high profile law enforcement actions were taken in 1998, major challenges remain; (2) new laws passed to address organized crime, money laundering, and the diversion of chemicals used in narcotics manufacturing have not been fully implemented; (3) moreover, no major Mexican drug trafficker was surrendered to the United States on drug charges; (4) in addition, during 1998, opium poppy eradication and drug seizures remained at about the same level as in 1995; (5) Mexican Government counternarcotics activities in 1998 have not been without positive results; (6) one of its major accomplishments was the arrest of Jesus and Luis Amezcua who, along with their brother Adan, are known as the Kings of Methamphetamine; (7) although all drug-related charges against the two have been dropped, both are still in jail and being held on United States extradition warrants; (8) the Mexican foreign ministry has approved the extradition of one of the traffickers to the United States, but he has appealed the decision; (9) in addition, during 1998 the Organized Crime Unit of the Attorney General's Office conducted a major operation in the Cancun area where four hotels and other large properties allegedly belonging to drug traffickers associated with the Juarez trafficking organization were seized; (10) Mexico also implemented its currency and suspicious transaction reporting requirements; (11) the Mexican Government has proposed or undertaken a number of new initiatives; (12) it has initiated an effort to prevent illegal drugs from entering Mexico, announced a new counternarcotics strategy and the creation of a national police force; (13) one of the major impediments to United States and Mexican counternarcotics objectives is Mexican Government corruption; (14) recognizing the impact of corruption on law enforcement agencies, the President of Mexico: (a) expanded the role of the military in counternarcotics activities; and (b) introduced a screening process for personnel working in certain law enforcement activities; (15) since these initiatives, a number of senior military and screened personnel were found to be either involved in or suspected of drug-related activities; (16) since 1997, the Departments of State and Defense have provided the Government of Mexico with over \$112 million worth of equipment, training, and aviation spare parts for counternarcotics purposes; and (17) the major assistance included UH-1H helicopters, C-26 air-

craft, and two Knox-class frigates purchased by the Government of Mexico through the foreign military sales program.

*b. Benefits.*—This report describes the progress that is being made by Mexico in addressing the drug threat and further progress that is needed. It also details the assistance that has been provided to Mexico to support its efforts. This information is critical to understanding Mexico's efforts and ascertaining future needs for effective and coordinated drug threat strategies and operations.

2. *"Medicare: Early Evidence of Compliance Program Effectiveness Is Inconclusive," April 1999, GAO/HEHS-99-59.*

*a. Summary.*—This GAO report reviewed the compliance programs established by health care providers to reduce improper payments by Medicare, focusing on the: (1) prevalence of compliance programs among hospitals and other Medicare providers; (2) costs involved with compliance programs; and (3) effectiveness of the programs, to the extent that could be measured. The report found that: (1) although there is no comprehensive data on the number of providers with compliance programs, many hospitals are implementing them; (2) two recent hospital surveys, one focusing on academic health centers and the other including a broad range of hospital types, found that most hospitals responding either had or planned to soon implement a compliance program; (3) the hospitals in GAO's study said they felt compelled to implement a compliance program for a variety of reasons, including the heightened enforcement environment, suggestions from the Department of Health and Human Services' Office of the Inspector General, and expectations that the Health Care Financing Administration and accrediting bodies would soon require compliance programs; (4) although compliance programs are apparently becoming widely accepted, most of the hospitals in GAO's study have only recently begun implementation; (5) hospitals report that compliance programs require an investment of considerable time and money; (6) however, measuring the cost of compliance programs is difficult; (7) hospitals could not always distinguish costs attributable to their compliance programs from those of their normal operations, in part because the hospitals often had existing compliance-oriented activities that were subsumed by the compliance program; (8) hospitals reported a variety of significant direct costs, such as salaries for compliance staff and professional fees for consultants and attorneys; (9) according to the information GAO was able to obtain, direct compliance program costs appear to account for a very small percentage of total patient revenues—less than 1 percent in all but one of the hospitals studied; (10) the hospitals also reported indirect costs, such as time spent by employees in compliance-related training and away from their regular duties; (11) these indirect costs are more difficult to measure and may be larger than the direct costs reported; (12) the principal measure of a compliance program's effectiveness is its ability to prevent improper Medicare payments; (13) it is difficult to measure effectiveness in this way because of the lack of comprehensive baseline data and the existence of many other factors that could affect measurement results; (14) other measures have been suggested as a proxy for measuring compliance program effectiveness; (15) Medicare contractors reported that they have re-



ceived refunds of provider overpayments with more frequency; (16) GAO has also noted an increase in formal provider self-disclosures during the last few years; and (17) however, this preliminary evidence does not demonstrate that compliance programs have reduced improper Medicare payments.

*b. Benefits.*—This report describes the current state of knowledge regarding the operation of compliance program effectiveness. This is a topic of continuing concern to the subcommittee and will be addressed in future hearings. As compliance implementation is ongoing, compliance experiences to date provide the basis of current appraisals of the benefits and deficiencies of this new program and its operations.

3. *“Drug Control: ONDCP Efforts to Manage the National Drug Control Budget,” May 1999, GAO/GGD-99-80.*

*a. Summary.*—This GAO report reviewed the role of the Office of National Drug Control Policy [ONDCP] in shaping the national drug control budget that the President ultimately proposes to Congress to implement the National Drug Control Strategy, focusing on: (1) whether the process ONDCP followed to certify Federal agencies’ drug control budgets for fiscal year 1999 was consistent with statutory requirements; and (2) the system ONDCP has developed to assess the extent to which drug control agencies and programs achieve intended results. The report found that: (1) the process ONDCP used to certify fiscal year 1999 drug budgets was generally consistent with the requirements of the Anti-Drug Abuse Act of 1988; (2) ONDCP provided budget guidance to agencies and reviewed some agencies’ preliminary budgets in the summer and others in the fall; (3) based on its budget reviews, ONDCP notified agencies of recommended changes to incorporate into their final budgets that were submitted to the President for approval; (4) ONDCP reviewed budgets of 14 drug control agencies specifically for certification to determine whether they were adequate to support the goals and objectives of the National Drug Control Strategy; (5) ONDCP certified all but the Department of Defense [DOD] budget; (6) DOD was not certified because DOD and ONDCP could not agree on funding levels for certain drug program initiatives; (7) later, however, DOD’s budget was significantly increased following ONDCP’s appeals to the Office of Management and Budget and the President; (8) ONDCP continued to monitor development of the national drug control budget during the remaining budget and congressional appropriations process; (9) to assess the extent to which agencies and programs achieve intended results, ONDCP has initiated a system known as Performance Measures of Effectiveness—a long-term effort designed to assess the effectiveness of the Nation’s drug control efforts; (10) although this system represents a blueprint for the first accountability in the area of drug policy, some questions remain about: (a) the availability of adequate data to measure performance; (b) how the system is to interface with the drug budget process; and (c) how agencies will link the performance expected of them by the National Strategy with the performance goals they prepare in response to the Government Performance and Results Act; and (11) ONDCP plans to continually mon-

itor the system's operation to ensure that it is fully functional and achieving its designed purpose.

*b. Benefits.*—This report provides critical information for the effective oversight of ONDCP and the implementation of the National Drug Control Strategy. Budget issues and decisions will define the success of the agency and the accomplishment of its mission. The performance measures that are being implemented also will be critical to assessing agency and strategy progress. This overview describes actions taken to date.

4. *"Drug Control: Narcotics Threat From Colombia Continues to Grow," June 1999, GAO/NSIAD-99-136.*

*a. Summary.*—This GAO report provided information on the narcotics threat from Colombia, focusing on: (1) the nature of the drug threat from Colombia; (2) recent initiatives of the Colombian Government to address the threat, and obstacles it faces; and (3) the status of United States efforts to assist the Colombian Government in furthering its counternarcotics activities and reducing the flow of illegal narcotics to the United States.

The report found that: (1) despite the efforts of United States and Colombian authorities, the illegal narcotics threat from Colombia has grown; (2) Colombia remains the primary source country for cocaine products for the United States market; (3) for the third year in a row, coca cultivation has increased so that Colombia is now the world's leading cultivator of coca; (4) more potent coca leaf is being grown within Colombia, which is likely to lead to an estimated 50-percent increase in cocaine production in the next 2 years; (5) Colombia is now the major supplier of heroin to the eastern part of the United States; (6) the Colombian Government has lost a number of battles to insurgent groups who, along with paramilitary groups, have increased their involvement in illicit narcotics activities and gained greater control over large portions of Colombia where drug-trafficking activities occur; (7) the Government of Colombia has undertaken a number of initiatives to address the narcotics threat; (8) these include: (a) the initiation of peace talks with the insurgents; (b) the development of a national drug control strategy; (c) the establishment of a joint military-police task force to combat drug traffickers; (d) the development of a new counternarcotics unit within the Colombian army that will be fully screened for human rights abuses; and (e) the implementation of legislative reforms on extradition, money laundering, and asset forfeiture; (9) in 1998, these efforts led to the seizure of record amounts of cocaine and arrests of drug traffickers; (10) the Government of Colombia faces a formidable challenge in overcoming a number of significant obstacles in addressing the narcotics problem; (11) the Colombian military has several institutional weaknesses that have limited its capability to support counternarcotics operations; (12) government corruption, budgetary constraints, and a weak judicial system have hindered the Colombian Government's ability to reduce drug-trafficking activities; (13) the United States has had limited success in achieving its primary objective of reducing the flow of illegal drugs from Colombia; (14) despite 2 years of extensive herbicide spraying, United States estimates show there has not been any net reduction in coca cultivation—net coca cul-

tivation actually increased 50 percent; and (15) the growing involvement and strength of insurgent groups in the areas where coca and opium poppy are grown complicate United States support for counternarcotics activities.

*b. Benefits.*—This report provides additional important data on the mounting drug threat from Columbia. This data reveals current problems and areas of priority need. The findings highlight the need for a more comprehensive effort on the part of the United States and Columbia if mutual objectives in countering this drug threat are to be achieved. It appears that Congress will be required to assume a greater role in this effort.

5. *“Student Loans: Default Rates Need To Be Computed More Appropriately,” July 1999, GAO/HEHS-99-135.*

*a. Summary.*—This GAO report reviewed the Department of Education’s method of calculating a school’s student loan default rate, focusing on: (1) whether there has been an increase in the number of borrowers who entered repayment but subsequently received deferments or forbearances; (2) what effect would excluding borrowers whose loans were in deferment or forbearance have on the most recent default rate calculation; and (3) whether additional schools would have exceeded the 25-percent default rate threshold under the alternative method of calculating the default rate. The report found that: (1) between 1993 and 1996, the percentage of borrowers with loans in deferment or forbearance more than doubled, from 5.2 percent of borrowers who had begun repaying to 11.3 percent; (2) this doubling was consistent across the various types of schools, including 4-year and less-than-4-year public and private schools as well as proprietary schools; (3) according to Education officials, the increase was attributable, in part, to provisions of the 1992 amendments to the Higher Education Act of 1965 that eased the requirements for obtaining deferments and forbearances as a way of helping minimize loan defaults; (4) excluding borrowers with loans in deferment or forbearance entirely from the calculation of the cohort default rate would have had the effect of increasing the overall default rate from 9.6 percent to 10.9 percent for 1996, the most recent cohort year for which data are available; (5) the proportional increases would have been roughly similar for the various types of schools; (6) for example, the rate at 4-year schools would have risen from 6.8 to 7.7 percent, while the rate at proprietary schools would have risen from 18.3 to 20.1 percent; (7) for the 1996 cohort, excluding borrowers with loans in deferment or forbearance from the calculation would have increased the number of schools with rates exceeding the 25-percent threshold by 181 schools, from 352 to 533, an increase of 51 percent; (8) under the law, these schools would have become ineligible to participate in student loan programs if their cohort default rate had exceeded the threshold for 3 consecutive years; (9) since 1991, the Department has denied participation in the programs to more than 1,000 schools because their default rates were too high; and (10) most of the additional schools that would have exceeded the threshold under the alternative calculation method were proprietary schools, but 12 were 4-year colleges and universities and 57 were public or private schools with degree programs of less than 4 years.

*b. Benefits.*—This report identifies the need to compute loan default rates more accurately. The student loan programs of the Department of Education are experiencing significant changes and substantial administrative problems. The calculation of an accurate default rate is critical to assessing future financial exposures, and in determining what efforts may be effective in preventing huge financial losses. It also helps in comparing the loan collection experiences of various schools and institutions.

6. *“Assets DOD Contributes to Reducing the Illegal Drug Supply have Declined,” December 1999, GAO/NSIAD-00-9.*

*a. Summary.*—The Department of Defense has plans and strategies that support the goal of reducing the Nation’s illegal drug supply as specified in the National Drug Control Strategy. DOD supports this goal by providing military personnel, detection and monitoring equipment, intelligence support, communication systems, and training. However, DOD has not yet developed a set of performance measures to assess its effectiveness in contributing to this goal but has taken some initial steps to develop such measures. These steps include the development of a database to capture information that can be used to assess the relative performance of DOD’s detection and monitoring assets.

DOD’s level of support to international drug control efforts has declined significantly since 1992. For example, the number of flight hours dedicated to detecting and monitoring illicit drug shipments declined from approximately 46,000 to 15,000 or 68 percent, from 1992 through 1999. Likewise, the number of ship days declined from about 4,800 to 1,800, or 62 percent, over that same time period. Some of the decline in air and maritime support has been partially offset by increased support provided by the U.S. Coast Guard and Customs Service. Nevertheless, DOD officials have stated that coverage in key, high-threat drug-trafficking areas in the Caribbean and in cocaine-producing countries is limited. The decline in assets DOD uses to carry out its counterdrug responsibilities is due to (1) the lower priority assigned to the counterdrug mission compared with that assigned to other military missions that might involve contact with hostile forces such as peacekeeping and (2) overall reductions in defense budgets and force levels. DOD officials believe that their operations are more efficient today than in the past and that this has partially offset the decline in assets available for counterdrug operations. Because of a lack of data, however, the impact of the reduced level of DOD support on drug trafficking is unknown.

DOD faces several challenges in providing counterdrug support to host-nation military and law enforcement organizations. These organizations often lack the capability to operate and repair equipment and effectively utilize training provided by the United States. In addition, DOD faces restrictions on providing training support to some foreign military units and sharing intelligence information with certain host-nation counterdrug organizations because of the past evidence of human rights violations and corruption within these organizations.

GAO recommends that DOD develop measures to assess the effectiveness of its counterdrug activities.

*b. Benefits.*—This report provides information identifying critical decreases in resource allocations and a faltering commitment by the Department of Defense to drug control efforts. The report acknowledges that some of the shortfalls in ship days and flight hours were offset by the U.S. Coast Guard and the U.S. Customs Service. It further establishes the need for the Department of Defense to reprioritize the drug threat within the national security apparatus to ensure that adequate resources are dedicated to this mission in the future. These and other deficiencies will continue to be monitored by the subcommittee until improvements are made.

7. *“U.S. Assistance to Colombia Will Take Years to Produce Results,” October 2000, GAO-01-26.*

*a. Summary.*—Despite United States and Colombian efforts, the illegal narcotics threat from Colombia continues to grow and become more complex. From 1995 through 1999 coca cultivation and cocaine production in Colombia more than doubled and Colombia became a major supplier of heroin consumed in the United States. Moreover, over time, the drug threat has become more difficult to address. This is due in part to the increasing number and types of organizations involved in illegal drug activities, including insurgent groups, and also the lack of Colombian Government control over more than 40 percent of its territory. The situation makes eradication and interdiction operations to reduce illegal drug activities difficult.

Although United States-provided assistance has enhanced Colombian counternarcotics capabilities, it has sometimes been of limited utility because of long-standing problems in planning and implementing this assistance. For example, helicopters that State provided to the National Police and the military have not had sufficient spare parts or the funding necessary to operate and maintain them to the extent possible for conducting counternarcotics operations. Moreover, the U.S. Embassy has made little progress implementing a plan to have the National Police assume more responsibility for the aerial eradication program, which requires costly U.S. contractor assistance to carry out. U.S. Embassy officials also expressed concern that the National Police has not always provided documentation about its use of some counternarcotics assistance.

The Governments of the United States and Colombia face financial and management challenges in implementing Plan Colombia. The total cost and activities required to meet the plan’s goals remain unknown, and it will take years before drug activities are significantly reduced. U.S. agencies are still developing implementation plans, and manufacturing and delivering equipment. GAO finds that placing staff in Colombia to manage activities will take time. As a result, agencies do not expect to have many of the programs to support Plan Colombia in place until late 2001. Moreover, additional funds will be needed to ensure that equipment provided remains operable. State planning documents indicate that it has not budgeted funds to train pilots and mechanics, provide logistical support, and support the operations of certain U.S.-provided helicopters. To date, the Colombian Government has not demonstrated that it has detailed plans, management structure, and funding necessary to effectively implement its programs and achieve stated

goals. While Colombia is relying on international donors in addition to the United States to help fund Plan Colombia, much of that support has yet to materialize. Colombia faces continuing challenges associated with its political and economic instability fostered by Colombia's long-standing insurgency and the need to ensure that the Colombian Police and military comply with human rights standards in order for United States assistance to continue.

GAO recommends to the Secretaries of State and Defense that efforts be undertaken to help ensure that United States counter-narcotics assistance to Colombia is used more effectively and problems in supporting United States-provided equipment do not recur. In commenting on a draft of this report, State and Defense generally concurred with the information presented and the recommendations.

*b. Benefits.*—This report describes past problems within the Department of State and Department of Defense in getting needed aid down to the security forces in Colombia. It also details the assistance that has been provided to Colombia to support its counterdrug efforts. This information is critical to understanding Colombia's efforts and ascertaining future needs for effective and coordinated drug threat strategies and operations. The findings are very important as the administration attempts to implement the U.S. assistance approved by the Congress and signed into law this past summer in the Fiscal Year-2000 Supplemental Aid package for Plan Colombia. The information contained in the report will assist the subcommittee monitor the delivery of future United States aid to Colombia.

8. *"Drug Abuse Treatment: Efforts Under Way to Determine Effectiveness of State Programs," February 15, 2000, GAO/HEHS-00-50.*

*a. Summary.*—GAO reviewed the efforts by the Substance Abuse and Mental Health Services Administration [SAMHSA] and states to provide effective drug abuse treatment programs, focusing on: (1) activities supported by SAMHSA's Substance Abuse Prevention and Treatment [SAPT] block grant and Knowledge Development and Application [KDA] grant funds for drug abuse treatment; (2) SAMHSA and State mechanisms for monitoring fund use; and (3) SAMHSA and State efforts to determine the effectiveness of drug abuse treatment supported with SAPT block grant funds. GAO noted that: (1) about \$581 million in SAMHSA's fiscal year 1996 grant funds was spent on drug abuse treatment activities; (2) more than \$478 million was spent by all States for treatment services funded through the SAPT block grant program; (3) the 16 States GAO surveyed reported that SAPT funds supported both residential and outpatient drug abuse treatment services, including detoxification and methadone maintenance; (4) for half of the States in GAO's survey, outpatient drug abuse treatment services accounted for 57 to 85 percent of their block grant expenditures; (5) all of the States GAO surveyed reported providing methadone treatment services almost exclusively on an outpatient basis; (6) SAMHSA spent another \$25 million of the SAPT block grant for technical assistance and evaluation activities related to drug abuse treatment; (7) the remaining \$78 million of SAMHSA's fiscal year 1996 grants

were KDA funds provided to community-based organizations, universities, and State and local government agencies to develop and disseminate information on promising drug abuse treatment practices; (8) to monitor grantees' use of SAPT and KDA program funds, SAMHSA uses on-site reviews, reviews of independent financial audit reports, and application reviews; (9) these mechanisms are primarily used to monitor grantees' compliance with program requirements, identify grantees' technical assistance needs, and provide grantees guidance for improving program operations; (10) the accountability system for the SAPT block grant is mostly based on a review of State expenditures; (11) SAMHSA primarily monitors States' compliance with certain statutory requirements for use of funds; (12) the States also monitor SAPT block grant funds using mechanisms similar to SAMHSA's; (13) they used the results of their monitoring efforts, in part, to make drug abuse treatment funding allocation decisions and determine technical assistance needs; (14) several State and SAMHSA efforts are under way to determine the effectiveness of drug abuse treatment programs using client outcome measures, such as drug use, employment, criminal activity and living arrangement; (15) 9 of the 16 States that GAO surveyed have conducted such assessments, but the results vary from State to State; (16) SAMHSA officials believe that collecting uniform State-level client outcome and other performance data are critical to determining the effectiveness of State programs supported with SAPT block grant funds; and (17) however, this effort is not likely to result in uniform State data because some of the States reported that they would not be able to submit all of the requested data.

*b. Benefits.*—This report describes developments and plans regarding SAMHSA's research and evaluation efforts involving drug treatment programs and approaches. The report describes the scope and funding levels of the agency's efforts, and serves to identify that significant research remains to be completed.

9. *"Drug Abuse: Efforts Under Way to Determine Treatment Outcomes," February 17, 2000, GAO/HEHS-00-60.*

*a. Summary.*—GAO discussed the Substance Abuse and Mental Health Services Administration's [SAMHSA] efforts to support an effective drug abuse treatment system, focusing on: (1) activities supported by SAMHSA's Substance Abuse Prevention and Treatment [SAPT] block grant and Knowledge Development and Application [KDA] grant funds for drug abuse treatment; (2) SAMHSA and State mechanisms for monitoring fund use; and (3) SAMHSA and State efforts to determine the effectiveness of drug abuse treatment supported with SAPT block grant funds. GAO noted that: (1) about \$581 million in SAMHSA's fiscal year 1996 grant funds was spent on drug abuse treatment activities; (2) more than \$478 million was spent by the States for treatment services funded through the SAPT block grant program; (3) the 16 States GAO surveyed reported that SAPT funds supported residential and outpatient drug abuse treatment services, including detoxification and methadone maintenance; (4) for half of the States in GAO's survey, outpatient drug abuse treatment services accounted for 57 to 85 percent of their block grant expenditures; (5) all the States GAO surveyed re-

ported providing methadone treatment services almost exclusively on an outpatient basis; (6) SAMHSA spent \$25 million of the SAPT block grant for technical assistance and evaluation activities related to drug abuse treatment; (7) the remaining \$78 million of SAMHSA's 1996 grant funds were KDA funds provided to community-based organizations, universities, and State and local government agencies to develop and disseminate information on promising drug abuse treatment practices; (8) SAMHSA monitors grantees' use of these funds through on-site reviews, reviews of independent financial audit reports, and application reviews; (9) these mechanisms are used to monitor grantees' compliance with program requirements, identify grantees' technical assistance needs, and provide grantees guidance for improving program operations; (10) the accountability system for the SAPT block grant is mostly based on a review of State expenditures designed to determine whether States comply with statutory spending requirements for use of funds, such as those that stipulate that a certain percentage of SAPT block grant funds be spent for alcohol prevention and treatment, drug prevention and treatment, and special populations; (11) SAMHSA's monitoring has not focused on the outcomes of the effectiveness of States' drug abuse treatment programs; (12) several State and SAMHSA efforts are under way to determine the effectiveness of drug abuse treatment programs using client outcome measures, such as drug use, employment, criminal activity, and living conditions; (13) 9 of the 16 States have conducted such assessments, but the outcomes measured, populations assessed, methodologies used, and availability of results vary from State to State; (14) SAMHSA is funding a pilot effort to help 19 States develop and uniformly report on a core set of client outcomes; and (15) however, this effort is not likely to result in uniform State data because some States are not collecting requested data.

*b. Benefits.*—This report describes SAMHSA's evaluation and funding practices aimed at determining treatment outcomes. Significant assessment challenges continue.

10. *“Export Promotion: Federal Agencies’ Activities and Resources in Fiscal Year 1999,” April 10, 2000, GAO/NSIAD-00-118.*

Pursuant to a congressional request, GAO provided information on U.S. Government programs intended to help businesses promote their products and services in overseas markets, focusing on: (1) the Federal agencies involved in promoting exports of U.S. goods and services and the export promotion activities they perform; (2) these agencies' total resources devoted to export promotion in fiscal year 1999; and (3) the agencies' overseas resources devoted to export promotion during this period. GAO noted that: (1) 10 Federal agencies are involved in export promotion activities: (a) the Departments of Agriculture, Commerce, Energy, State, and Transportation; (b) the Export-Import Bank of the United States; (c) the Overseas Private Investment Corporation; (d) the Small Business Administration; (e) the Agency for International Development; and (f) the U.S. Trade and Development Agency; (2) all of these agencies help educate U.S. businesses about the export process by participating in trade shows and other events; seven provide financial assistance to exporters or investors in overseas projects; seven pro-



vide trade contacts; and six gather and disseminate market and trade lead information; (3) these agencies received approximately \$1.9 billion for export promotion activities in 1999; (4) the Export-Import Bank and the Department of Agriculture, agencies that provide direct financial support to U.S. exporters, received \$1.47 billion, or almost 78 percent, of this amount; (5) another \$299 million (16 percent) was received by the Department of Commerce, which employed the equivalent of almost 2,000 full-time people in these activities during this period; (6) the remaining 6 percent was devoted to eight other agencies; (7) seven agencies devoted approximately \$174 million in estimated expenses to export promotion activities at U.S. overseas posts in fiscal year 1999; (8) of this amount, about +\$110 million came from the Commerce Department, which devoted the equivalent of over 700 full-time people to these activities during this period; (9) the Departments of Agriculture and State devoted \$48 million and \$14 million respectively; and (10) these expenditures covered salaries and expenses of overseas staff and administrative costs associated with overseas facilities.

*b. Benefits.*—Overlapping activities and a piecemeal approach to achieving various trade objectives are evident from the descriptive report.

11. *“Medicare: Contractors Screen Employees but Extent of Screening Varies,” June 30, 2000, GAO/HEHS-00-135R.*

*a. Summary.*—GAO provided information on the use of employee screening measures by Medicare claims administration and program safeguard contractors, focusing on the: (1) requirements the Health Care Financing Administration [HCFA] has placed on Medicare contractors to conduct employee background checks; (2) steps Medicare contractors are taking to ensure that employees are trustworthy in handling Medicare funds and sensitive information; and (3) costs to Medicare contractors of conducting background checks or using other employee screening measures. GAO noted that: (1) HCFA expects its contractors to exercise sound business judgment when they make hiring decisions; (2) as a result, HCFA does not specifically require its Medicare claims administration and program safeguard contractors to conduct background checks or undertake other employee screening measures; (3) however, HCFA does advise its claims administration contractors to adopt personnel selection safeguards, specifically employment verification and applicant certifications; (4) HCFA also requires its claims administration contractors to obtain fidelity bonds for certain employees; (5) in addition, both Medicare claims administration and program safeguard contractors are required to collect and submit to HCFA conflict of interest information; (6) the Medicare claims administration and program safeguard contractors GAO surveyed screen their employees as common business practice without specific requirements from HCFA to do so; (7) nearly all the contractors in GAO’s sample said that they perform typical screening measures, such as employment and education verification, reference checking, and credential validation; (8) most of the claims administration contractors GAO spoke to also reported that they perform more extensive screening measures, such as criminal background checks and drug tests; (9)

in contrast, the two program safeguard contractors GAO surveyed indicated that they do not conduct criminal background checks or require drug testing unless such requirements are included in their contracts; (10) both claims administration and program safeguard contractors reported that they rarely use less traditional screening measures, such as credit checks and government debarment and exclusion database reviews; (11) the costs associated with employee screening vary by the complexity and urgency associated with each screening measure; (12) however, the Medicare contractors GAO surveyed could not calculate the total cost of their employee screening measures; and (13) the fact that employee screening efforts are conducted and continue to be recognized as a common business practice within the Medicare contractor community suggests that such measures are considered worthwhile.

*b. Benefits.*—Valuable information regarding current personnel background information collection and uses is provided. The information is useful in determining safeguards.

12. *“Civilian Acquisitions: Selected Agencies’ Use of Criminal Background Checks on Contractor Principals to Prevent Fraud,” September 28, 2000, GGD-00-194R.*

*a. Summary.*—GAO provided information on selected agencies’ use of criminal background checks to help prevent contractor fraud, focusing on: (1) policies and practices for making contractor responsibility determinations and conducting criminal background checks on contractor principals; (2) efforts to suspend, debar, or otherwise prevent firms or contractor principals that have violated relevant Federal laws and regulations from receiving government contracts; and (3) Office of Inspector General [OIG] completed contractor fraud investigations involving principals and whether the principals who committed fraud had criminal histories. GAO noted that: (1) the Federal Acquisition Regulation [FAR] sets forth seven general standards that agencies’ contracting officers are required to use in determining whether prospective contractors are responsible; (2) these standards require prospective contractors to have adequate financial resources to perform the contract, the ability to comply with contract schedules, satisfactory performance records, and satisfactory records of integrity and business ethics; (3) although FAR does not specifically require criminal background checks on contractor principals, agencies are not prohibited from performing such checks and may do so when they believe it is necessary or appropriate; (4) the Department of Housing and Urban Development [HUD], the Department Treasury, and General Services Administration [GSA] have acquisition regulations and guidance that implement and supplement the FAR requirements concerning the information that contracting officers are expected to obtain when making contractor responsibility determinations; (5) while HUD’s practices for making contractor responsibility determinations appeared consistent with the FAR and the HUD procurement handbook, they did not include criminal background checks on contractor principals; (6) according to Treasury and GSA officials, their contracting officers rely on certain types and sources of information to make responsibility determinations; (7) Treasury and GSA officials said that such determinations do not include

criminal background checks on contractor principals; (8) as of March 2000, HUD was among the top five agencies regarding debarments, but according to HUD officials, most of these debarments were not related to acquisition activities; (9) the Department of Health and Human Services [HHS] and Office of Personnel Management [OPM] accounted for about 70 percent of debarments government-wide; (10) like HUD, most of HHS' and OPM's debarments were not related to acquisitions, but typically involved health care providers, such as doctors and nursing homes; (11) during fiscal years 1997 through 1999, the OIGs at the Departments of Agriculture, HUD, Justice, Transportation, Veterans Administration, and at GSA investigated a total of 151 contractor principals for allegedly committing fraud; (12) of these principals, 56, or 37 percent, were found to have committed fraud; and 8 of the 56 principals who committed fraud had criminal histories.

*b. Benefits.*—These findings provided new information that identified a serious need for greater scrutiny of agency acquisition practices, and consideration by agencies of needs to conduct criminal background checks when situations warrant them. At HUD, criminal background checks of principals may have prevented mismanagement of agency business, saved millions of dollars, and prevented moneys and program operations from unnecessarily being placed at risk.

13. *"Economic Development: Multiple Federal Programs Fund Similar Economic Development Activities," September 29, 2000, RCED/GGD-00-220.*

*a. Summary.*—GAO identified Federal programs that supported economic development, focusing on: (1) the programs that more directly fund economic development activities, including the level of financial support that they provide; and (2) comparing selected aspects of these programs, such as program applicants, to identify areas of potential overlap. GAO noted that: (1) 10 agencies and 27 sub-agency units administer 73 programs that can be used to support one or more of the six activities that GAO identified as being directly related to economic development; (2) in some cases, a single program can be used to fund multiple activities, while in some cases, a single program can be used to fund only one type of activity; (3) while these 73 programs had total combined obligations of about \$58 billion during fiscal year 1999, most of the individual programs each had obligations of less than \$50 million; (4) in many cases, only a portion of the obligations was related to the six activities that GAO identified as being directly related to economic development; (5) specifically, for 30 of the programs—those for which agencies could provide more detailed obligation information—approximately \$7 billion was obligated to support one or more of the six economic development activities for fiscal year 1999; (6) in many cases, the programs required the applicants to supplement or match these funds with funds from other sources; (7) in each of the six activity areas, GAO identified programs that fund a similar activity and also have the same applicants; and (8) while GAO identified overlap among many Federal programs that support economic development, additional information is needed to determine wheth-

er that overlap resulted in the inefficient or ineffective delivery of the programs involved.

*b. Benefits.*—This descriptive information is needed to complete an evaluation of whether the multiple agencies and overlapping economic development activities result in inefficiencies that should be remedied. The report makes clear that the activities and arrangements of the various economic development programs and agencies represent a complex approach to achieving economic development goals and policies, and that current practices are ripe for further simplification.

14. *“Anti-Drug Media Campaign: Investigation of Actions Taken Concerning Alleged Excessive Contractor Cost,” October 4, 2000, GAO-01-34T.*

*a. Summary.*—This testimony discusses the Office of the National Drug Control Policy’s [ONDCP] contract with Ogilvy & Mather, the lead media campaign contractor for the National Youth Anti-Drug Media Campaign. GAO reviewed ONDCP investigations into (1) the facts and circumstances surrounding actions taken by ONDCP after receiving the allegations that Ogilvy may have over-billed the government; (2) allegations that Ogilvy had provided services unrelated to the contract and submitted invoices under the contract for those services; and (3) the Director of ONDCP, General Barry McCaffrey, knew about the allegations concerning Ogilvy’s billing practices but did not act. GAO found that Director McCaffrey had a private meeting with Ogilvy’s project director after internal ONDCP discussions of the need for an external audit. However, based upon available evidence, GAO concluded that this meeting did not result in a negative decision with respect to an external audit of Ogilvy. Based upon available evidence, GAO concluded that Ogilvy did not write congressional testimony for ONDCP employees, which would have gone beyond the scope of its contract with ONDCP. Ogilvy did provide ONDCP with figures, research, and documentation for use in responding to congressional inquiries and testimony. Available evidence indicated that Ogilvy did not provide services to Director McCaffrey involving his response to an article in the New Yorker magazine that was critical of Director McCaffrey’s actions when he was in the military.

*b. Benefits.*—This report was very helpful to the subcommittee in identifying serious problems and concerns that merited further investigation. GAO has begun an audit and examination to determine whether these substantial Federal program funds are being spent wisely, whether proper billing practices are being followed, and whether evidence of serious contractor fraud or mismanagement exists. The subcommittee continues to monitor this activity.

15. *“Drug Control: Challenges in Implementing Plan Colombia,” October 12, 2000, GAO-01-76T.*

*a. Summary.*—This testimony discusses the challenges facing the United States and Colombia in implementing Plan Colombia, which is designed to help curb drug trafficking. The United States believes that the drug threat from Colombia has both expanded and become more complex during the past several years. During fiscal years 1996–2000, the United States provided Colombia more than

\$765 million in assistance to help reduce illegal drug activities. Both governments face several management and financial challenges in implementing Colombia's strategy to cut the cultivation, processing, and distribution of narcotics by in half in 6 years. Although both governments are taking steps to address the challenges, the total cost and activities required to meet the plan's goals remain unknown, and significantly reducing drug activities will likely take years. Problems include the lack of spare parts for helicopters, lags in equipment supply, the failure of the Colombian National Police to take control of aerial operations, and funding.

*b. Benefits.*—This testimony highlighted serious problems and challenges that executive branch officials must consider in determining how best to implement Plan Colombia successfully. The testimony and hearing raises numerous and significant concerns regarding past and present assistance practices, and raises additional concerns regarding future plans and efforts. The testimony demonstrated that the situation in Colombia is complex and volatile, and that a rethinking of approaches and practices is in order, especially given past practices and experiences.

16. *"Drug Control: U.S. Assistance to Colombia Will Take Years to Produce Results,"* October 17, 2000, GAO-01-26.

*a. Summary.*—The United States has been providing assistance to Colombia since the early 1970's to help the Colombian National Police and other law enforcement agencies, the military, and civilian agencies in their efforts to reduce illegal drug production and trafficking activities. Recognizing that illegal drug activities are a serious problem, the Colombian Government announced a counternarcotics plan known as Plan Colombia. This report reviews the United States counternarcotics efforts in Colombia. Although United States-provided assistance has enhanced Colombian counternarcotics capabilities, it has sometimes been of limited utility because of long-standing problems in planning and implementing this assistance. For example, little progress has been made in implementing a plan to have Colombia's National Police assume a larger role in managing the aerial eradication program, which requires costly United States contractor assistance. The governments of the United States and Colombia face continuing and new financial and management challenges in implementing Plan Colombia. The costs and activities needed to implement the plan are unknown at this time, and it will take years before any significant reduction in the drug trade is seen. Colombia must resolve problems with its political and economic stability and improve its management of counternarcotics funding in order to be successful in implementing Plan Colombia.

*b. Benefits.*—The report reiterated the testimony of GAO, and further demonstrated the need for rethinking past policies and practices in assisting Colombia. Colombian officials have not demonstrated a capability to effectively use United States assistance, nor has the United States demonstrated its capability to provide assistance in a timely and responsive manner during the Clinton administration. The report indicates that an improved assistance plan is needed, and that dysfunctional past practices should be avoided.

17. *"Defense Trade: Data Collection and Coordination on Offsets,"*  
October 26, 2000, GAO-01-83R.

*a. Summary.*—Defense offsets are the full range of industrial and commercial benefits that firms give to foreign governments as conditions for the purchase of military goods and services. They have gained attention because of the potential impact they may have on the economy and national security. In 1984 and 1999, data collection and reporting requirements were levied by Congress to obtain information on the impact of offsets on the U.S. industrial base; the Departments of Commerce, State, and Defense are all required to report to Congress on defense offsets. GAO found that although coordination of data collection is limited, it may not be significant because the agencies collecting offsets cover different time periods or situations. Additional coordination may occur after the National Commission on the Use of Offsets begins its work.

*b. Benefits.*—The report provides descriptive information regarding defense offsets that identifies impacts and potential problem areas, such as insufficient coordination. The report is useful in beginning to evaluate options for limiting various negative consequences of offset practices. The usefulness of this report to evaluating benefits and costs of offsets—including offset impacts—will become more apparent once further study is completed.

SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

Hon. Thomas M. Davis, *Chairman*

1. *District of Columbia Courts: Improvements needed in Accounting for Escrow and other Funds, October 29, 1999.*

*a. Summary.*—Information was received for purpose of oversight and implementation of reforms.

2. *Issues Related to the Youngstown Prison Report and Lorton Closure Process, April 7, 2000.*

*a. Summary.*—Information was received for purpose of oversight.

3. *District of Columbia Courts: Implementation of Personnel Policies Requiring Further Attention From the Courts' Leadership, April 12, 2000.*

*a. Summary.*—Information was received for purpose of oversight and implementation of reforms.

4. *District of Columbia Government: Performance Report's Adherence to Statutory Requirements, April 14, 2000.*

*a. Summary.*—Information was received for purpose of oversight.

5. *Foster Care: Status the District of Columbia's Child Welfare System Reform Efforts, May 5, 2000.*

*a. Summary.*—Information received for purposes of oversight hearings.

6. *District of Columbia Receivership: Selected Issues Related to Medical Services at the District of Columbia Jail, June 30, 2000.*

a. *Summary.*—Information received for purposes of an oversight hearing.

7. *Status of District of Columbia Convention Center Project, August 30, 2000.*

a. *Summary.*—Information received for purpose of oversight.

8. *Washington Metropolitan Area Transit Authority, ongoing inquiry.*

a. *Summary.*—Hearing held, awaiting report.

9. *District of Columbia Mental Health Services, ongoing inquiry.*

a. *Summary.*—Hearing planned, awaiting report.

10. *District of Columbia Private Use of Official Vehicles, GAO/ GGD-99-50.*

a. *Summary.*—Pursuant to a congressional request, GAO reviewed the District of Columbia's compliance with Public Law 105-100, focusing on whether: (1) any District employees were authorized, as of September 1998, to take home official vehicles; and (2) these employees were aware of the statutory restriction on using District government vehicles for other than official business, including home-to-work transportation.

b. *Benefits.*—GAO noted that: (1) all of the 46 District entities reported to have vehicles as of September 30, 1997, now report compliance with the prohibition against using appropriated funds for government vehicles taken home by employees; (2) in response to GAO's September 1998 questionnaire to or interviews with the 46 District entities that had vehicles under their control, 37 entities reported that they did not authorize anyone to take home a public vehicle; (3) the remaining 9 entities reported that 44 employees were authorized to take home a public vehicle; (4) subsequently, 8 of the 9 entities told GAO that 21 employees who were still authorized as of September 1998 to take home public vehicles were no longer doing so; (5) the other entity, the District of Columbia Housing Authority [DCHA], which had 23 employees authorized to take home public vehicles, planned to comply with the law by funding the cost of vehicles taken home with nonappropriated funds; (6) GAO concurred that the statutory restriction does not prohibit DCHA from spending its nonappropriated funds on vehicles that are taken home; (7) GAO also contacted the 10 entities identified in the District's Public Vehicle Report as allowing vehicles to be taken home as of September 30, 1997, about steps they had taken to inform their affected employees of the restriction on this practice; (8) officials at these 10 entities said that they had notified their staff of the change in the law; (9) 21 of the 22 District employees GAO contacted who were authorized to take home vehicles as of September 30, 1997, were aware of the restriction; and (10) the remaining employee said that his entity had not notified him of the change in policy, but when he became aware of it from GAO's survey, he stopped taking home a vehicle.

11. *District of Columbia Authority Needs to Improve Its Procurement Practices, GAO/GGD-99-134, August 1999.*

a. *Summary.*—Allegations have been made about procurement improprieties at the District of Columbia Financial Responsibility and Management Assistant Authority, which Congress established in 1995 to repair the District's failing financial condition and to improve the effectiveness of city operations. The Authority was given the authority to award contracts itself and to review and approve contracts awarded by the District.

b. *Benefits.*—GAO found that the Authority did not always comply with its procurement regulations and procedures or follow sound contracting principles when it awarded and administered the nine contracts GAO assessed. In addition, the Authority's files for these contracts were incomplete.

12. *D.C. Courts Staffing Level Determination Could Be More Rigorous, GAO/GGD-99-162, August 1999.*

a. *Summary.*—This report provides information on personnel management in the District of Columbia courts. Specifically, GAO discusses staffing and workload levels for the courts from 1989 through 1998, assesses how the courts evaluate the sufficiency of the levels of nonjudicial staff who work on the processing and the disposition of cases, and compares the D.C. courts' staffing methodology to other available methodologies.

13. *D.C. Courts Planning Budgeting Difficulties During Fiscal Year 1998, September 1999, GAO/AIMD/OGC-99-226.*

a. *Summary.*—Pursuant to a congressional request, GAO provided information on the planning and budgeting difficulties faced by District of Columbia [DC] Courts during fiscal year 1998. GAO noted that: (1) DC Courts incurred obligations of \$115.4 million, \$119 million, and \$125.6 million in fiscal years 1996, 1997, and 1998, respectively; (2) fiscal year 1998 obligations reflect a different scope of activities than prior year obligations, primarily because of changes necessitated by the Revitalization Act of 1997; (3) these changes include the transfer of a DC Courts function to another entity and increased costs of employee benefits during fiscal year 1998; (4) DC Courts also gave its nonjudicial employees a 7-percent pay raise and assumed responsibility for judges' pension costs as part of its fiscal year 1998 appropriation for court operations; (5) DC Courts did not prepare and execute a budget based on amounts appropriated for fiscal year 1998; (6) records showed that throughout the year, DC Courts was aware that its spending was on pace to exceed available resources; (7) rather than managing within its available funds, DC Courts incurred obligations in anticipation of receiving additional resources from Congress and others to cover the difference; (8) faced with an impending shortfall in operating funds, DC Courts officials deferred payments totalling \$5.8 million owed to court-appointed attorneys and expert service providers during the last 3 months of fiscal year 1998; (9) Congress transferred \$1.7 million in fiscal year 1998 funds to DC Courts that was used for deferred court-appointed attorney payments and authorized DC Courts to use the fiscal year 1999 appropriations to fund the remaining deferred amount of \$4.1 million; (10) as of May 25, 1999,



GAO found that DC Courts fiscal year 1998 obligations exceeded available resources by \$4.6 million, in violation of the Anti-Deficiency Act; (11) this funding shortfall reflected the \$4.1 million in deferred payments to court-appointed attorneys that should have been recorded as fiscal year 1998 obligations and GAO's assessment of deobligations for fiscal year 1998 submitted by DC Courts; (12) DC Courts treated \$773,000 in interest—earned primarily on the bank balances from quarterly apportionments of its fiscal year 1998 appropriation—as an available budgetary resource for court operations without having legislative authority to do so; (13) DC Courts processed vouchers for court-appointed attorneys and expert-service providers in accordance with established policies and procedures; (14) however, its policies did not: (a) include timeframes for processing the vouchers and making payments; or (b) require that judges document decisions to reduce claimed voucher amounts; and (15) DC Courts did not have procedures for retaining data on vouchers reported as lost or missing.

*14. Financial Audit District of Columbia Highway Trust Funds's Fiscal Years 1998 and 1997 Financial Statements, September 1999, GAO/AIMD-99-263.*

*a. Summary.*—Pursuant to a legislative requirement, GAO presented the results of its audit of the District of Columbia's Highway Trust Fund, focusing on: (1) GAO's opinion on the effectiveness of the District's internal control related to the fund as of September 30, 1998; and (2) the results of GAO's evaluation of the District's fiscal year 1998 compliance with laws and regulations as they relate to the fund.

*b. Benefits.*—GAO noted that: (1) the financial statements for 1998 and 1997 were fairly presented, in all material respects; (2) the District did not maintain effective internal control related to the fund as of September 30, 1998; (3) GAO found material weaknesses related to accounting for revenue, cashier operations, and computer system general controls; (4) there was a reportable non-compliance with one of the laws GAO tested relating to the licensing and bonding of motor vehicle fuel wholesalers/businesses; and (5) the underlying assumptions made and methodology used to develop the fund's revised forecasted statements provided a reasonable basis for such statements, and the statements were presented in conformity with guidelines established by the American Institute of Certified Public Accountants.

*15. District of Columbia Status of the New Convention Center, dated September 1999, GAO/AIMD-99-258.*

*a. Summary.*—Pursuant to a congressional request, GAO provided a status report on the construction of the new Washington Convention Center, focusing on: (1) the status of the project; (2) changes in the Washington Convention Center Authority's [WCCA] estimated project costs and financing plan since GAO's last report; and (3) actual expenditures and collection of dedicated taxes. GAO noted that: (1) in March 1999, work started on slurry wall construction, site excavation, and removal of contaminated soil; (2) based on information provided by WCCA officials as of June 1999, total estimated project costs decreased \$55 million from \$846 mil-

lion to \$791 million; (3) this decrease was due to reduced financing-related costs, which resulted primarily from the purchase of a surety bond covering debt servicing instead of funding the initially planned for Debt Service Reserve Fund; (4) WCCA estimated the total construction cost of the project at \$714 million—\$6.3 million, or less than 1 percent, more than the June 1998 estimate; (5) the \$6.3 million increases to \$24 million the estimated value of equipment that WCCA anticipates being provided by vendors at no initial cost to WCCA; (6) however, WCCA remains at risk for the cost of the equipment until contracts are executed with vendors; (7) within the \$714 million construction cost estimate, WCCA made a number of changes, increasing the estimated cost of some project components and decreasing others to reflect more current data; (8) proceeds from the September 1998 bond sale covered about 66 percent of the \$791 million June 1999 project cost estimate; (9) WCCA's financing plan covered the remaining cost through dedicated taxes over the 4-year construction period, anticipated interest earnings, anticipated Federal grants, and reliance on vendors to provide without cost, equipment that WCCA estimates would cost \$24 million—an amount for which WCCA is at risk until such time that there are executed contracts to cover these arrangements; (10) dedicated tax collections for the first 10 months of fiscal year 1999 were \$42.2 million—a little higher than the amount assumed in the bond offering documents prorated for the same period; (11) in addition to the amounts already collected, WCCA may receive some portion of amounts in the lockbox exceptions account; (12) these amounts cannot be determined until all collections held in the lockbox exceptions account have been appropriately allocated by the District of Columbia and appropriate amounts transferred to WCCA; and (13) WCCA's share of interest earnings on amounts in the exceptions account cannot be determined until the District determines the appropriate allocation.

*16. D.C. Courts Improvements needed in Accounting for Escrow and Other Funds, October 1999, GAO/AIMD/OGC-00-6.*

*a. Summary.*—The District of Columbia Courts did not properly account for the funds in half of its 18 bank accounts during fiscal year 1998, as shown by its problems in determining its cash balances and reconciling its accounting records to supporting documentation. In addition, DC Courts lacked adequate controls and procedures during fiscal year 1998 to help ensure that the fines and the fees that were collected were accurately recorded. Although DC Courts was authorized to deposit fines, fees, and penalties specified in District Law into the Crime Victims Fund to provide financial assistance to crime victims, in fiscal years 1998 and 1999 DC Courts also deposited other fines, fees, and penalties into the Fund that should have been deposited in the U.S. Treasury.

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND  
TECHNOLOGY

Hon. Stephen Horn, *Chairman*

1. *"Year 2000 Computing Challenge: Agencies' Reporting of Mission-Critical Classified Systems," August 5, 1999, GAO/AIMD-99-218.*

*a. Summary of subcommittee action.*—(See section II.B.1.)

*b. Benefits.*—The subcommittee and OMB used the information provided by the agencies to monitor year 2000 progress across the Federal Government. This audit showed that, as of July 31, 1999, one agency—the Department of the Treasury—had not reported the status of its mission-critical, classified systems to OMB, and therefore, to Congress. Ultimately, however, all Federal departments and agencies completed their year 2000 remediation work before the January 1, 2000, deadline. As a result of this focused governmentwide effort, there were no major disruptions in Federal services.

2. *"Performance Budgeting: Past Initiatives Offer Insights for GPRA Implementation," March 27, 1997, GAO/AIMD-97-46.*

*a. Summary of subcommittee action.*—(See section II.B.8.)

*b. Benefits.*—The Subcommittee on Government Management, Information, and Technology held two hearings to investigate the effectiveness of the Government Performance and Results Act [GPRA] based on input from previous public- and private-sector experiences. Using the lessons learned from these experiences, the subcommittee was able to direct the Office of Management and Budget and Federal agencies in more profitable directions.

3. *"Inspectors General: Information on Operational and Staffing Issues," January 1999, GAO/AIMD-99-29; and*

4. *"Inspectors General: Views on Semiannual Reporting," August 25, 1999, GAO/AIMD-99-203.*

*a. Summary of subcommittee action.*—The subcommittee has held numerous meetings to discuss potential legislation to update the 21-year-old Inspectors General Act.

*b. Benefits.*—Pursuant to a congressional request, the GAO surveyed inspectors general in the executive branch to obtain information on their organizational structure, staffing, and workload; and their views on current policy issues affecting them in order to apprise Congress of the successes or failures of existing law. The GAO found the following:

The inspector general's work covers a broad spectrum of agency programs and operations.

In general, the inspectors general responded that they have the expertise and resources necessary to assemble the staff they need to perform the major types of work for which they are responsible.

While the inspectors general anticipate the level of work to remain the same or slightly increase across the range of areas that were reviewed, they anticipate that the greatest increase will be in information technology reviews.

The inspectors general also indicated that they were generally satisfied with their role and the overall legislation governing them, but did identify certain potential areas for modification.

5. *"Public-Private Partnerships: Key Elements of Federal Building and Facility Partnerships," February 3, 1999, GAO/GGD-99-23.*

- a. *Summary of subcommittee action.*—(See section II.B.2.(c)(1).)

- b. *Benefits.*—With a portfolio of more than 500,000 buildings located on more than 560 million acres of land, the Federal Government is one of the world's largest landowners. These holdings are under the custody and control of more than 30 Federal departments and agencies. They represent a taxpayer investment of more than \$300 billion. The Government, however, is not a good steward of its real property assets. The Government must find innovative ways to ensure the proper maintenance of this substantial taxpayer investment.

6. *"Financial Audit: IRS's Fiscal Year 1998 Financial Statements," March 1, 1999, GAO/AIMD-99-75.*

- a. *Summary of subcommittee action.*—(See section II.A.2(c) (1) and (2).)

- b. *Benefits.*—In response to a congressional request, the GAO examined the audit of the Internal Revenue Service's [IRS] fiscal year 1998 financial statements. Currently, billions of dollars are being wasted because of poor accounting procedures throughout the departments and agencies in the executive branch. These audits are intended to make Federal agencies more accountable for the taxpayer-provided money they spend, and will ultimately help curb unintended overpayments and unnoticed losses through the use of timely and accurate accounting.

7. *"Performance Budgeting: Initial Experiences Under the Results Act in Linking Plans With Budgets," April 12, 1999, GAO/AIMD/GGD-99-67.*

- a. *Summary of subcommittee action.*—(See section II.B.8.)

- b. *Benefits.*—Pursuant to a congressional request, the GAO examined performance budgeting in the Federal Government, focusing on the postponement of the performance budgeting pilot programs that are required by the Government Performance and Results Act of 1993 [GPRA] and the challenges confronting efforts to relate performance expectations and spending estimates. Full implementation of GPRA will create a more efficient and effective Federal Government with the potential of saving billions of taxpayer dollars.

8. *"National Archives: Preserving Electronic Records in an Era of Rapidly Changing Technology," July 19, 1999, GAO/GGD-99-94.*

- a. *Summary of subcommittee action.*—(See section II.B.9.)

- b. *Benefits.*—Many challenges confront the Federal Government as the Nation moves into the digital age. In response to a congressional request, the GAO examined the challenges that face the National Archives and Records Administration [NARA] and other Fed-

eral agencies in their effort to manage the rapidly increasing volume of electronic records. NARA has already begun revising its guidance to agencies to better protect electronic documents of historic value.

9. *“Unpaid Payroll Taxes: Billions in Delinquent Taxes and Penalty Assessments Are Owed,” August 2, 1999, GAO/AIMD/GGD-99-211.*

*a. Summary of subcommittee action.*—(See section II.B.4.c.(2).)

*b. Benefits.*—Continuing oversight of financial management within the executive branch of Government has the potential of ultimately saving taxpayers billions of dollars once Federal agencies implement timely and accurate accounting procedures. In response to a congressional request, the GAO provided information on payroll taxes owed to the Federal Government and the associated trust fund recovery penalties assessed individuals responsible for the nonpayment of these taxes.

10. *“Acquisition Reform: GSA and VA Efforts to Improve Training of Their Acquisition Workforces,” February 18, 2000, GGD-00-66.*

*a. Summary of subcommittee action.*—The subcommittee requested the U.S. General Accounting Office to examine the training programs for the Federal acquisition workforce, focusing on whether: (1) the General Services Administration [GSA] and the Department of Veterans Affairs [VA] had assurance that their acquisition workforces met the training requirements defined by the Office of Federal Procurement Policy [OFPP] and whether contracting officers at one GSA and one VA field location met each agency’s training requirements; (2) OFPP had taken action to ensure that civilian departments and agencies collected and maintained standardized acquisition workforce information, as required by the 1996 Clinger-Cohen Act; and (3) GSA and VA were taking actions to comply with Clinger-Cohen Act funding requirements.

On March 16, 2000, the subcommittee convened a hearing to assess current issues related to Federal acquisition. The subcommittee learned that despite the impact of recent procurement reforms, significant challenges remain. The General Accounting Office [GAO] testified that a number of Federal procurement operations are at high risk of waste, fraud, and mismanagement.

The GAO noted that both the GSA and VA have efforts under way to train their acquisition workforces. However, neither had assurance that all members of their acquisition workforces had received core training and continuing education, as required by OFPP’s policy. In addition, neither agency had complete, readily accessible information on the overall extent to which their acquisition workforces had received required training. And, contrary to OFPP’s policy, neither the GSA nor the VA had established core training requirements for some segments of their acquisition workforces—contracting officer representatives and contracting officer technical representatives who do not have authority to award contracts. By reviewing agency training records and documentation from GSA’s Greater Southwest Regional Office and VA’s medical center in Dallas, the GAO determined that 99 percent of GSA and 72 percent of VA contracting officers at these two locations met core training

requirements that each agency had established for such personnel, however, only about half of GSA's and VA's contracting officers at these locations who were to have continuing education requirements completed by December 1999 had met those requirements by the due date, because agency officials cited conflicts in scheduling the training and a lack of awareness of training requirements. As well, the GAO found that the OFPP has not yet ensured that civilian departments and agencies were collecting and maintaining standardized information, including training data, on their acquisition workforces, as required by Clinger-Cohen. In September 1997, the OFPP tasked the Federal Acquisition Institute to work with departments and agencies and the Office of Personnel Management [OPM] to develop a governmentwide management information system, including specifications for the data elements to be captured, to assist departments and agencies in collecting and maintaining standardized data. But the system's development was significantly delayed because the Institute and OPM had not reached agreement on final system requirements and specifications. Moreover, the GAO found that neither the GSA nor the VA identified all the funds it planned to use for acquisition workforce training in its congressional budget justification documents as required by Clinger-Cohen. Clinger-Cohen provides that agencies may not obligate funds specifically appropriated for acquisition workforce education and training under the act for any other purpose. The GAO review found that neither the GSA nor the VA specified a funding level for acquisition workforce education and training.

*b. Benefits.*—As the Nation's largest purchaser of goods and services, the Federal Government stands poised to save taxpayers billions of dollars a year through efficient and cost-effective purchasing procedures. A number of laws are in place to ensure that Government agencies utilize these procedures, yet the GAO found that many Federal procurement operations remain at high-risk of waste, fraud, and mismanagement. Ongoing congressional oversight is needed to bring these programs into compliance with Federal laws, which will ultimately conserve millions of taxpayer dollars.

11. *“Competitive Contracting: Agencies Upheld Few Challenges and Appeals Under the FAIR Act,” September 29, 2000, GGD-NSIAD-00-244.*

*a. Summary of subcommittee action.*—As a result of an October 28, 1999, hearing, entitled “The Federal Activities Inventory Reform Act of 1998: Is it Working?,” the subcommittee requested the General Accounting Office to examine Federal agencies' handling of appeals and challenges within the broader context of the initial implementation of the Federal Activities Inventory Reform [FAIR] Act focusing on the 24 Chief Financial Officer [CFO] Act agencies' inventories and the number of challenges and appeals that interested parties filed; issues raised in challenges and appeals by interested parties and agencies' responses to them; and six agencies' plans for reviewing or using their inventories and how agencies could use information contained in the inventories to help ensure that activities are effectively aligned and efficiently performed.

The GAO found that the 24 CFO Act agencies identified about 900,000 full-time equivalent [FTE] positions in their inventories as performing commercial activities, but over one half were exempted from consideration for competition at the time that the inventories were compiled. These agencies received and responded to a total of 332 challenges and 96 appeals to their 1999 FAIR Act inventories from interested parties. Of those submitted, 20 challenges and 3 appeals were successful. Private companies or industry representatives filed most of their 145 challenges and appeals at civilian agencies, while employees and labor unions filed most of their 283 challenges and appeals at the Department of Defense [DOD]. Although the challenge and appeal process did not result in significant changes to agencies' inventories, the process served a broader purpose by identifying the need for greater clarity in agencies' inventories for use by both interested parties and agencies.

*b. Benefits.*—The civilian agencies have begun to review their inventories to identify ways to improve their inventories or to use the information on them to make more informed management decisions. In contrast, the DOD has used its inventories of commercial activities to identify activities, currently performed by Federal personnel, for possible competition. The GAO concluded that it will require a sustained leadership effort by the Office of Management and Budget to help ensure that agencies review their inventories and identify opportunities for better using agency resources by subjecting activities to competition. In addition, inventories provide only a portion of the information that agency management could use in making decisions about how all of its activities are carried out and whether they are being performed in the most efficient and cost-effective manner.

12. *"Information Security: Controls over Software Changes at Federal Agencies," May 4, 2000, AIMD-00-151R.*

*a. Summary of subcommittee action.*—As part of the subcommittee's ongoing effort to ensure that Government computer systems are adequately protected from unauthorized entries, the subcommittee requested the General Accounting Office [GAO] to examine software change controls at Federal agencies, focusing on: (1) whether key controls as described in documented policies and procedures regarding software change authorization, testing, and approval comply with Federal guidance; and (2) the extent to which agencies contracted for year 2000 remediation of mission-critical systems and the extent to which foreign nationals were involved in these efforts.

The GAO found that controls over changes to software for Federal information systems were inadequate. Specifically, the GAO identified deficiencies in the control areas of formal policies and procedures, contract oversight, and background screening of personnel. In addition, the GAO found that formally documented policies and procedures did not exist or did not meet the requirements of Federal criteria. Moreover, GAO interviews at 16 agencies and their 128 components, found that contractor oversight was inadequate, especially when software change functions were completely contracted out. This is a concern because 1,980 (41 percent) of 4,785 mission-critical Federal systems covered by the GAO's study

involved the use of contractors for year 2000 remediation. Of equal concern, code or data associated with 319 of these systems were sent to contractor facilities, but agency officials could not readily determine how such code and data were protected during and after transit. Based on GAO interviews with agency officials and review of documented security policies and procedures, background screenings of personnel, including contractor staff and foreign nationals, who were involved in the software change process, were not a routine security control.

*b. Benefits.*—As a result of this and other GAO reports, the subcommittee held a series of hearings on computer security at Federal departments and agencies during the 106th Congress. On September 11, 2000, the subcommittee issued the first comprehensive study on governmentwide computer security policies and programs, grading each of the 24 major Federal departments and agencies on their computer security efforts. Because of the Federal Government's increasing reliance on computer technology, it is imperative that Government systems are protected from increasingly sophisticated invasions by those seeking privileged information or seeking to disrupt Government services. Subcommittee hearings and resultant report cards (see Section II.B.13) focused agency attention on the need to implement computer security programs. Some, such as the Veterans Administration, have made recent strides to strengthen those programs.

13. *"Information Security: Serious and Widespread Weaknesses Persist at Federal Agencies," September 6, 2000, AIMD-00-295.*

*a. Summary of subcommittee action.*—As a result of ongoing hearings, the subcommittee requested the General Accounting Office to review the Inspectors' General [IG] security audit findings for 24 Federal agencies. The subcommittee requested that the GAO focus on information security weaknesses identified in IG and GAO audit reports issued from July 1999 through August 2000 and any findings that involved weaknesses and related risks at Federal departments and agencies.

At a subcommittee hearing on September 11, 2000, the GAO reported that computer security efforts at Federal agencies continue to be fraught with weaknesses and, as a result, critical operations and assets continue to be at risk. As in 1998, the GAO analysis identified significant weaknesses in each of the 24 agencies covered by its review. In fact, since July 1999, the range of weaknesses in individual agencies has broadened, at least in part because the scope of audits being performed is more comprehensive than in prior years. While these audits are providing a more complete picture of the security problems at Federal agencies, they also show that agencies have much work to do to ensure that their security programs are complete and effective. The identified weaknesses place a broad array of Federal operations and assets at risk of fraud, misuse, and disruption. Further, information security weaknesses place enormous amounts of confidential data, ranging from personal and tax data to proprietary business information, at risk of inappropriate disclosure.

*b. Benefits.*—See above.



14. *“Year 2000 Computer Challenge: Lessons Learned Can Be Applied to Other Management Challenges,” September 12, 2000, AIMD-00-290.*

Summary of subcommittee action.—As a result of the subcommittee’s extensive review of the Federal Government’s efforts to update its critical computer systems for the year 2000, the subcommittee requested the GAO to identify lessons the Federal Government had learned from year 2000 applicable to improving Federal information technology [IT] management; to identify lessons that individual agencies can apply to the management of future IT initiatives; and discuss how the momentum generated by the Government’s year 2000 efforts can be sustained.

The GAO found that the year 2000 challenge was met through the collaborative efforts of Congress, the administration, Federal agencies, State and local governments, and the private sector. Had any of these sectors failed to take the year 2000 problem seriously, neglected to remediate computer systems, or failed to work together with partners on common issues, such as contingency planning, critical services could have been disrupted. Although the year 2000 crisis was finite, it led to the development of initiatives, processes, methodologies, and experiences that can assist in resolving ongoing management challenges. The year 2000 challenge demonstrated the value of sustained and effective bipartisan oversight by both the Senate and the House of Representatives. Leadership, commitment, and coordination by the Federal Government, which included periodic reporting and oversight of agency efforts, were major reasons for the Government’s year 2000 success.

The Federal Government implemented initiatives that helped ensure that necessary staff and financial resources would be available to agencies. Individual agencies also gleaned lessons from their year 2000 efforts that can be carried forward. Specific management practices that contributed to year 2000 success included top-level management attention, risk analysis, project management, development of complete information systems inventories and strengthened configuration management, independent reviews by internal auditors and independent contractors, improved testing methods and procedures, and business continuity and contingency planning.

*b. Benefits.*—By continuing and strengthening these practices in the future, Federal agencies are more likely to improve their overall IT management record, particularly in the areas of critical infrastructure protection and security, the effective use of technology, and large-scale IT investments.

15. *“Debt Collection: Treasury Faces Challenges in Implementing Its Cross-Servicing Initiative,” August 4, 2000, AIMD-00-234.*

*a. Summary of subcommittee action.*—As part of its ongoing oversight of Federal debt collection practices and as a result of a June 8, 2000, hearing entitled, “Oversight of the Implementation of the Debt Collection Improvement Act,” the subcommittee requested the General Accounting Office [GAO] to examine the challenges facing the Financial Management Service [FMS] in implementing the cross-servicing provision of the Debt Collection Improvement Act of 1996.

The GAO found that as of September 30, 1999, about 89 percent of the \$59.2 billion in debts that are over 180 days delinquent were excluded from cross-servicing. However, the accuracy and completeness of amounts reported by agencies, including exclusions from cross-servicing, were not required to be, and were not, independently verified. The FMS reported that as of April 2000, about \$3.7 billion of the approximately \$6.4 billion of eligible debt had been referred for cross-servicing. In addition, many of the eligible debts were not promptly referred by the agencies or simply not referred by certain agencies.

In an effort to encourage debt referrals, the FMS requested written debt referral plans from 22 of the 24 Chief Financial Officer Act agencies. The plans were of limited use, however, because the FMS had no assurance that agencies had properly identified all non-tax debts that were eligible for cross-servicing. In addition, many of the plans did not include debt amounts or timeframes for referral, and the FMS did not use the plans to closely monitor actual agency referrals. As the sole operator of a governmentwide cross-servicing debt collection center, the FMS had well-developed written standard operating procedures for its collectors and requirements for its private collection agency [PCA] contractors. But FMS staff and some of the PCAs did not always follow established procedures and requirements, and failed to use certain debt collection tools effectively.

*b. Benefits.*—Improvements in the Federal Government's debt collection practices will provide a direct financial benefit for American taxpayers. To date, the program has collected nearly \$2.4 billion in fiscal year 2000, including \$1.3 billion in delinquent child support payments owed to States and \$1.1 billion in non-tax debt owed to the Federal Government.

16. *"Single Audit: Update on the Implementation of the Single Audit Act Amendments of 1996," September 29, 2000, AIMD-00-923.*

*a. Summary of subcommittee action.*—As a result of the subcommittee's oversight of financial management within the departments and agencies of the executive branch, and, specifically, a May 13, 1999, oversight hearing on the Single Audit Act Amendments of 1966, the subcommittee requested the General Accounting Office to examine implementation of seven key amendments to the Single Audit Act of 1984.

The GAO found that the intended objectives of the first two amendments have, for the most part, been accomplished. The legislation and subsequent implementation guidance issued by the Office of Management and Budget [OMB] resulted in uniform audit requirements for State and local governments and nonprofit organizations and raised, to a more cost-beneficial level, the dollar threshold for determining which recipients are subject to audit. Federal agencies, State and local governments, and nonprofit organizations that are recipients of Federal awards and their respective auditors are applying the audit guidance in meeting their single audit responsibilities, and actions by single audit stakeholders have laid the foundation for effective implementation of the next four amendments. Users of single audit reports can now obtain and

analyze information on more than 27,000 annual reports more quickly than ever before using the Internet to access a single audit automated database established by the Bureau of the Census. Recipients have recently begun submitting their audit reports under the 9-month reporting deadline instead of the previous 13-month deadline. To date, there is not enough experience to evaluate the prospects for achieving the objective of the seventh amendment. The OMB received two pilot project proposals and approved one, a proposal by the Washington State Auditor to combine 200 separate audits of State educational organizations into one audit. More experience with pilot projects is needed before their use as an alternative method for streamlining and improving single audits can be evaluated.

*b. Benefits.*—Full compliance with the Single Audit Act Amendments of 1996 will provide greater accountability by Federal grant and award recipients, and has the potential of providing a direct financial benefit to taxpayers.

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL  
RESOURCES, AND REGULATORY AFFAIRS

Hon. David McIntosh, *Chairman*

1. *“Regulatory Burden: Some Agencies’ Claims Regarding Lack of Rulemaking Discretion Have Merit,” January 8, 1999, GAO/GGD-99-20.*

*a. Summary.*—The General Accounting Office [GAO] previously reported what officials from 15 private sector companies said were the most problematic Federal regulations for their businesses. The 125 concerns cited by these officials included: (a) the perceived high cost of regulatory compliance; (b) excessive paperwork; (c) unreasonable, unclear, and inflexible requirements; and, (d) severe penalties for noncompliance. GAO also obtained responses from the 19 Federal agencies that issued the regulations underlying the companies’ concerns.

This report examines agency assertions that some of the 125 regulatory concerns were, at least in part, attributable to the underlying statutes. For each of the 27 concerns on which GAO focused, this report determines: (a) what amount of discretion the underlying statutes gave the rulemaking agencies in developing the regulatory requirements, (b) whether the regulatory requirements at issue were within the authority granted by the underlying statutes, and (c) whether the rulemaking agencies could have developed regulatory approaches that would have been less burdensome to the regulated entities while still meeting the underlying statutory requirements.

*b. Benefits.*—This report aided the subcommittee in its regulatory oversight duties and its understanding of the amount of discretion given to agencies in developing regulations.

2. *“Regulatory Flexibility Act: Agencies’ Interpretations of Review Requirements Vary,” April 2, 1999, GAO/GGD-99-55.*

*a. Summary.*—Section 610 of the Regulatory Flexibility Act of 1980 [RFA] requires Federal agencies to develop a plan for the re-

view of their existing rules that will have a “significant economic impact on a substantial number of small entities.” The purpose of these reviews is to decide whether the rules should continue unchanged or should be amended or rescinded to minimize their impact on small entities, which include small businesses and small governmental jurisdictions. Agencies are required to provide an annual Federal Register notice of rules they intend to review in the next 12 months. Several agencies have used the Unified Agenda of Federal Regulatory and Deregulatory Actions to publish these notices.

This report updates GAO’s earlier work on Section 610 of the FRA. With regard to the April 1998 and November 1998 editions of the Unified Agenda of Federal Regulatory and Deregulatory Actions, this report determines: (a) how many agencies had no Agenda entries that were characterized as section 610 reviews, whether agencies are interpreting the review requirements consistently, and why some agencies that appeared subject to the requirements had no entries; (b) how many of the section 610 review entries in the Agenda appeared to meet the notification requirements in subsection 610(c); (c) if the section 610 review entries did not appear to meet the statutory requirements, why some agencies’ entries were not characterized as section 610 reviews; and, (d) whether any Federal agencies had revised their plans for section 610 reviews.

*b. Benefits.*—This report aided the subcommittee in its understanding of agencies’ compliance with the RFA and underscored the importance of further statutory protections for small businesses, such as H.R. 391, “The Small Business PRA Amendments of 1999.”

3. *“Paperwork Reduction Act: Burden Increases and Unauthorized Information Collections,” April 15, 1999, GAO/T-GGD-99-78.*

*a. Summary.*—Estimates of Federal paperwork burden have risen dramatically since the Paperwork Reduction Act [PRA] was first enacted in 1980. Agency estimates have continued to increase since 1995, despite congressional expectations to the contrary. The increase in the government-wide paperwork estimate appears largely attributable to continued increases in the Internal Revenue Service’s [IRS] paperwork requirements. However, IRS said that these increases are due to increased economic activity and new statutory requirements, i.e., factors beyond its control. Also, GAO believes that the Office of Management and Budget’s [OMB’s] Office of Information and Regulatory Affairs has not fully satisfied all of the responsibilities assigned to it by the PRA. Data provided by OMB to Congress indicates a troubling disregard by agencies for the requirement that they obtain OMB’s approval before collecting information from the public. GAO estimates that the agencies have imposed at least \$3 billion in unauthorized paperwork burden in recent years.

*b. Benefits.*—GAO’s testimony was useful in the subcommittee’s continuing oversight of agency compliance with the PRA. It highlights a disappointing compliance record by the current administration.

4. *“Regulatory Accounting: Analysis of OMB’s Reports on the Costs and Benefits of Federal Regulation,” April 20, 1999, GAO/GGD-99-59.*

*a. Summary.*—Issuing and enforcing regulations is a basic responsibility of government, but the costs that non-Federal entities pay to comply with Federal regulations are not accounted for in the Federal budget process. Some researchers have estimated those costs at hundreds of billions of dollars, and some estimates of aggregate benefits are even higher. Congress, deciding that it needed more information on regulatory costs and benefits, required OMB to submit successive annual reports to Congress providing: (1) estimates of the total annual costs and benefits of Federal regulatory programs; (2) estimates of the costs and benefits of each rule likely to have a \$100 million annual effect on the economy in higher costs; (3) an assessment of the direct and indirect effects of Federal rules on the private sector, State and local governments, and the Federal Government; and, (4) recommendations to reform or eliminate any Federal program that is inefficient, ineffective, or not a sound use of taxpayer dollars. This report describes, for each of these four requirements, how OMB addressed the requirements in its 1997 and 1998 reports to Congress and the views of noted economists on OMB’s responses in these reports.

*b. Benefits.*—This report was useful in the subcommittee’s development of H.R. 1074, the “Regulatory Right-to-Know Act of 1999,” and other regulatory reform legislative initiatives.

5. *“Regulatory Reform: Comments on S. 746—The Regulatory Improvement Act of 1999,” April 21, 1999, GAO/T-GGD/RCED-99-163.*

*a. Summary.*—S. 746, “The Regulatory Improvement Act of 1999,” addresses many issues in regulatory management that have long been controversial. This statement focuses on GAO’s past work in the following four areas: (1) the effectiveness of previous regulatory reform initiatives, (2) agencies’ cost-benefit analysis practices and the trigger for the analytical requirements, (3) the peer review of agencies’ regulatory analyses, and (4) the transparency of the regulatory development and review process.

*b. Benefits.*—This report was useful in the subcommittee’s consideration and development of various regulatory reform bills.

6. *“Observations on the Environmental Protection Agency’s Fiscal Year 2000 Performance Plan,” July 20, 1999, GAO/RCED-99-237R.*

*a. Summary.*—Pursuant to a congressional request, GAO reviewed the Environmental Protection Agency’s [EPA’s] fiscal year 2000 performance plan, which was submitted to Congress in response to the Government Performance and Results Act of 1993 [GPRA], and focused on: (a) assessing the usefulness of EPA’s plan for decisionmaking; and (b) identifying the degree of improvement in EPA’s fiscal year 2000 performance plan represents over its fiscal year 1999 plan. GAO noted, among other things, that the plan: provides only limited confidence that the agency’s performance information will be credible; shows little improvement from fiscal year 1999 in providing details on goals and strategies that cut

across agency lines; and shows no substantial progress in better identifying data limitations.

*b. Benefits.*—This report was useful in the subcommittee’s continuing oversight of EPA and EPA’s progress in identifying appropriate performance measures and improvements, especially for climate change programs and activities.

7. *“Managing for Results: Strengthening Regulatory Agencies’ Performance Management Practices,” October 28, 1999, GAO/GGD-00-10.*

*a. Summary.*—GAO gathered information from 23 Federal and State organizations that are known for using or planning to use various useful practices to improve their performance management and measurement processes. These practices fall into the following five categories: (1) restructuring the organization’s management approach to become more performance-oriented; (2) establishing relationships outside of the organization to boost performance; (3) refining performance goals, measures, and targets to better translate activities into results; (4) strengthening analytical capabilities and techniques to better meet performance management information needs; and (5) assessing performance-based management efforts on a continuous basis to identify areas for improvement. GAO believes that the practices would be readily transferable to Federal financial institution regulatory agencies or other government agencies seeking to improve their implementation of GPRA.

*b. Benefits.*—This report was useful in the subcommittee’s continuing oversight of agency compliance with GPRA, including identification of appropriate outcome performance measures.

8. *“EPA Paperwork: Burden Estimate Increasing Despite Reduction Claims,” March 16, 2000, GAO/GGD-00-59.*

*a. Summary.*—EPA, like other Federal agencies, collects information from the public. EPA uses this information to help ensure compliance with its regulations, to evaluate the effectiveness of its programs, and to determine eligibility for program benefits. However, EPA’s information collection efforts impose a substantial burden on the public, and small businesses contend that they are particularly affected by government paperwork. This report: (1) describes the general dimensions of EPA’s paperwork requirements and the agency’s progress toward reducing the burden that those requirements impose, (2) describes EPA’s process for developing paperwork burden-hour estimates for its largest information collections as of September 1998 and gauges the credibility of those estimates, and (3) describes EPA’s largest paperwork burden-hour reductions between September 1995 and September 1998 and gauges the credibility of those reductions. GAO also provides information on EPA’s Reinventing Environmental Information Initiatives and the agency’s new Office of Environmental Information.

*b. Benefits.*—This report was useful in the subcommittee’s continuing oversight of agency compliance with the PRA. It highlights a disappointing compliance record by EPA.

9. *"Paperwork Reduction Act: Burden Increases at IRS and Other Agencies," April 12, 2000, GAO/T-GGD-00-114.*

*a. Summary.*—Although PRA of 1995 anticipated a 30-percent reduction in Federal paperwork between fiscal years 1995 and 1999, preliminary data show that paperwork actually rose during that period. The increase is primarily due to the IRS. Federal agencies identified 710 violations of the PRA during fiscal year 1999—a decline from the 872 violations identified a year earlier. Problems in last year's data, however, make it unclear whether the number of violations is really going down. And even if the number of violations is going down, 710 violations is far too many, in GAO's view. GAO believes that OMB can do more to ensure that agencies do not use information collections without required OMB clearance. GAO also believes that other Federal agencies have a role to play in reducing the number of violations.

*b. Benefits.*—GAO's testimony was useful in the subcommittee's continuing oversight of agency compliance with the PRA. It highlights a disappointing compliance record by the current administration.

10. *"Managing for Results: EPA Faces Challenges in Developing Results-Oriented Performance Goals and Measures," May 28, 2000, GAO/RCED-00-77.*

*a. Summary.*—For more than a decade, internal and external studies have called for EPA to "manage for environmental results" as a way to improve and better account for its performance. GPRA requires EPA and other Federal agencies to prepare performance plans containing annual performance goals and measures to help move them toward managing for results. These performance goals and measures are used to assess an agency's progress toward achieving the results expected from its major functions. GAO's report: (1) determines the extent to which EPA's fiscal year 2000 performance goals and measures focus on end outcomes, intermediate outcomes, or outputs; (2) identifies any challenges EPA faces in developing additional performance goals and measures that focus on end outcomes; and (3) describes the initiatives EPA is taking to address any identified challenges.

*b. Benefits.*—This report was useful in the subcommittee's continuing oversight of EPA and EPA's implementation of GPRA, including identification of appropriate outcome performance measures.

11. *"Climate Change: Observations on EPA's March 2000 Climate Change Report," June 5, 2000, RCED-00-166R.*

*a. Summary.*—Pursuant to a legislative requirement, GAO provided information on EPA's March 2000 climate change report, focusing on: (1) EPA's climate change programs for fiscal year 2001; (2) the programs' goals, strategies, and procedures to verify and validate performance information; (3) EPA's justification for requested funding increases; and (4) how the programs are justified independently of the Kyoto protocol agreement.

*b. Benefits.*—This report was useful in the subcommittee's continuing oversight of the administration's climate change programs, and its compliance with the Knollenberg provision that restricts

funding for the implementation or preparation of the Kyoto protocol.

12. *“Regulatory Reform: Procedural and Analytical Requirements in Federal Rulemaking,” June 8, 2000, GAO/T-GGD/OGC-00-157.*

*a. Summary.*—In response to congressional concerns that agencies had not adequately considered the effects of their actions on regulated entities or worked to minimize any negative effects, GAO discusses its review of agency compliance with a number of procedural and analytical requirements in Federal rulemaking. GAO examined requirements contained in numerous statutes and Executive orders governing the rulemaking process, including the Administrative Procedures Act, RFA, the Unfunded Mandates Reform Act of 1995 [UMRA], and Executive Order No’s. 12866 and 12612.

GAO’s evaluations yielded mixed results. In some cases GAO discovered inadequate data, methodologies, or assumptions. GAO also discovered instances of agency noncompliance with statutory requirements or Executive orders. While GAO’s review established that agencies were acting properly in some cases, it is troubling to note the instances where this is not the case. Finally, GAO recommends that Congress consider assigning the responsibility of regulatory analysis to an organization outside of the executive branch due to the inherent bias of OMB and the agency proposing the regulation. While GAO recognizes its ability to perform such a function, it points out possible limitations due to: (1) the scope of the analysis contemplated; (2) the number of requests that it receives; (3) the time allotted to perform the reviews; and (4) the resources it is given to accomplish the tasks involved.

*b. Benefits.*—GAO’s testimony was useful in the subcommittee’s continuing oversight on agency compliance with procedural and analytical requirements in Federal rulemaking and in the subcommittee’s work in creating a congressional office of regulatory analysis, including H.R. 3521, H.R. 4744, and H.R. 4924.

SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS, AND  
INTERNATIONAL RELATIONS

Hon. Christopher Shays, *Chairman*

1. *“Defense Inventory: Improvements Needed to Prevent Excess Purchases by the Air Force,” November 1999 (GAO/NSIAD-00-5).*

*a. Summary.*—Pursuant to a congressional request, GAO reviewed inventory the Air Force had on contract that was excess to current operating requirements.

*b. Benefits.*—GAO noted that: (1) the Air Force did not always cancel purchases that exceeded current operating requirements; (2) the Air Force canceled contracts for \$5.5 million of the \$162.4 million excess inventory that GAO reviewed, but it could have canceled more; (3) contracts for unnecessary items are not being canceled primarily because the Air Force process for canceling contracts takes a long time, during which costs are incurred for which the government is liable; (4) specifically, it takes 60 to 90 days to provide managers with the requirement information needed to



make cancellation decisions; (5) also, the Air Force model provides for over 63 months of supply—more time than needed to order and receive items; (6) in addition, the model uses invalid requirements that reduce quantities to be canceled; (7) once a purchase is considered for cancellation, Air Force managers use a model to determine if the savings from canceling the contract would exceed the cost of reordering the items at a later date; (8) in several cases that GAO reviewed, the model indicated that it was not cost beneficial to cancel contracts for unneeded inventory items because of potential procurement costs; (9) however, the model is flawed because it does not consider parts recovered from retired weapon systems that are available to be reused; (10) as a result, the model understates the amount of purchases that could be canceled; and (11) in other cases, inaccurate records increased manager workloads by causing items to be unnecessarily reviewed.

2. *“Gulf War Illnesses: Management Actions Needed to Answer Basic Research Questions,” January 2000 (GAO/NSIAD-00-32).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on management actions needed to answer basic research questions about gulf war illnesses, focusing on the: (1) amount of money the Departments of Veterans’ Affairs [VA], Defense [DOD], and Health and Human Services [HHS] spent on research and investigation of gulf War veterans’ illnesses and health concerns in the fiscal years 1997 and 1998, including current and projected spending by the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses; (2) productivity of this research spending, including the extent to which the Coordinating Board has determined that Federal research objectives have been satisfied, and the extent to which the research has resulted in peer-reviewed publications and the identification of the causes or successful treatments for gulf war veterans’ illnesses; (3) extent of coordination between the Research Working Group of the Coordinating Board and the Office of the Special Assistant for Gulf War Illnesses; and (4) Office of the Special Assistant for Gulf War Illnesses’ contract management.

*b. Benefits.*—GAO noted that: (1) during fiscal years 1997–1998, DOD, VA, and HHS spent more than \$121 million on research and investigation of gulf war veterans’ illnesses, with DOD spending more than \$112 million of that total; (2) these funds supported a growing catalog of research and investigatory efforts intended to address both veterans’ health concerns and their questions about hazards encountered in the conflict; (3) the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses spent about \$65.3 million in fiscal year 1997 and fiscal year 1998, with another \$65.4 million in spending planned for fiscal year 1999 and fiscal year 2000; (4) basic questions about the causes, course of development, and treatments of gulf war veterans’ illnesses remain unanswered; (5) as of November 30, 1999, the Research Working Group of the Persian Gulf Veterans’ Coordinating Board had not published an assessment of the extent to which the research program had answered the major questions it identified as research objectives in 1995, and no date had been set to publish

such an assessment; (6) while federally sponsored studies have resulted in some descriptive information concerning veterans' symptoms, many basic questions remain; (7) although the question of causation is unresolved, VA has begun recruiting patients for trials of antibiotic and exercise-behavioral treatments for a set of veterans' unexplained symptoms; (8) although the Office of the Special Assistant for Gulf War Illnesses expends more than half of the Federal funds supporting research and investigation into gulf war veterans' illnesses, its activities are not effectively coordinated with those of the Research Working Group; (9) the weak coordination between the group and the office increases the potential to miss opportunities to leverage ongoing and completed work by other agencies; (10) the office rapidly developed relationships with various contractors to support its mission; (11) however, two of the largest task orders were awarded improperly, and the office discouraged competition for another task order by specifying a preferred vendor; and (12) because the office is likely to continue to spend a significant part of its budget on support contracts, it needs to ensure that its contracts fully comply with applicable requirements.

3. *"Combating Terrorism: Need to Eliminate Duplicate Federal Weapons of Mass Destruction Training," March 2000 (GAO/NSIAD-00-64).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the potential for duplicative weapons of mass destruction training, focusing on: (1) the principal Federal organizations that provide weapons of mass destruction training to first responders; (2) whether the training is well coordinated among Federal organizations; and (3) actions being taken to improve the Federal Government's role in weapons of mass destruction training.

*b. Benefits.*—GAO noted that: (1) the Departments of Defense [DOD] and Justice [DOJ] and the Federal Emergency Management Agency [FEMA] are the principal Federal organizations that provide weapons of mass destruction training to first responders; (2) DOD provides this training through its Domestic Preparedness Program; (3) DOJ provides training primarily through its Metropolitan Firefighters and Emergency Medical Services Program; (4) both programs were authorized and funded by Congress and specifically developed to provide training in cities and counties primarily to individuals who would train others in their communities; (5) DOJ also provides training through the National Domestic Preparedness Consortium; (6) in 1998 Congress directed that DOJ use to the fullest extent possible the capabilities of the Consortium to achieve cost-effective weapons of mass destruction training; (7) FEMA provides weapons of mass destruction courses at its National Fire Academy and Emergency Management Institute in Maryland, and also provides related course materials to local and State organizations for their use in training first responders; (8) Federal training programs on weapons of mass destruction are not well coordinated, resulting in inefficiencies in the Federal effort and concerns in the first responder communities; (9) DOD, DOJ, and FEMA are providing similar awareness courses as part of their train-the-trainer programs; (10) DOD and DOJ plan to deliver their programs to individuals in the same 120 cities; (11) State and local

officials and representatives of various responder organizations express concerns about duplication and overlap among the two Federal training programs, courses offered by the Consortium, and other courses such as hazardous materials and other specialized training that first responders are required to complete; (12) officials were concerned that DOD and DOJ programs offered to cities and counties had bypassed the States' emergency management and training structures and that DOD and DOJ programs will not train responders in smaller communities; (13) the responders' concerns are consistent with the conclusions reached by a forum of over 200 State and local responders in August 1998 and a June 1999 Justice report; (14) more actions are needed to eliminate duplicative training and improve the efficiency of DOD and DOJ programs; and (15) in response to requests from the first responder community, DOJ has established the interagency National Domestic Preparedness Office, which will provide an interagency forum for coordinating Federal weapons of mass destruction assistance to State and local emergency responders.

4. *“Combating Terrorism: How Five Foreign Countries Are Organized to Combat Terrorism,” April 2000 (GAO/NSIAD-00-85).*

a. *Summary.*—Pursuant to a congressional request, GAO reviewed five foreign countries' efforts to combat terrorism, focusing on: (1) how other governments are organized to combat terrorism; and (2) how they allocate their resources to combat terrorism.

b. *Benefits.*—GAO noted that: (1) the countries generally have the majority of organizations used to combat terrorism under one lead government ministry; (2) however, because many other ministries are also involved, the countries have created interagency coordination bodies to coordinate both within and across ministries; (3) for example, while many countries generally have their intelligence and law enforcement organizations under their ministries of interior or equivalent, they also need to coordinate with their ministries of foreign affairs, defense, and health or emergency services; (4) the countries have clearly designated who is in charge during a terrorist incident—typically their national or local police; (5) the countries have national policies that emphasize prevention of terrorism; (6) to achieve their policies, the countries use a variety of strategies, including intelligence collection, police presence, and various security measures such as physical barriers at the entrances to public buildings; (7) these countries primarily use their general criminal laws (e.g., those for murder or arson) to prosecute terrorists; (8) the countries also have special terrorism-related laws that allow for special investigations or prosecution mechanisms and increased penalties; (9) the countries' executive branches provide the primary oversight of organizations involved in combating terrorism; (10) this oversight involves reviewing the programs and resources for effectiveness, efficiency, and legality; (11) the five countries GAO examined also had similarities in how they allocate resources to combat terrorism; (12) officials in the ministries involved said they make resource allocations based upon the likelihood of threats taking place, as determined by intelligence assessments; (13) while the officials GAO met with discussed resource levels in general, none of the five countries tracked overall spending on pro-

grams to combat terrorism; (14) such spending was imbedded in other accounts for broad organizational or functional areas such as law enforcement, intelligence, and defense; (15) officials in all countries told GAO that because of limited resources, they made funding decisions for programs to combat terrorism based on the likelihood of terrorist activity actually taking place, not the countries' overall vulnerability to terrorist attack; and (16) the officials said their countries maximize their existing capabilities to address a wide array of threats, including emerging threats, before they create new capabilities or programs.

5. *“Joint Strike Fighter Acquisition: Development Schedule Should Be Changed to Reduce Risks,” May 2000 (GAO/NSIAD-00-74).*

*a. Summary.*—Pursuant to a congressional request, GAO reviewed the Department of Defense's [DOD] Joint Strike Fighter [JSF] Program, focusing on: (1) the program's acquisition strategy; and (2) whether the strategy is being implemented in a manner that will ensure that the acquisition strategy objectives will be achieved.

*b. Benefits.*—GAO noted that: (1) the key objective of the JSF acquisition strategy is affordability—reducing the development, production, and ownership costs of the program relative to prior fighter aircraft programs; (2) DOD expects the JSF acquisition strategy to save nearly \$18 billion (in fiscal year 1995 dollars) in development costs; (3) to achieve its affordability objective, the JSF program office has incorporated various DOD and commercial acquisition initiatives into the JSF acquisition strategy; (4) these initiatives include modifying the traditional weapons acquisition cycle, revising the requirements determination process, and developing critical technologies to a level where they represent low technical risk before the engineering and manufacturing contract is awarded; (5) the expectation is that incorporating these initiatives into the JSF acquisition strategy will result in a better match between the maturity of key technologies and the aircraft's requirements; (6) matching the requirements and the maturity of technology when a program enters engineering and manufacturing development is a critical determinant of a program's success; (7) once the development phase begins, a large, fixed investment in the form of human capital, facilities, and materials is sunk into the program and any significant changes will have a large, rippling effect on cost and schedule; (8) beginning the engineering and manufacturing development phase when critical technologies are at a low level of maturity serves to significantly increase program risk and the likelihood of schedule delays, which in turn result in increased program costs; (9) the JSF program office's implementation of its acquisition strategy will not ensure that the JSF program will enter the engineering and manufacturing development phase with low technical risk; (10) the aircraft being produced during the concept demonstration phase are not intended to demonstrate many of the technologies considered critical for achieving JSF program cost and performance requirements; (11) instead, many of these technologies—such as avionics, flight systems, manufacturing and producibility, propulsion, supportability, and weapons delivery system—will only be demonstrated in laboratory or ground-testing environments; and

(12) therefore, these critical technologies will be at low levels of technical maturity when the engineering and manufacturing development contract is scheduled to be awarded.

6. *“VA and Defense Health Care: Evolving Health Care Systems Require Rethinking of Resource Sharing Strategies,” May 2000 (GAO/HEHS-00-52).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the Department of Veterans Affairs’ [VA] and Department of Defense’s [DOD] shared health care resources, focusing on: (1) the benefits gained from sharing; (2) the extent to which VA and DOD are sharing health care resources; and (3) barriers and challenges VA and DOD face in their efforts to share health resources.

*b. Benefits.*—GAO noted that: (1) as a provider of services, VA most frequently cited increased revenue as a benefit and DOD most often cited the opportunity to enhance staff proficiency; (2) VA and DOD providers also cited fuller utilization of staff and equipment as benefits; (3) as a receiver of services, VA cited improved beneficiary access and DOD cited reduced cost of services as benefits; (4) for fiscal year 1998, sharing activity occurred under 412, or about three-quarters, of the existing local sharing agreements; (5) direct medical care accounted for about two-thirds of services exchanged—the remaining one-third included ancillary services, such as laboratory testing, and support services, such as laundry; (6) most of this activity occurred under a few agreements and at a few facilities, usually in locations where multiple DOD facilities were near VA hospitals or where DOD facilities provided specialized services; (7) overall, 75 percent of direct medical care episodes occurred under just 12 agreements for inpatient care, 19 agreements for outpatient care, and 12 agreements for ancillary care; (8) reimbursements for care provided under sharing agreements were similarly concentrated; (9) in fiscal year 1998, three-quarters of the \$29 million in reimbursements for provided care was collected by only 26 of the 145 facilities participating in active agreements; (10) at the joint venture sites, where another \$21 million in services was exchanged, GAO found activity was concentrated at the two locations where VA and DOD integrated many hospital services and administrative processes; (11) specifically, almost 300,000 episodes of care were provided, and \$3.2 million in cost avoidance was measured at these two locations; (12) two barriers identified most often by both VA and DOD are: (a) inconsistent reimbursement and budgeting policies; and (b) burdensome agreement approval processes; (13) a more recent barrier centers on DOD policies and guidance in implementing its managed care program; (14) a DOD legal opinion and subsequent policy in effect prohibits military treatment facilities from using existing sharing agreements with VA for direct medical care; (15) consequently, DOD’s contracts with private health care companies may supersede the sharing of direct medical care between VA and DOD facilities; and (16) while the policy supports VA facilities’ participation in the contractors’ health care networks, the military Surgeons General and local VA and DOD officials told GAO that the policy is causing confusion over what services can be shared.

7. *“Occupational Safety and Health: Government Responses to Beryllium Uses and Risks,” May 2000 (GAO/OCG-00-6).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the health safety controls over the use of beryllium, focusing on: (1) beryllium’s uses and risks; and (2) key events that illustrate the evolution of the Federal Government’s response to risks posed by beryllium.

*b. Benefits.*—GAO noted that: (1) lightness, strength, and other attributes have made beryllium useful in a wide array of products, such as aircraft, spacecraft, x-ray equipment, and nuclear weapons; (2) however, beryllium is considered hazardous; (3) health effects from high exposure to beryllium particles were first noted in the early 20th century; (4) beginning in the 1940’s, scientists linked exposure to beryllium with an inflammatory lung condition now called chronic beryllium disease, which can be debilitating and, in some cases, fatal; (5) questions remain about the level of exposure that poses a risk and exactly how chronic beryllium disease develops; (6) in the 1950’s, studies showed that beryllium caused cancer in laboratory animals; (7) national and international organizations now consider beryllium a human carcinogen; (8) the magnitude of the risk from current occupational exposure levels is not known, but may be minimal; (9) from the 1960’s to the 1990’s, Department of Defense [DOD], Department of Energy [DOE], and the Occupational Safety and Health Administration [OSHA] took a number of actions to assess and to respond to risks associated with exposure to beryllium; (10) agencies took steps to reduce risks from exposure to beryllium; (11) DOD discontinued testing beryllium in rocket fuel by 1970, due in part to concerns about meeting air quality requirements; (12) OSHA proposed a more stringent worker exposure standard for beryllium in 1975 based on evidence that it was carcinogenic in laboratory animals; (13) the proposal generated concerns about the technical feasibility of the proposal, impact on national security, and the scientific evidence supporting the proposed change; (14) according to OSHA officials, the agency discontinued its work on the proposal in the early 1980’s in response to other regulatory priorities such as lead, electrical hazards, and occupational noise; (15) in 1998, the agency announced that it would develop a comprehensive standard for beryllium by 2001; (16) DOE improved working conditions at its facilities and implemented medical testing for its current and former workers during the 1980’s and 1990’s after new cases of chronic beryllium disease were identified during the 1980’s; (17) in 1999, DOE issued a rule that established new worker safety controls, such increased use of respirators and assessing hazards associated with work tasks, for its facilities that use beryllium; and (18) DOE also proposed a compensation program for DOE workers affected by chronic beryllium disease, which has been introduced as legislation in Congress.

8. *“Army National Guard: Enhanced Brigade Readiness Improved but Personnel and Workload Are Problems,” June 2000 (GAO/NSIAD-00-114).*

*a. Summary.*—Pursuant to a congressional request, GAO examined the readiness of the Army National Guard’s Enhanced Brigades, focusing on: (1) whether the brigades are meeting training

and personnel readiness goals; (2) the key reasons for any continuing difficulties in meeting these goals; and (3) whether the Army has an effective system for assessing brigade readiness and the time required for the brigades to be ready for war.

*b. Benefits.*—GAO noted that: (1) the brigades continue to have difficulty meeting training and personnel readiness goals; (2) only 3 of the 15 brigades reported that their platoons met training goals for certain mission-essential maneuver tasks and only 10 of the 24 mechanized battalions met gunnery standards; (3) on a more positive note, individual training has improved significantly; (4) since 1993–1994, completion rates for job training for all soldiers, and required and recommended leadership courses for officers and sergeants have improved by between 10–15 percentage points; (5) the key reasons for the brigades’ continuing difficulties in meeting the readiness goals are: (a) personnel shortages; and (b) too much to do in the time available; (6) authorizations for full time support personnel, who help prepare training exercises and operate the brigades between weekend drills, have been cut from 90–100 percent in the early 1990’s to 55–64 percent; (7) officials told GAO that the brigades continue to have difficulty recruiting and retaining enough personnel to meet staffing goals due to the strong economy, less desire to join the military, high personnel attrition, and other problems; (8) at the same time, war plans and training guidance do little to focus or prioritize the broad and growing range of missions the brigades must be ready to perform; (9) consequently, the brigades find it difficult to narrow training to a predictable and realistic set of skills for the time available; (10) the Army does not have an effective system for assessing brigade readiness; (11) the current system relies primarily on the subjective view of commanders and does not require the use of objective criteria or established training goals in reporting unit readiness; (12) as a result, brigade estimates—that they would need 42 days or less of training to be ready for war once called to active duty—are unrealistically low; (13) experiences during the gulf war and a 1996 study by the RAND Corp. indicate that 70–80 days would be needed to prepare the brigades for deployment; (14) some brigade officials told GAO that they feel pressured to report they can be ready with 42 or less days of training to avoid low readiness ratings; (15) accurate assessments of readiness are further confused by inconsistencies between training guidance and actual war plans; (16) training guidance calls for the brigades to be trained and ready to deploy 90 days after they are called to active duty; and (17) however, war plans give some brigades considerably more time to be trained and moved to the war zones.

9. *“Defense Acquisitions: Recent F-22 Production Cost Estimates Exceeded Congressional Limitation,” August 2000 (GAO/NSIAD-00-178).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the Air Force F-22 Raptor production cost estimate, focusing on: (1) the status of cost reduction plans, including some plans not yet implemented, and Air Force procedures for reporting on the plans; and (2) a comparison of the 1999 production cost estimates with the congressional cost limitation.

*b. Benefits.*—GAO noted that: (1) about half of the \$21 billion in cost reductions identified by the F-22 contractors and program office have not yet been implemented; (2) however, the Air Force may not be able to achieve the expected results from some of the plans because they are beyond the Air Force's ability to control; (3) GAO reviewed 10 plans estimated to reduce costs by \$6.8 billion; (4) GAO found that cost reductions for 4 of the plans, which accounted for \$5.6 billion in potential cost reductions, may not be achievable because they were dependent on decisions or later determinations that must be made by the Office of the Secretary of Defense or Congress; (5) although the Air Force and its contractors have procedures to track the status of the production cost reduction plans, and the Air Force has reported quarterly to the Under Secretary of Defense concerning the total estimated cost of F-22 production, the Air Force reports have not regularly included a summary of the status of production cost reduction plans; (6) both Office of the Secretary and Air Force cost estimators projected F-22 production costs that exceeded the congressional cost limitation of \$39.8 billion in effect at that time; (7) in 1999, after considering the potential of all the cost reduction plans, the Air Force estimated F-22 production cost at \$40.8 billion, and the Office of the Secretary of Defense estimated production costs at \$48.6 billion; (8) in comparing the cost estimates, GAO found that: (a) although both estimates were based on the production of 339 aircraft, the two estimating groups did not use the same estimating methods, nor did they make the same estimating assumptions; (b) the cost estimators did not make the same assumptions about which cost reduction plans were already implemented or about the cost reductions achievable from plans not yet implemented; (c) the Office of the Secretary's estimate of F-22 total production cost exceeded the Air Force's estimate by \$7.8 billion, or 19 percent; (d) although Air Force cost estimators projected a total of \$40.8 billion in production costs, the official Air Force cost position was \$39.8 billion, the same as the congressional cost limitation; and (e) DOD officials noted that it will be some time before actual production cost trends emerge and before they will know whether the Air Force or the Secretary of Defense estimate is more realistic.

10. *"DOD Personnel: More Actions Needed to Address Backlog of Security Clearance Reinvestigations," August 2000 (GAO/NSIAD-00-215).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the Department of Defense's [DOD] estimates of its reinvestigation backlog, focusing on: (1) how DOD estimates the backlog; (2) the soundness of DOD's backlog estimates; and (3) DOD's plans to address the backlog problem.

*b. Benefits.*—GAO noted that: (1) in the absence of a Department-wide database that can accurately measure the reinvestigation backlog, DOD estimates the backlog on an ad-hoc basis, using two primary methods—manual counts and statistical sampling; (2) using the counting method, the military services and Defense agencies ask security managers to review their personnel and count those overdue for a reinvestigation; (3) the counts are totaled to provide a DOD-wide backlog estimate; (4) using the sampling



method, DOD makes a rough—and known to be inaccurate—estimate from existing personnel security databases; (5) it then selects a random sample of individuals from this estimate and surveys them to determine whether they are associated with DOD, require a security clearance, and are overdue for a reinvestigation; (6) DOD uses this information and statistical analysis to develop a refined and more accurate estimate; (7) DOD's two most recent estimates each used a different method and arrived at similar results—about one of every five individuals with a security clearance is overdue for a reinvestigation; (8) however, both estimates had methodological limitations, were 6 months old or older by the time they were reported, and excluded thousands of overdue reinvestigations because they used a restricted backlog definition; (9) using the counting method, DOD reported that the backlog totalled 505,786, however, the estimate's accuracy is questionable; (10) using the sampling method, a DOD contractor estimated the backlog to be between 451,757 and 558,552, however the contractor did not verify certain data; (11) DOD recognizes that the reinvestigation backlog is a problem; (12) after not making progress in meeting an earlier goal to eliminate the backlog, the services and other Defense agencies, at the direction of the Deputy Secretary of Defense and the DOD Comptroller, have begun to formulate plans to eliminate the backlog by March 31, 2002; (13) DOD also plans to implement a new personnel security database in mid-2001; (14) among other things, the database is designed to include information that could allow real-time counts of overdue reinvestigations; and (15) however, DOD has not specified how it plans to ensure that future reinvestigation requests are submitted when they are due or use the information in the new personnel security database system to help manage the reinvestigation program.

#### SUBCOMMITTEE ON THE POSTAL SERVICE

Hon. John M. McHugh, *Chairman*

*1. Year 2000 Computing Crisis: Challenges Still Facing the U.S. Postal Service," February 23, 1999, T-AIMD-99-86.*

*a. Summary.*—Pursuant to a congressional request for testimony, GAO discussed the U.S. Postal Service's [USPS] conversion strategy for preparing for the year 2000 crisis, focusing on the Service's year 2000 planning documents and their year 2000 guidance and internal development standards. GAO noted that for USPS to ensure continuity of operations after the century date change, it must assess, remediate, and validate several interlocking components of its operating and support infrastructure. The Postal Service has 152 severe and critical business systems that it must assess, correct, and verify to ensure year 2000 compliance. It also owns 349 important business systems—systems for which workarounds exist and whose failure will result in an inconvenience, but not significantly impact core business activities. In addition to business systems, USPS relies on a broad range of equipment to sort, deliver, and process mail. It has estimated that it has over 100,000 pieces of hardware and software to assess and correct when necessary, including mainframe computers, personal computers, networks, and

operating systems. The USPS systems interface with computer systems belonging to Federal, State, and local governments and hundreds of private businesses. Because of these interdependencies, postal systems are also vulnerable to failure caused by incorrectly formatted data provided by other systems that are noncompliant. While USPS' progress in renovating its systems has picked up in recent months, USPS has lagged behind the Office of Management and Budget [OMB] and GAO's recommended milestones for assessment, renovation, and validation. As of the OMB validation deadline of January 1999, only 27 percent of its mission-critical systems had been validated. In December 1998, USPS reorganized its program management to better reflect year 2000 efforts in terms of its business operations; this new management approach offers the USPS an improved opportunity for linking business processes to year 2000 problems and solutions. Even with a stronger management structure now in place, there are substantial challenges still facing USPS. If they are not addressed adequately, these challenges will threaten the USPS' ability to deliver the mail on time next January.

*b. Benefits.*—By continuing to monitor the Y2K problems, the GAO can keep Congress informed about the Postal Service's progress in readying its mission-critical systems for optimum performance during the change of the century.

2. *"U.S. Postal Service: Subcommittee Questions Concerning Year 2000 Challenges Facing the Service," April 23, 1999, AIMD-99-150R.*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on challenges facing the U.S. Postal Service [USPS] in addressing the year 2000 problem.

GAO noted that the Postal Service has been running behind the Office of Management and Budget's schedule for system renovation and still must address major issues to correct and test system and mail processing equipment, ensure the readiness of thousands of local facilities, and determine whether and when its key suppliers and interface partners will be year 2000 compliant. The USPS has determined that its systems are susceptible to September 9, 1999, as well as 25 other special dates, and it is testing its critical systems to ensure that they can correctly handle these dates. USPS is pursuing a windowing approach to date conversion rather than expanding date fields from two to four characters. Under this approach, software is written to associate a fixed or sliding period of years with either the 20th or 21st centuries. USPS year 2000 officials have advised GAO that windowing fixes will remain viable beyond the year 2048 for all but two systems, which will remain viable until the year 2019. Replacement schedules have already been developed for permanent fixes for these two systems. The Service has realized significant benefits from their year 2000 efforts including: the elimination of unnecessary software code; replacement of antiquated, locally developed software applications; and modernization of information technology equipment, including mainframe computer systems, mid-range computer systems, and desktop workstations. USPS' Inspector General is planning a year 2000 conversion contract examination as part of its continuing audits of

year 2000 issues within USPS. GAO reported that the Postal Service is following GAO's Business Continuity and Contingency Planning guide, which provides a conceptual framework for managing the risk of potential year 2000-induced disruptions to operations and incorporates best practices in contingency planning and disaster recovery. Contingency plans are not scheduled to be completed and tested until June 30, 1999, and continuity plans are not scheduled to be completed and tested until August 1999, and tested again in November 1999. This schedule will leave USPS with little room for slippage or for making adjustments to ensure that contingency and continuity plans are practical and cost effective. USPS' ability to control its suppliers is limited and it must rely on statements of assurance of year 2000 compliance by its suppliers. Any critical suppliers assessed as non-compliant will be part of USPS' contingency planning activities.

*b. Benefits.*—The continuing GAO report on Y2K readiness focuses on deficiencies of the Postal Service contingency plans since it is also the back up system for many other entities. The report also shows the progress that the USPS has made and the benefits that will endure long into the 21st century.

3. *"The Results Act: Observations on the Postal Service's Preliminary Performance Plan for Fiscal Year 2000," April 30, 1999, GGD-99-72R.*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the Postal Service's Preliminary Performance Plan for fiscal year 2000. GAO noted that the Postal Service's preliminary performance plan for fiscal year 2000 will be useful to decisionmakers in that it articulates well the Service's mission and performance goals and provides more measures to track intended performance. For example, the Service's preliminary performance plan for fiscal year 2000 includes a discussion of the Service's mission that is consistent with the Service's 5-year Strategic Plan. The goals that respond to key challenges appear balanced and challenging. Continued development of performance measures target and track intended performance. As the Service develops its final performance plan for fiscal year 2000, it could enhance its usefulness by improving the linkage between performance goals, strategies, and resources, providing more complete baseline data on past performance, and by identifying the top goals for the year covered by the plan. For example, GAO believes that the plan could be more useful to decisionmakers if it clearly indicated how the Service's human capital will contribute to achieving performance goals, such as those that relate to improving timely mail delivery. GAO's review of the Service's preliminary performance plan for fiscal year 2000 represents GAO's assessment of a work in progress. It should be noted that unlike other Federal agencies, the Service is not required to submit its performance plan to the Office of Management and Budget (OMB) and is not subject to OMB's Circular A-11. The Service submitted its plan to Congress in February 1999 by filing its preliminary performance plan for fiscal year 2000 as part of the Service's annual Comprehensive Statement on Postal Operations. The Service's preliminary performance plan for fiscal year 2000 is provisional until resources have been allocated and the Board of

Governors adopts the Service's budget. The Service plans to publish its final performance plan for fiscal year 2000 by September 30, 1999, after adoption by the Board of Governors, which is to include final decisions on resource allocations.

*b. Benefits.*—GAO has included some valid suggestions in this report that will be of assistance to the Postal Service if and when they are incorporated in their future performance plans.

4. *"U.S. Postal Service: Status of Efforts to Protect Privacy of Address Changes," July 30, 1999, GGD 99-102.*

*a. Summary.*—GAO updated its previous report on the U.S. Postal Service's National Change of Address [NCOA] program, focusing on the actions the Service has taken in response to GAO's 1996 report and assessed whether any additional actions are needed to strengthen the Service's oversight of the program. GAO noted that, as recommended, the Service has developed and implemented written procedures that addressed its NCOA program oversight and control responsibilities for using seed records to help detect the unauthorized disclosure of NCOA data by licensees, should it occur, and reviewing, responding to, and documenting NCOA-related complaints and inquiries from postal customers and NCOA-related proposed advertisements by licensees. However, procedures designed by the Service to ensure that it is alerted when mail is sent to seed record addresses were not working as intended; thus, the Service lacked assurance that the seeding process provided an effective program oversight mechanism. Additionally, even though required to do so by the licensing agreement or by prescribed program procedures, during the 1996 through 1998 period GAO examined, the Service did not always conduct the minimum number of licensee audits, including on-site audits or promptly reaudit licensees that failed initial audits. Furthermore, USPS did not promptly or always suspend or terminate licensees that failed successive audits. Also, the Service reported that it had performed more licensee audits than were documented in its audit files. However, even when GAO included these additional audits in its data, GAO determined that the Service did not perform all audits required. The Service has taken no action on GAO's recommendations that it explicitly state, in the acknowledgment form signed by customers of licensees, that NCOA program-linked data are not to be used to create or maintain new-movers lists. GAO continues to believe that more specific language in the acknowledgment form could help ensure that use of NCOA program-linked data is limited to the purposes for which they were collected.

*b. Benefits.*—This GAO report documents the problems which some postal customers and private sector entities in the business of advertising by mail have brought to the attention of the subcommittee. GAO's findings are crucial to understanding the problems and the perceptions of both the Postal Service and the complaining parties.

5. *"Deceptive Mail: Consumers' Problems Appear Substantial," August 4, 1999, T-GGD-99-150.*

*a. Summary.*—In this testimony, pursuant to a congressional request, GAO discussed matters related to deceptive mail marketing

practices, focusing on the extent and nature of consumers' problems with deceptive mail and the initiatives various Federal agencies and other organizations have made to address deceptive mail problems and educate consumers. GAO noted that examples of deceptive mail include sweepstakes, chain letters, cashiers check look-alikes, work-at-home schemes, and fraudulent charity solicitations. Officials in various agencies and organizations said that comprehensive data on the full extent of consumers' deceptive mail problems were not available mainly because consumers often did not report their problems and no centralized database existed from which such data could be obtained. However, data GAO collected from various sources suggested that consumers were having substantial problems with deceptive mail. Based on a GAO sponsored November 1998 statistically generalized sample of the U.S. adult population, GAO estimates that about half of the adult population believed that within the preceding 6 months, they had received deceptive mailed sweepstakes material or cashier's check look-a-likes. Officials from the Federal Trade Commission [FTC], Postal Inspection Service, and State Attorneys General offices estimated that in fiscal year 1998, about 10,400 deceptive mail complaints led to or initiated about 100 law enforcement actions. For the period October 1, 1997, through March 31, 1999, FTC received over 18,000 deceptive mail complaints, of which about 2,700 reported consumer payments of about \$4.9 million. The Postal Inspection Service received over 16,700 complaints on fraud and chain letters, of which about 3,000 reported consumer fraud losses of about \$5.2 million. The Inspection Service also had over 1,800 open investigative cases on deceptive mail during fiscal year 1998. Various Federal agencies and other organizations have undertaken efforts to address consumers' deceptive mail problems and educate them about such problems. The FTC, for example, established a national toll-free hotline for receiving deceptive mail and other complaints. One joint effort was Project Mailbox, which involved such organizations as FTC, Postal Inspection Service, and various State Attorneys General. These organizations initiated over 200 law enforcement actions against companies and individuals that used the mail to allegedly defraud consumers.

*b. Benefits.*—The information reported by the GAO in its testimony provided substantial evidence in the subcommittee's work in enhancing the protection of individuals, particularly senior citizens and those vulnerable to deceptive mailings.

6. *U.S. Postal Service: Challenges to Sustaining Performance Improvements Remain Formidable on the Brink of the 21st Century* (GAO/T-GGD-00-2, Oct. 21, 1999). Testimony 29 pp., plus 1 attachment (2 pp.).

*a. Summary.*—Pursuant to a congressional request, GAO discussed the U.S. Postal Service's [USPS] financial position and delivery performance. GAO noted that (1) the USPS may be nearing the end of an era; (2) during the past 5 years, USPS has made notable improvements in its financial position and delivery performance; (3) USPS has recorded positive net income and has maintained or improved the overall delivery of certain specific classes of mail; (4) however, USPS expects declines in its core business in the

coming years; (5) the growth of the Internet, electronic communications, and electronic commerce has the potential to substantially affect USPS' mail volume; (6) as a result, USPS may experience growing difficulty in maintaining its position in a dynamic communications and delivery environment; (7) these developments make it imperative for USPS to resolve four long-standing performance challenges which include: (a) maximizing performance; (b) managing employees; (c) maintaining financial viability; and (d) adapting to competition; (8) GAO is highlighting the need for USPS to take action to address long-standing issues related to the quality of data used in ratemaking and recommending that the Postmaster General report to congressional oversight subcommittees on the actions taken and planned in this area; (9) in recent years, USPS has progressed in addressing various challenges and is continuing to initiate significant changes that respond to the challenges; and (10) however, as long as USPS stands on the brink of the 21st century, time appears to be growing short for USPS to successfully address its challenges so that it can sustain and improve current performance levels and remain competitive in a rapidly changing communications environment.

*b. Benefits.*—GAO's report contained an unbiased analysis of the challenges of the 21st century and the Postal Service's efforts to respond to challenges, both old and new. This information will help the Service position itself and preserve both revenue and market share in the new communications and delivery market.

7. *Equal Employment Opportunity: The Postal Service Needs to Better Ensure the Quality of EEO Complaint Data (GAO/GGD-99-167, Sept. 28, 1999). Letter Report, 8 pp.*

*a. Summary.*—In its limited analysis of the data that the Postal Service reported to the Equal Employment Opportunity [EEO] Commission, GAO found errors in the statistics underlying EEO complaints. GAO also found that required data on the issues raised in the complaints were not fully reported. These discrepancies were generally limited to statistical reports generated by the Postal Service's automated complaint information system. Because GAO examined only a limited portion of the reported data for obvious discrepancies and because the errors GAO identified were related to the data generated by an automated complaint information system put in place in 1995, GAO has concerns about the completeness, the accuracy, and the reliability of the data that it did not examine. GAO recommends that the Postal Service review its controls over the recording and the reporting of data that it submits to the EEO Commission.

8. *U.S. Postal Service: Deficiencies Continue While Antelope Valley Project Status Remains Uncertain (GAO/GGD-99-147, Aug. 31, 1999). Letter Report, 25 pp., plus 2 appendices (3 pp.).*

*a. Summary.*—The Postal Service has proposed relocating postal operations for the Antelope Valley from the Main Post Office in Mojave, CA, to a new facility in Lancaster, CA. A Member of Congress has raised concerns about whether the Service appropriately acquired land in Lancaster and properly considered project costs. This report evaluates whether the Postal Service followed its cap-

ital project approval process for the purchase of land in Lancaster. GAO also identifies the reasons for delays in the project and the effects of those delays on postal operations, project costs, and affected communities.

*b. Benefits.*—The report provides an unbiased overview of the effects of Postal process on facilities and the impact of delays on communities that are anticipating the use and benefit of the facilities.

9. *Deceptive Mail: Consumers' Problems Appear Substantial (GAO/T-GGD-99-150, Aug. 4, 1999). Testimony 19 pp., plus 2 attachments (5 pp.).*

*a. Summary.*—Information GAO collected from several sources suggests that consumers are having major problems with deceptive mail, which includes sweepstakes, chain letters, cashiers check look-alikes, work-at-home schemes, and fraudulent charity solicitations. About one in two adults believe that in the last 6 months they have received deceptive mailed sweepstakes material or cashier's check look-alikes, according to GAO estimates. The Federal Trade Commission [FTC], Postal Inspection Service, and the State attorneys general offices estimate that in fiscal year 1998 about 10,400 deceptive mail complaints led to about 100 law enforcement actions. Between October 1997 and March 1999, FTC received more than 18,000 deceptive mail complaints, of which about 2,700 involved consumer payments that totaled nearly \$5 million. The Postal Service received more than 16,700 complaints, of which 3,000 involved consumer fraud losses that totaled more than \$5 million. The Inspection Service also had more than 1,800 open investigations on deception mail in 1998. Various Federal agencies and other groups have undertaken efforts to address consumers' deceptive mail problems and educate them about these risks. For example, FTC established a national toll-free hotline for receiving deceptive mail and other complaints.

*b. Benefits.*—GAO's documentation of deceptive mailing, along with its review of work done with other agencies working on the issue of deceptive mail complaints has benefited Congress in its enacting of legislation that will help abate this problem.

10. *U.S. Postal Service: Status of Efforts to Protect Privacy of Address Changes (GAO/GGD-99-102, July 30, 1999). Letter Report, 25 pp. plus 2 appendices (3 pp.).*

*a. Summary.*—The Postal Service's national change of address program is intended to improve the quality of addresses on mail by providing business mailers with accurate, properly formatted change-of-address data that are automation compatible. To do this, the Service collects change-of-address information reported by postal customers nationwide and sends corrected addresses through several private firms licensed to provide address correction services. A recent audit found that the program saved the Service nearly \$1.2 billion in rehandling costs associated with forwarding mail in fiscal year 1998. GAO pointed out in a 1996 report that the program was operating without clearly delineated procedures and sufficient management attention to always prevent, detect, and correct the inappropriate release or use of change-of-address data. (See GAO/GGD-96-119, August 1996.) This report discusses the steps

that the Service has taken in response to the 1996 report and whether any additional actions are needed to strengthen the Service's oversight of the program.

*b. Benefits.*—The report helps to highlight the benefits of a sanitized address program which enables the Postal Service carry out its delivery mission more effectively and economically.

11. *The Results Act: Observations on the Postal Service's Preliminary Performance Plan for Fiscal Year 2000* (GAO/GGD-99-72R, Apr. 30, 1999). *Correspondence, 10 pp. plus 3 enclosures (8 pp.).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the Postal Service's preliminary performance plan for fiscal year 2000.

GAO noted that: (1) the Postal Service's preliminary performance plan for fiscal year 2000 will be useful to decisionmakers in that it articulates well the Service's mission and performance goals and provides more measures to track intended performance; (2) for example, the Service's preliminary performance plan for fiscal year 2000 includes a discussion of the Service's mission that is consistent with the Service's 5-year strategic plan; goals that respond to key challenges and appear balanced and challenging; and continued development of performance measures and targets to track intended performance; (3) as the Service develops its final performance plan for fiscal year 2000, it could enhance its usefulness by improving the linkage between performance goals, strategies, and resources, providing more complete baseline data on past performance, and by identifying the top goals for the year covered by the plan; (4) for example, GAO believes that the plan could be more useful to decisionmakers if it clearly indicated how the Service's human capital will contribute to achieving performance goals, such as those that relate to improving timely mail delivery; (5) GAO's review of the Service's preliminary performance plan for fiscal year 2000 represents GAO's assessment of a work in progress; (6) unlike other Federal agencies, the Service is not required to submit its performance plan to the Office of Management and Budget [OMB] and is not subject to OMB's Circular A-11; (7) the Service submitted its plan to Congress in February 1999 by filing its preliminary performance plan for fiscal year 2000 as part of the Service's annual comprehensive statement on postal operations; (8) the Service's preliminary performance plan for fiscal year 2000 is provisional until resources have been allocated and the Board of Governors adopts the Service's budget; and (9) the Service plans to publish its final performance plan for fiscal year 2000 by September 30, 1999, after adoption by the Board of Governors, which is to include final decisions on resource allocations.

*b. Benefits.*—GAO's review of the Postal Service's performance plan gives Congress a better, concise, and unbiased review of where the strengths and weaknesses of the Postal Service's plans lie.



12. *U.S. Postal Service: Subcommittee Questions Concerning Year 2000 Challenges Facing the Service* (GAO/AIMD-99-150R, Apr. 23, 1999). Correspondence, 6 pp.

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the challenges facing the U.S. Postal Service [USPS] in addressing the year 2000 problem.

GAO noted that: (1) USPS has been running behind the Office of Management and Budget's schedule for system renovation and still must address major issues to correct and test system and mail processing equipment, ensure the readiness of thousands of local facilities, and determine whether and when its key suppliers and interface partners will be year 2000 compliant; (2) USPS has determined that its systems are susceptible to September 9, 1999, as well as 25 other special dates, and it is testing its critical systems to ensure that they can correctly handle these dates; (3) USPS is pursuing a windowing approach to date conversion rather than expanding date fields from two to four characters; (4) under this approach, software is written to associate a fixed or sliding period of years with either the 20th or 21st centuries; (5) USPS year 2000 officials have advised GAO that windowing fixes will remain viable beyond the year 2048 for all but two systems, which will remain viable until the year 2019; (6) replacement schedules have already been developed for permanent fixes for these two systems; (7) USPS has realized significant benefits from their year 2000 efforts; (8) these include the elimination of unnecessary software code; replacement of antiquated, locally developed software applications; and modernization of information technology equipment, including mainframe computer systems, mid-range computer systems, and desktop workstations; (9) USPS' Inspector General is planning a year 2000 conversion contract examination as part of its continuing audits of year 2000 issues within USPS; (10) USPS is following GAO's Business Continuity and Contingency Planning guide, which provides a conceptual framework for managing the risk of potential year 2000-induced disruptions to operations and incorporates best practices in contingency planning and disaster recovery; (11) contingency plans are not scheduled to be completed and tested until June 30, 1999, and continuity plans are not scheduled to be completed and tested until August 1999 and tested again in November 1999; (12) this schedule will leave USPS with little room for slippage or for making adjustments to ensure that contingency and continuity plans are practical and cost effective; (13) USPS' ability to control its suppliers is limited and it must rely on statements of assurance of year 2000 compliance by its suppliers; and (14) any critical suppliers assessed as non-compliant will be part of USPS' contingency planning activities.

*b. Benefits.*—It is crucial that the Postal Service is not plagued with Y2K disruptions. Many Federal and private agencies plan to use the Postal Service as their contingency plan. As the Postal Service is behind the OMB's schedule, it is particularly important that GAO monitor the situation for Congress and recommend contingency planning for the benefit of the Nation.

13. *U.S. Postal Service: Diversity in High-Level EAS Positions* (GAO/GGD-99-26, Feb. 26, 1999). *Letter Report*, 29 pp. plus 4 appendices (11 pp.).

*a. Summary.*—This report discusses the promotion of women and minorities to high-level Executive and Administrative Schedule [EAS] management positions—EAS 17 and above—in the U.S. Postal Service. GAO provides (1) information about the overall extent to which women and minorities have been promoted or are represented in EAS 17 and above positions in the Service; (2) GAO's observations on the methodology used by a private contractors, Aguirre International, to study workforce diversity at the Service; (3) the status of the Service's efforts to address the recommendations in the Aguirre report; and (4) GAO's analysis of whether the Service could better capture and use data to achieve its diversity objectives.

*b. Benefits.*—The Postal Service is one of the largest agencies with a substantially diverse employment base. Proper monitoring by the GAO, along with its analysis will provide for better data and objectives for promotions for women and minorities to higher level positions.

14. *Year 2000 Computing Crisis: Challenges Still Facing the U.S. Postal Service* (GAO/T-AIMD-99-86, Feb. 23, 1999). *Testimony*, 7 pp.

*a. Summary.*—Information technology is integral to every facet of postal operations—from sorting, processing, and distributing the mail; to dealing with customers; accounting for and managing cash flows; communicating with business partners and other government agencies; and modernizing its facilities. The Postal Service has been working hard to address its year 2000 problems and has recently revamped its management approach that, if successfully implemented, can provide significant support and oversight to its year 2000 efforts. However, the Service has been running somewhat behind the Office of Management and Budget's schedule for system renovation and must still address major issues to complete system and mail processing equipment correction and testing, ensure the readiness of hundreds of local facilities, and determine the ability of key suppliers and interface partners to be year 2000 ready. Moreover, the Service needs to complete the "simulation" testing of its business process areas as well as complete the development and testing of its business continuity and contingency plans. These challenges are further exacerbated by the fact that the Service expects a surge in workload beginning in September due to the holiday business rush, which typically requires greater management attention.

*b. Benefits.*—This GAO testimony is useful in determining if the Postal Service will be ready for the anticipated problems which may arise during year 2000, particularly if the Postal Service is not prepared.

15. *Major Management Challenges and Program Risks: U.S. Postal Service (GAO/OCG-99-21, Jan. 1, 1999). Other Written Product, 42 pp.*

*a. Summary.*—This publication is part of GAO’s performance and accountability series that provides a comprehensive assessment of government management, particularly the management challenges and program risks confronting Federal agencies. Using a “performance-based management” approach, this landmark set of reports focuses on the results of government programs—how they affect the American taxpayer—rather than on the processes of government. This approach integrates thinking about organization, product and service delivery, use of technology, and human capital practices into every decision about the results that the government hopes to achieve. The series includes an overview volume discussing government-wide management issues and 20 individual reports on the challenges facing specific cabinet departments and independent agencies. The reports take advantage of the wealth of new information made possible by management reform legislation, including audited financial statements for major Federal agencies, mandated by the Chief Financial Officers Act, and strategic and performance plans required by the Government Performance and Results Act. In a companion volume to this series, GAO also updates its high-risk list of government operations and programs that are particularly vulnerable to waste, fraud, abuse, and mismanagement.

*b. Benefits.*—This comprehensive study of the Postal Service assesses the information and operation utilized by government agencies.

16. *U.S. Postal Service: Development and Inventory of New Products (GAO/GGD-99-15, Nov. 24, 1998). Letter Report, 23 pp. plus 4 appendices (38 pp.).*

*a. Summary.*—The U.S. Postal Service has developed an array of new products in recent years, such as global priority mail, prepaid phone cards, and retail merchandise. Some Members of Congress contend that the Postal Service is unfairly expanding its product line to compete in nonpostal markets and have introduced legislation to curtail such activity. Some private sector companies have also raised concerns that the Postal Service could use its governmental status to an unfair advantage when introducing products that compete with private sector companies. This report (1) identifies the statutory and regulatory authorities and constraints covering all major groups of new products, (2) identifies the potential impact that H.R. 22 and the Postal Service’s proposed reform legislation could have on new products, and (3) discusses the Postal Service Marketing Department’s new product development process and determines, for three products, how closely that process was followed. GAO found that during fiscal years 1995, 1996, and 1997, the Service marketed, or had under development, 19 new products that had been publicly announced. Three of these new products involved strategic alliances with other businesses. As of July 1998, the Service had discontinued five of the new products and was considering discontinuing another. Total revenues and expenses for the 19 products from inception through fiscal year 1997 were \$148.8 million and \$233.5 million, respectively. During the first

three-quarters of fiscal year 1998, Service officials said that four of the 19 new products had produced revenues that exceeded expenses. GAO notes that it may not be reasonable to expect all new products to become profitable in their early years, because new products generally take several years to become established and recoup their start-up costs.

*b. Benefits.*—This GAO report has benefited the subcommittee in its effort to provide comprehensive reform of the Postal Service by ensuring that both the public and private sectors are able to compete on a level playing field.

17. *U.S. Postal Service: Postal and Telecommunications Sector Representation in International Organizations (GAO/GGD-99-6BR, Oct. 29, 1998). Briefing Report, 47 pp. plus 4 appendices (7 pp.).*

*b. Benefits.*—This report provides information on two international organizations: the Universal Postal Union, which regulates international postal services, and the International Telecommunications Union, which coordinates global telecommunications networks and services among governments and the private sector. GAO compares the roles and the responsibilities of government and private-sector stakeholders in U.S. policy development and representation in international organizations for the postal and telecommunications sectors. Specifically, GAO compares the representation of the United States in the Universal Postal Union and in the International Telecommunications Union.

18. *U.S. Postal Service: Challenges to Sustaining Performance Improvements Remain Formidable on the Brink of the 21st Century T-GGD-00-2, Oct. 21, 1999).*

*a. Summary.*—Pursuant to a congressional request, GAO discussed the U.S. Postal Service's [USPS] financial position and delivery performance. GAO noted that: (1) USPS may be nearing the end of an era; (2) during the past 5 years, USPS has made notable improvements in its financial position and delivery performance; (3) USPS has recorded positive net income and has maintained or improved the overall delivery of certain specific classes of mail; (4) however, USPS expects declines in its core business in the coming years; (5) the growth of the Internet, electronic communications, and electronic commerce has the potential to substantially affect USPS' mail volume; (6) as a result, USPS may experience growing difficulty in maintaining its position in a dynamic communications and delivery environment; (7) these developments make it imperative for USPS to resolve four long-standing performance challenges which include: (a) maximizing performance; (b) managing employees; (c) maintaining financial viability; and (d) adapting to competition; (8) GAO is highlighting the need for USPS to take action to address long-standing issues related to the quality of data used in ratemaking and recommending that the Postmaster General report to congressional oversight subcommittees on the actions taken and planned in this area; (9) in recent years, USPS has progressed in addressing various challenges and is continuing to initiate significant changes that respond to the challenges; and (10) however, as long as USPS stands on the brink of the 21st century, time appears

to be growing short for USPS to successfully address its challenges so that it can sustain and improve current performance levels and remain competitive in a rapidly changing communications environment.

*b. Benefits.*—GAO's report contained an unbiased analysis of the challenges of the 21st century and the Postal Service's efforts to respond to challenges, both new and old. This information will help the service position itself and preserve both revenue and market share in the new communication and delivery markets.

*19. U.S. Postal Service: Changes Made to Improve Acceptance Controls for Business Mail GGD-00-31, Nov. 9, 1999).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the Postal Service's acceptance controls for business mail, focusing on whether the Service had made the changes GAO recommended previously and whether those changes were working. GAO noted that: (1) the Service made changes to its controls over the acceptance of business mail; (2) those changes are generally along the lines that GAO recommended in 1996 and its controls overall appear to have improved; (3) however, the Service lacks information on how well its controls are working Service-wide and thus cannot ensure that it is collecting all the revenue due from its business mail operations; (4) since GAO's 1996 report, the Service has: (a) developed and implemented a risk-based approach for verifying the eligibility of high-risk customers to receive discounted postage rates; (b) made changes to its presort verification, supervisory review, and documentation requirements to help provide more assurance that these functions are performed; (c) changed its business mail acceptance-control procedures and training guidelines to help supervisors and staff perform their tasks properly and made key tools available to help them more accurately determine customers' eligibility for specific postage discounts; (d) developed information sources for managers to use in evaluating business mail acceptance controls, procedures, staffing, and training; and (e) incorporated reviews of its business mail operations into a Service-wide effort to protect revenue and obtain all compensation due for its services and products; (5) on the basis of GAO's evaluation of the Service's new business mail acceptance control process, discussions with Service officials, observations of acceptance procedures at eight business mail facilities, and review of Postal Inspection Service audit reports, GAO believes that the changes the Service made to its business mail procedures and operations help to prevent revenue losses; (6) however, GAO could not determine whether all of these changes are working Service-wide because data needed to make such a determination were not available; (7) neither the results of GAO's work or the work of the Inspection Service that GAO reviewed can be projected to the universe of Service business mail facilities; and (8) however, there is sufficient evidence that the Service has not fully addressed GAO's 1996 recommendations that it ensure that required supervisory reviews are performed and that it develop information for evaluating the adequacy of its business mail acceptance controls.

*b. Benefits.*—This report will help the Postal Service refine its business mail operations, thereby improving efficiency and preserv-

ing the revenue generated in a class of mail that is large, lucrative and essential to the Service's bottom line.

20. *Postal Issues: The Department of State's Implementation of Its International Postal Responsibilities* ( GGD-00-40, Jan. 31, 2000).

a. *Summary.*—Pursuant to a congressional request, GAO reviewed how the Department of State has implemented its new responsibilities for U.S. policy regarding U.S. participation in the Universal Postal Union [UPU]. GAO noted that: (1) State faced difficult challenges in assuming its new UPU-related responsibilities less than a year before the UPU Congress met in August and September 1999 to update binding agreements governing international postal service; (2) State's performance in implementing these new responsibilities was uneven in that GAO found strengths in some areas and opportunities for improvement in other areas; (3) State made progress in its first year in providing stakeholders and the general public with relevant information on UPU matters and giving them an opportunity to offer input into U.S. policy concerning the UPU; (4) State coordinated with the U.S. Postal Service, other Federal agencies, and other nongovernmental stakeholders that were involved in UPU matters and included some of these stakeholders in the U.S. delegation to the UPU Congress; (5) stakeholders said that State was receptive to input and evenhanded in its consideration of views; (6) in addition, State clearly signaled changes to U.S. policy on issues related to UPU reform; (7) State officials said that the United States presented a different view and approach to the UPU with respect to raising issues of UPU reform that gave impetus to the UPU's decision to establish a process to consider reform issues; (8) several options exist for State to develop a more structured and open process for obtaining stakeholder input including insuring better and more advance notification of public meetings and more advance distribution of materials prior to these meetings; (9) some stakeholders have raised concerns about the potential burden on State of using a formalized process to handle UPU-related responsibilities as well as whether such a process would be beneficial; (10) in this regard, 10 of 19 Federal agencies that accounted for 90 percent of the Federal Advisory Committee Act [FACA] committees have reported that FACA requirements are more useful than burdensome; (11) representatives of Federal and on Federal organizations in the U.S. delegation to the UPU Congress said that staff turnover, combined with the limited time available before the UPU Congress, affected State's ability to fully understand the implications associated with various complex UPU policy issues; and (12) providing sufficient institutional continuity and expertise will be essential if State intends to play a leadership role in handling complex UPU issues and dealing with domestic and international stakeholders.

b. *Benefits.*—The international postal and delivery market is worth billions of dollars and millions of jobs to the U.S. economy. In recent years this market has seen sweeping changes in the form of new communications technologies and comprehensive postal regulatory reform in industrialized nations. The effectiveness of the Department of State, the interrelationship between State and other

agencies, and the quality of private operator's input will determine the success of U.S. international postal policy.

21. *Postal Issues: The Department of State's International Postal Responsibilities (T-GGD-00-63, Mar. 9, 2000).*

*a. Summary.*—Pursuant to a congressional request, GAO discusses how the Department of State has implemented its responsibilities for U.S. policy regarding U.S. participation in the Universal Postal Union [UPU]. GAO noted that: (1) State assumed primary responsibility for U.S. policy on UPU matters in October 1998 from the Postal Service; (2) State has made progress in implementing its UPU responsibilities by taking steps to consult with the Postal Service, other Federal agencies, postal users, private providers of international postal services, and the general public; (3) in addition, State clearly signaled changes in U.S. policy on issues related to UPU reform; (4) this progress was notable because State assumed its expanded responsibilities for the UPU less than a year before the UPU Congress met in August and September 1999 to update binding agreements governing international postal service; (5) while GAO recognizes the progress made by State in its first year of responsibility for UPU matters, GAO also identified opportunities for the Department to improve its process for developing U.S. policy on these matters and the institutional continuity and expertise of its staff working in this area; (6) GAO identified some shortcomings relating to the timing and notification for public meetings, and the distribution of documents discussed at these meetings, that may have limited the opportunities for stakeholders to provide meaningful input; (7) GAO also found that State's policy development process on UPU matters resulted in little public record of agency or stakeholder positions, which may make it difficult for Congress and others to fully understand the basis for U.S. policy positions; and (8) further, staff turnover made it more difficult for State to develop the institutional continuity and expertise to fulfill its leadership responsibilities.

*b. Benefits.*—This report, in conjunction with the January 31, 2000, product on the same topic, provides a candid and unbiased assessment of the Department of State's emerging role in developing international postal policy, and representation before the UPU. The GAO findings will be of assistance to all stakeholders as State develops its policymaking process in this area.

22. *U.S. Postal Service: Diversity in the Postal Career Executive Service (GGD-00-76, Mar. 30, 2000).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the representation of women and minorities in the U.S. Postal Service's Career Executive Service [PCES], focusing on: (1) the overall extent that women and minorities have been represented in the PCES, fiscal years 1995 through 1999, and have been selected for positions in the PCES, particularly executive positions, in fiscal year 1999; and (2) efforts under way by the Service to promote diversity within the PCES. GAO noted that: (1) at the end of fiscal year 1999, women and minorities represented about 35 percent of the PCES executive workforce compared to their representation of about 58 percent in the Service's overall workforce;

(2) similarly, their representation among PCES executives for each specific women and minority Equal Employment Opportunity [EEO] category was lower than their representation in the corresponding EEO categories in the Service's overall workforce; (3) with respect to the 42 occupied officer positions below the Deputy Postmaster General, women and minorities held 13, or about 31 percent, as of the end of fiscal year 1999; (4) over the last 5 fiscal years women and minority representation among PCES executives has generally increased by about 4 percentage points; (5) most of this change occurred during the last 2 years of the period and was primarily accounted for by the increase in the representation of white women; (6) over the 5-year period, white women's representation has consistently increased while that of Hispanic, Asian, and American Indian women also generally increased after fiscal year 1997; (7) with regard to officers, over the 5-year period, women and minority representation increased by 6 percentage points; (8) regarding the career Senior Executive Service [SES], women and minority representation among the PCES executive workforce was somewhat higher than that in the career SES in the Federal workforce and much higher when compared to the civilian career SES workforce at Department of Defense; (9) finally, with respect to selections for PCES executive positions, in fiscal year 1999, women and minorities represented about 33 percent of PCES executives before the selections, and they were selected for 25 of the 59 selections for executive positions; (10) also, women and minority representation as a group among the selections was the same as their representation in the PCES potential successor pool for all the positions; (11) outside hires accounted for 17 percent of all of the executive selections and 24 percent of the 25 women and minority selections; (12) in November 1998, the Service required that its PCES merit performance evaluation process address diversity-related activities in individual executive performance objectives and that executives be accountable for the accomplishment of those objectives; (13) the Service also developed management training programs to help employees better manage their careers; and (14) another Service effort includes the establishment of a diversity oversight group, which is to oversee corporate diversity initiatives.

*b. Benefits.*—This report provides valuable information to ensure that Postal Service is a place of opportunity for women and minorities. It will prove particularly valuable in efforts to eliminate the “glass ceiling” that may prevent such employees from becoming part of the organization's highest level of management.

*23. Breast Cancer Research Stamp: Millions Raised for Research, but Better Cost Recovery Criteria Needed (GGD-00-80, Apr. 28, 2000).*

*a. Summary.*—Pursuant to a legislative requirement, GAO provided information on the Postal Service's Breast Cancer Research Stamp, focusing on: (1) how the Service went about identifying and allocating the costs it incurred in developing and marketing the Breast Cancer Research Semipostal [BCRS] and the issues associated with effectiveness; (2) the statutory authorities and constraints associated with the Service's issuance of semipostals, in general, as a means of fundraising; and (3) the appropriateness of



using the BCRS as a means of fundraising. GAO noted that: (1) on March 16, 2000, the Service reported that the bulk of its costs to develop and sell the BCRS through December 31, 1999, was \$5.9 million; (2) according to the Service, almost all of these costs would have been incurred with any blockbuster commemorative stamp issue and have been recovered through the 33 cents that constitutes the first-class postage portion of the BCRS; (3) in a March report, the Postal Service Office of Inspector General [OIG] identified \$836,000 in costs that it believed were attributable to the BCRS program and not previously identified by the Service; (4) after reviewing a draft of OIG's report, the Service agreed that \$488,000 of these costs were incurred exclusively on behalf of the BCRS program, and included them in its reported \$5.9 million in BCRS costs; (5) the Service and OIG had not, as of March 31, 2000, resolved their differences over the remaining +\$348,000 in costs identified by OIG; (6) the Stamp Out Breast Cancer Act did not provide quantitative measures for evaluating the effectiveness of the BCRS as a fundraiser; (7) however, the act provided that the BCRS would be voluntary and convenient, and it would raise funds for breast cancer research; (8) to these ends, BCRS has been successful; (9) the BCRS had raised about \$10 million for breast cancer research by the end of 1999 and is expected to raise more by the time sales are scheduled to conclude; (10) with respect to appropriateness, about 71 percent of adults responding to the public opinion survey GAO commissioned, and most of the key stakeholders GAO spoke with, believed that it is appropriate to use semipostals issued by the Service to raise funds for nonpostal purposes; (11) GAO does not believe that the Service has the authority to issue semipostals on its own volition without specific legislation authorizing it to do so; (12) although the act gave the Service the specific authority to issue the BCRS, it was silent with regard to the appropriateness of the Service issuing additional semipostals for other causes; (13) postal officials have stated that in the absence of statutory authority to issue semipostals, it is unclear whether selling such stamps would be consistent with the underlying statutory and regulatory authorities governing the Service; and (14) GAO does not interpret the Service's underlying statutory authority as authorizing it to establish postage rates and fees for a particular stamp at a level that exceeds its postage value for purposes of generating revenue for contributions to a charitable cause.

*b. Benefits.*—The Breast Cancer Research Stamp report provided a wealth of the successes and setbacks of that program, and GAO's analysis of the scope of the Postal Service's legal authority to issue semipostals. These findings were an integral part of the debate leading to the passage of legislation authorizing future semipostals, and the data will aid the Postal Service in the management of future semipostal programs.

*24. U.S. Postal Service: Diversity in District Management-Level Positions (GGD-00-142, June 30, 2000).*

*a. Summary.*—Pursuant to a congressional request, GAO provided information on the representation of women and minorities in the Postal Service's [USPS] Executive and Administrative Schedule [EAS] management-level positions, focusing on: (1) statis-

tical information on the representation of women and minorities in EAS levels 16 through 26 in USPS nationwide for fiscal year 1999; (2) the Chicago, IL, and Akron, OH, postal districts: (a) representation of women and minorities in EAS levels 16 through 26; (b) initiatives implemented to promote diversity; and (c) lessons identified by district officials that relate to increasing diversity; and (3) equal employment opportunity [EEO] concerns at the Youngstown, OH, postal site. GAO noted that: (1) at the end of fiscal year 1999, women and minorities in USPS' districts represented a district average of about 49 percent of the EAS 16 through 26 workforce; (2) the representation of women and minorities in EAS levels 16 through 26 in USPS' 83 districts ranged from about 22 percent to 95 percent; (3) in Chicago, women and minorities represented about 93 percent of the EAS 16 through 26 workforce compared with their overall workforce representation of 92 percent; (4) in Akron, the representation of women and minorities in the district's EAS 16 through 26 workforce was about 41 percent compared with their overall workforce representation of about 46 percent at the end of fiscal year 1999; (5) in Chicago, black men and women represented about 84 percent of the EAS 16 through 26 workforce in fiscal year 1999—white, Hispanic, Asian, and Native American men and women represented about 16 percent; (6) in Akron, white men and women represented about 81 percent of the EAS 16 through 26 workforce in fiscal year 1999—black, Hispanic, Asian, and Native American men and women represented about 19 percent; (7) both the Chicago and Akron district offices are using the Associate Supervisor Program [ASP] to increase the representation of women and minorities in EAS levels 16 through 26; (8) ASP has provided opportunities for a diverse group of employees from lower grade levels to be trained and eventually promoted into first-level supervisory positions; (9) to improve other aspects of diversity, both districts are using a national alternative dispute resolution program referred to as REDRESS (Resolve Employment Disputes, Reach Equitable Solutions Swiftly) to facilitate discussion between managers and employees on individual EEO complaint issues; (10) Chicago and Akron have also developed their own individual initiatives to promote appreciation for cultural differences; (11) according to district officials in Chicago and Akron: (a) management must demonstrate its commitment to diversity; (b) training and career development programs must be made available to provide opportunities for women and minorities to ascend to supervisory and management-level positions; and (c) an environment that encourages communications and cultural appreciation between management and employees must be established; (12) regarding the alleged EEO concerns at the Youngstown postal site, district records show that race and sex discrimination were most often cited as the bases for the complaints; and (13) management, union representatives, and employees had different opinions about the source of the problem.

*b. Benefits.*—GAO's assessment of the Postal Service's successes and failures in including women and minorities in EAS management-level positions will help the Service in its continuing efforts to create and maintain an environment in which all employees have an opportunity to succeed.

## V. Prior Activities of Current or Continuing Interest

### SUBCOMMITTEE ON THE CENSUS

Hon. Dan Miller, *Chairman*

The subcommittee will continue its investigations and oversight work in the following areas within its jurisdiction:

1. *The Accuracy and Coverage Evaluation [ACE].*

a. *Summary.*—Operational details of the ACE plan are being scrutinized, and concerns with its methodology, accuracy, legality, and potential for political manipulation persist.

2. *Department of Commerce Regulation 15 CFR Part 101.*

a. *Summary.*—Department of Commerce Regulation 15 CFR Part 101, Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. § 141(c) and Availability of Other Population Information directs the Director of the Bureau of the Census to make the final determination whether sampled data from the 2000 census is released for the purposes of redistricting or the allocation of Federal funds. The subcommittee and others, supported by analysis of the American Law Division of the Congressional Research Service [CRS], believe that this is a clear violation of the final decisionmaking authority and responsibility vested in the Commerce Secretary by the U.S. Congress under 13 U.S.C. § 195. The regulation took effect on November 6, 2000.

3. *The American Community Survey [ACS].*

a. *Summary.*—Currently in testing, the Census Bureau plans on implementing the ACS nationwide in 2003, subject to congressional approval and funding.

4. *Continuing Census Operations.*

a. *Summary.*—There are decennial census operations that are still ongoing, as the Census Bureau is preparing census 2000 apportionment and redistricting data for release by December 31, 2000, and April 1, 2001, respectively. Additionally, inter-censal surveys to determine economic, social, and demographic data for the Nation will continue to occur throughout the decade.

5. *Review of Census 2000 Operations and Programs.*

a. *Summary.*—Decennial census operations such as the Accuracy and Coverage Evaluation, the paid advertising campaign, and the partnership program were used for the first time in census 2000. The success and cost effectiveness of these and other operations will be fully evaluated.

## 6. *Americans Abroad.*

*a. Summary.*—Several Members of Congress have introduced legislation aimed at implementing a census of Americans residing overseas. While such a census did not occur as part of census 2000 decennial operations, the details of what is necessary to conduct such an operation in 2010 are being investigated.

### SUBCOMMITTEE ON THE CIVIL SERVICE

Hon. Joe Scarborough, *Chairman*

The subcommittee will continue its investigations and oversight work in the following areas within its jurisdiction:

1. Monitoring the FEHBP/DOD demonstration project for military retirees.
2. Monitoring OPM's administration of the FEHBP.
3. Long-term care insurance program for Federal employees.
4. Offering additional life insurance options to Federal employees.
5. Accidental death and dismemberment insurance.
6. Prescription drug costs in the FEHBP.

### SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

Hon. Thomas M. Davis, *Chairman*

The subcommittee should continue its oversight of the following areas within its jurisdiction:

1. Public safety.
2. Economic development.
3. Education.
4. College access.
5. District of Columbia Water and Sewer Authority.
6. Washington Metropolitan Area Transit Authority.
7. Efforts to re-open Pennsylvania Avenue.
8. Receiverships.
9. Fiscal stability.
10. Health care.

### SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

Hon. Stephen Horn, *Chairman*

1. *The Government Performance and Results Act.*—The Government Performance and Results Act of 1993 seeks to improve the effectiveness, efficiency, and accountability of Federal programs by establishing a system for agencies to set goals for program performance and to measure results. The subcommittee will continue its oversight of the implementation of this act as performance reports are due for the first time from agencies by March 2000.

2. *Computer Security.*—The subcommittee will continue its oversight of this ongoing issue. Federal agencies rely on computers and electronic data to perform functions that are essential to the national welfare and directly affect the lives of millions of individuals. The number of attacks on these vital systems continue to increase,

both in terms of numbers and sophistication. The Federal Government must ensure that its computer systems and databanks are protected from these invasions.

*3. Federal Financial Management.*—The subcommittee will continue a variety of oversight initiatives in the area of financial management. The Chief Financial Officers Act of 1990 required agencies to audit revolving funds, trust funds and all funds that resembled commercial enterprises. The 1994 Government Management Reform Act extended the CFO requirements to cover all agency resources, with agencywide audited financial statements due in March 1997, and Federal Governmentwide audited financial statements due in March 1998. The act is an important tool in improving the financial management of Federal departments and agencies. The subcommittee will continue its oversight of the financial management practices of Federal departments and agencies, which will include a review of individual agency audited financial statements in addition to an analysis of the consolidated governmentwide audited financial statement.

*4. Federal Acquisition Management.*—The Federal Government procures more than \$200 billion a year in goods and services to support its various missions. In recent years, a number of procurement reform laws have been enacted designed to streamline the acquisition process. These laws include the Federal Acquisition Streamlining Act, the Federal Acquisition Reform Act, the Information Technology Management Reform Act (also known as the Clinger-Cohen Act), and the Federal Activities Inventory Reform Act. The subcommittee will conduct oversight into whether these reform initiatives are assisting Federal agencies in accomplishing their missions in a more efficient and cost-effective manner. The subcommittee will also consider whether additional legislative initiatives are needed to improve the Federal acquisition process.

*5. Oversight of the U.S. Customs Service.*—The subcommittee will continue its investigation into an imbalance in staffing by the U.S. Customs Service between the East and West Coasts. As part of this investigation, the subcommittee will review the Customs Service's progress in developing and implementing its resource allocation model.

*6. The Inspectors General Act.*—The subcommittee will continue its investigation into operational issues surrounding the 1978 Inspector General Act. The subcommittee will focus on ways to make the Offices of Inspectors General more efficient and effective. The subcommittee will also continue its oversight into issues associated with the accountability and investigative practices of the Inspectors General.

*7. Federal Debt Collection.*—The subcommittee will continue its oversight of the implementation of the Debt Collection Improvement Act of 1996. The subcommittee will also consider legislative amendments to the act with the goal of improving the collection rate of delinquent non-tax debts owed to the Federal Government.

*8. Federal Advisory Committee Act.*—With the assistance of the General Accounting Office, the subcommittee will examine the current use of Federal advisory committees by the Federal Government. Hearings are anticipated.

9. *The Electronic Freedom of Information Act.*—The subcommittee has jurisdiction over several governmentwide information laws, including the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, and the Government Sunshine Act.

The subcommittee will conduct hearings on the Freedom of Information Act with particular emphasis on the role of electronic reporting in the timeliness of responses to Freedom of Information Act requests. In addition, the subcommittee will oversee implementation of the new provision in the OMB Circular A-110, extending the reach of the Freedom of Information Act to federally funded research data.

10. *Department of Labor Management Practices.*—The subcommittee will continue its oversight of the management practices at the Department of Labor. In particular, oversight will be conducted of the Office of Workers' Compensation Programs and its adjudication of Federal injured workers claims.

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL  
RESOURCES, AND REGULATORY AFFAIRS

Hon. David McIntosh, *Chairman*

The subcommittee will continue its investigations and oversight work in the following areas within its jurisdiction:

1. Investigation of government-wide paperwork reduction initiatives and accomplishments and leadership in paperwork reduction by the Office of Management and Budget's Office of Information and Regulatory Affairs.
2. Investigation of the Office of Management and Budget's Congressional Review Act guidance and agency compliance with the Congressional Review Act.
3. Regulatory reform legislation.
4. Investigation of the White House initiative on global climate change and the Kyoto protocol.

SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS, AND  
INTERNATIONAL RELATIONS

Hon. Christopher Shays, *Chairman*

The subcommittee will continue investigations and oversight work in the following areas within its jurisdiction:

1. The DOD anthrax vaccination program.
2. Administration efforts to consolidate or bridge VA and DOD health care systems.
3. VA implementation with fiscal year 1999 Omnibus Appropriations Act provisions regarding presumption of service-connection for certain gulf war veterans' illnesses.
4. Government-wide implementation and coordination of counter-terrorism programs.
5. Results Act compliance status as Departments of Defense, State, Veterans Affairs, FEMA and NASA.
6. Armed forces quality of life and other issues effecting recruiting and retention.

7. VA/DOD/HHS joint management of research into causes and treatments of gulf war veterans illnesses.

8. Management and scientific integrity of ongoing longitudinal research into the effects of exposure of agent orange.

9. Status of U.S. participation in the Biological and Toxic Weapons Convention negotiations of an enforcement protocol by the Ad Hoc Working Group.

10. Research, development and acquisition activities for chemical and biological defense equipment: masks, suits, detectors, decontamination equipment.

11. VA initiatives to test and treat veterans at risk for Hepatitis C infection.

12. Procurement processes being used to develop the Joint Strike Fighter [JSF] aircraft.

13. Anti and counter terrorism planning and preparedness best practices used by cities and regions in Europe, Asia and the Middle East.

14. DOD TriCare health system contracts, communications and program administration.

15. Management and acquisition strategy of the DOD Joint Vaccine Acquisition Program [JVAP].

16. DOD plans to upgrade computer capabilities and otherwise address a serious backlog of personal background investigations at the Defense Security Service.

17. Military medical personnel training and specialties, and DOD methods to determine how medical readiness is matched to current threats and risks.

18. VA and CDC management of pharmaceutical stockpiles to be used in the event of a WMD attack/event.

19. Technology development and technology readiness measures in the National Missile Defense [NMD] program.

20. CDC contract to purchase 40 million doses of smallpox vaccine.

#### SUBCOMMITTEE ON THE POSTAL SERVICE

Hon. John M. McHugh, *Chairman*

The subcommittee will continue its investigations and oversight work in the following areas within its jurisdiction:

Operation of the U.S. Postal Service.

Reform of the Postal Service to meet the needs of the new millennium.

The future of the Postal Service: can it compete with reorganized postal systems in the free world?

The role of the Postal Service in the Universal Postal Union.

Is there a need for the Postal Service to produce nonpostal products?

The structure of the Board of Governors.

Whether the Postal Service should continue its ability to regulate and compete with the entities it regulates.

Labor management, sexual harassment, and discrimination in the workplace.





## VI. Projected Programs for the 107th Congress

### SUBCOMMITTEE ON THE CENSUS

Hon. Dan Miller, *Chairman*

In addition to ongoing oversight of all census programs and activities, the Subcommittee on the Census is planning on the following for the 107th Congress:

1. Continued review and assessment of the technical merits of the accuracy and coverage evaluation [ACE], particularly in light of the Bureau's planned use of ACE for adjusting the census for redistricting purposes. This may prove not only scientifically unsound, but also illegal under the Constitution and public law.
2. Closer examination of the long form issues and the Bureau's plan to replace the long form with the American Community Survey.
3. Post-Decennial Census evaluations of all major phases of the census, particularly those that were new to the 2000 census (i.e., paid advertising, outreach and partnership with State, local, and private organizations and partnership with the Postal Service).
4. Audit and evaluation of the budget of the Census Bureau.

### SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

Hon. Stephen Horn, *Chairman*

1. *The Government Performance and Results Act.*—The Government Performance and Results Act of 1993 seeks to improve the effectiveness, efficiency, and accountability of Federal programs by establishing a system for agencies to set goals for program performance and to measure results. The subcommittee will continue its oversight of the implementation of this act as performance reports are due for the first time from agencies by March 2000.

2. *Computer Security and Information Assurance.*—Computer security is a daily challenge. The year 2000 technology challenge has exposed organizations to potential weaknesses in computer security management, principles, and practices. In 1999, a series of computer viruses and reported Web site vandalism have illustrated how vulnerable computer systems and the data they hold are to outside attacks. Malicious hackers appear to be ubiquitous; security has become a round-the-clock challenge. The subcommittee will develop a framework to begin an in-depth review of computer security issues, including risk assessment, policies and related controls, awareness, and monitoring and evaluation.

3. *Federal Financial Management.*—The subcommittee will continue a variety of oversight initiatives in the area of financial management. The Chief Financial Officers Act of 1990 required agen-

cies to audit revolving funds, trust funds and all funds that resembled commercial enterprises. The 1994 Government Management Reform Act extended the CFO requirements to cover all agency resources, with agencywide audited financial statements due in March 1997, and Federal Governmentwide audited financial statements due in March 1998. The act is an important tool in improving the financial management of Federal departments and agencies. The subcommittee will continue its oversight of the financial management practices of Federal departments and agencies, which will include a review of individual agency audited financial statements in addition to an analysis of the consolidated governmentwide audited financial statement.

4. *Federal Acquisition Management.*—The Federal Government procures more than \$200 billion each year in goods and services to support its various missions. In recent years, a number of procurement reform laws have been enacted designed to streamline the acquisition process. These laws include the Federal Acquisition Streamlining Act, the Federal Acquisition Reform Act, the Information Technology Management Reform Act (also known as the Clinger-Cohen Act), and the Federal Activities Inventory Reform Act. The subcommittee will conduct oversight into whether these reform initiatives are assisting Federal agencies in accomplishing their missions in a more efficient and cost-effective manner. The subcommittee will also consider whether additional legislative initiatives are needed to improve the Federal acquisition process.

5. *Oversight of the U.S. Customs Service.*—The subcommittee will continue its investigation into an imbalance in staffing by the U.S. Customs Service between the East and West Coasts. As part of this investigation, the subcommittee will review the Custom Service's progress in developing and implementing its resource allocation model.

6. *The Inspectors General Act.*—The subcommittee will continue its investigation into operational issues surrounding the 1978 Inspector General Act. The subcommittee will focus on ways to make the Offices of Inspectors General more efficient and effective. The subcommittee will also continue its oversight into issues associated with the accountability and investigative practices of the Inspectors General.

7. *Federal Debt Collection.*—The subcommittee will continue its oversight of the implementation of the Debt Collection Improvement Act of 1996. The subcommittee will also consider legislative amendments to the act with the goal of improving the collection rate of delinquent non-tax debts owed to the Federal Government.

8. *Federal Advisory Committee Act.*—With the assistance of the General Accounting Office, the subcommittee will examine the current use of Federal advisory committees by the Federal Government. Hearings are anticipated.

9. *The Electronic Freedom of Information Act.*—The subcommittee has jurisdiction over several governmentwide information laws, including the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, and the Government Sunshine Act.

The subcommittee will conduct hearings on the Freedom of Information Act with particular emphasis on the role of electronic re-

porting in the timeliness of responses to Freedom of Information Act requests. In addition, the subcommittee will oversee implementation of the new provision in the OMB Circular A-110, extending the reach of the Freedom of Information Act to federally funded research data.

*10. Department of Labor Management Practices.*—The subcommittee will continue its oversight of the management practices at the Department of Labor. In particular, oversight will be conducted of the Office of Workers' Compensation Programs and its adjudication of Federal injured workers claims.

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL  
RESOURCES, AND REGULATORY AFFAIRS

Hon. David McIntosh, *Chairman*

1. Investigation of government-wide paperwork reduction initiatives and accomplishments and leadership in paperwork reduction by the Office of Management and Budget's Office of Information and Regulatory Affairs.

2. Investigation of the Office of Management and Budget's Congressional Review Act guidance and agency compliance with the Congressional Review Act, including agency use of non-codified guidance documents.

3. Additional regulatory reform legislation.

4. Investigation of the White House initiative on global climate change and the Kyoto protocol.



## **VII. Views of the Ranking Minority Member**

### **VIEWS OF HON. HENRY A. WAXMAN**

This activities report is prepared by the committee's chairman and these minority views are submitted by the ranking minority member. Under the House rules, the report is not considered or voted on by the committee members. As a result, the report has not been approved by the committee and does not necessarily reflect the views of the committee.

#### **I. FULL COMMITTEE ACTIVITIES**

The chairman's report on the full committee's activities in the 106th Congress contains numerous inaccuracies and omissions. Some of these are described below.

##### **A. CAMPAIGN FINANCE INVESTIGATION**

The report discusses the testimony of several key figures in the campaign finance investigation, including Johnny Chung, John Huang, and Charlie Trie. The report is accurate in stating that these individuals acknowledged having personally participated in campaign finance illegalities. The report, however, fails to note that neither the testimony of these three individuals nor any of the other evidence received by the committee demonstrates that the President, Vice President, or any other senior Democratic Party or White House official was aware of or intentionally participated in any campaign finance illegalities. Further, contrary to the allegations made by the majority at the outset of the investigation, the evidence before the committee does not demonstrate that the White House was involved in "selling or giving information to the Chinese in exchange for political contributions."<sup>1</sup>

##### **B. E-MAIL INVESTIGATION**

The report's description of the committee's investigation into White House e-mails contains several inaccuracies and omissions. The report fails to note that the committee found no evidence that the White House deliberately kept any e-mails from Federal or congressional investigators; in fact, in 1997 the White House provided approximately 7,700 pages of e-mails to this committee on campaign finance matters alone. The report also fails to mention that the evidence received by the committee about alleged jail threats was inconclusive and contradictory. Nor is there any evidence to suggest that the Office of the Vice President deliberately attempted

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<sup>1</sup>A minority staff report provides many additional examples of unsubstantiated allegations made by the majority. Minority Staff Report, House Government Reform Committee, "Unsubstantiated Allegations of Wrongdoing Involving the Clinton Administration" (October 2000).

to archive its e-mails in a way that would evade subpoena compliance.

The above points are discussed at greater length, along with a broader discussion of the e-mail investigation, in the minority views filed with the committee's e-mail report of December 4, 2000 (H. Rept. 106-1023).

#### C. INVESTIGATION OF THE DEPARTMENT OF JUSTICE

The report demonstrates an ongoing lack of perspective regarding the Justice Department. The report highlights trivial mistakes by the Justice Department, noting that a Justice Department official "conceded" that he had "misspelled the name" of a witness involved in a Justice investigation. At the same time, the report fails to include crucial information that conflicts with the majority's serious allegations about the Attorney General. Attempting to demonstrate that the Attorney General acted inappropriately in the campaign finance matter, the report focuses on memoranda by several individuals regarding the application of the Independent Counsel Act that took a view different from that of the Attorney General. The report fails to mention, however, that memoranda by several other individuals provided to the committee supported the Attorney General's position. The report also fails to note that numerous witnesses—including those who disagreed with the Attorney General's position—testified that disagreement over interpretation of the law is not unusual, that they believe the Attorney General reached her position in good faith, and that they believe she based her position on the facts and the law and not on political considerations.

The report also asserts that the Justice Department gave "preferential treatment" to the Vice President and President by giving them copies of their interview transcripts. The report fails to mention, however, that many other high-ranking officials—including several Republican officials—have been treated in exactly the same manner. For example, when Edwin Meese, the former Republican Attorney General, was investigated by an independent counsel, he was given a transcript of his deposition. When George Shultz, the former Republican Secretary of State, was interviewed by the Iran/Contra Independent Counsel, he was given a copy of a taped record of his session. When the House Ethics Committee interviewed former Speaker Newt Gingrich as part of its investigation into his ethical lapses, the committee provided him access to the transcripts. In fact, even this committee followed a similar procedure. When the committee interviewed the late former White House Counsel Charles Ruff in May 2000, the chairman gave Mr. Ruff a copy of the interview transcript. At the committee's July 20, 2000, hearing, the minority made the majority aware of this precedent, and introduced into the record letters by investigative counsel attesting to the fact that they used such similar procedures in previous investigations.

The minority addressed the majority's inaccurate allegations regarding the Justice Department in detail in the minority views filed with the committee's December 13, 2000, report on the Justice Department (H. Rept. 106-1027).

## D. REBEKAH POSTON INVESTIGATION

The report states that Florida attorney Rebekah Poston was “involved in potentially illegal conduct,” and that the “evidence showed that Ms. Poston . . . had hired private investigators who illegally obtained National Crime Information Center (NCIC) arrest record information.” This assertion appears to be based on the premise that Ms. Poston instructed private investigators to break the law by accessing restricted information. No evidence received by the committee, however, demonstrated that Ms. Poston instructed private investigators to break the law or otherwise was “involved in” illegal conduct. In fact, the two private investigators hired by Ms. Poston testified to the committee that Ms. Poston did not ask them to break the law.

The report also asserts that Ms. Poston received “highly unusual favors” from the Justice Department that resulted in her “obtain[ing] the information she sought from the Justice Department.” This statement concerns a decision by the Justice Department to confirm the lack of existence of records in response to a Freedom of Information Act request by Ms. Poston. The report fails to mention that this decision by the Justice Department to confirm the lack of records was legal, and the information provided to Ms. Poston was adverse to the interests of the client for whom Ms. Poston sought the information.<sup>2</sup>

## E. INVESTIGATION OF THE PRESIDENT’S DECISION TO GRANT CLEMENCY TO PUERTO RICAN NATIONALISTS

The section of the report on the President’s decision to grant clemency to individuals in two Puerto Rican groups, Fuerzas Armadas Liberacion Nacional Puertorriquena [FALN] and the Ejercito Popular Boricua (Los Macheteros), discusses the President’s assertion of executive privilege over a small number of documents. The report states that this assertion of privilege made it “impossible for the committee to come to any solid conclusions about the clemency.” It fails to acknowledge, however, that this assertion of executive privilege was entirely justified. The Constitution entrusts the clemency power solely and exclusively to the President. The Presidential communications relating to clemency decisions clearly fall within the parameters of executive privilege as defined by the Supreme Court. As noted by the Washington Post, “if executive privilege does not cover the Puerto Rico flap, it does not meaningfully exist.”<sup>3</sup>

## F. JAMES PRINCE/RAP-A-LOT RECORDS INVESTIGATION

The report unfairly and irresponsibly insinuates interference by the Vice President in the Drug Enforcement Administration’s investigation of the James Prince/Rap-A-Lot Records matter. On November 4, 2000, the Dallas Morning News reported that the chair-

<sup>2</sup>In the House Government Reform Committee’s report entitled, “Janet Reno’s Stewardship of the Justice Department: A Failure To Serve the Ends of Justice” (Dec. 13, 2000) (H. Rept. 106–1027), the majority makes numerous inaccurate statements about the Poston matter. The minority views of that report discuss these inaccuracies. Ms. Poston’s attorney, C. Boyden Gray, also took issue with the majority’s report in a Dec. 11, 2000, letter to Chairman Dan Burton, which is attached as exhibit 1.

<sup>3</sup>“Executive Privilege—Again,” Washington Post (Sept. 19, 1999).

man said the Department of Justice is purposely interfering with the committee's investigation, charging that, "Janet Reno is blocking, and I believe, obstructing justice for political reasons." Discussing Mr. Prince, Mr. Burton further stated, "He gives a million to a church, the vice president goes to that church, and two days later, somebody [says they're] closing the case? Something's wrong. They're blocking us because I think they're afraid that this might be an embarrassment to the vice president." No evidence in the committee record, however, supports these allegations or demonstrates any interference or any wrongdoing whatsoever on the part of the Vice President in this matter. Nor does any evidence demonstrate inappropriate actions on the part of the Attorney General in this matter.

The report also states that the Rap-A-Lot investigation was shut down in 1999, apparently as a result of political pressure. This conclusion ignores the clear testimony of Ernest Howard, the DEA Special Agent in Charge of the Houston Field Division. Mr. Howard testified that he never shut down the investigation. Rather, during the pendency of a DEA Office of Professional Responsibility investigation into allegations of misconduct by DEA agents working on the Rap-A-Lot investigation, he directed that all "proactive investigation" be suspended unless he or one of his Associate Special Agents in Charge gave special approval. The Deputy Administrator and Chief Inspector of the DEA testified that such action was not unusual and was fully consistent with DEA practice. The report's conclusion that the investigation was abruptly curtailed on account of political interference ignores all evidence inconsistent with its theory, including (1) Mr. Howard's explanation that he was expressing anger and frustration in his March 1999 e-mails and that he never actually terminated the Rap-A-Lot investigation; (2) Mr. Howard's explanation that he believed in August 1999 that the Rap-A-Lot investigation was at an unproductive stage and that there was little benefit in continuing proactive investigation; and (3) documentary evidence provided by Special Agent James Nims that fully supports Mr. Howard's recollection of events.

#### G. DIETARY SUPPLEMENTS INVESTIGATION

The report fails to include facts that contradict the majority's theories about the safety of certain dietary supplements. For example, in the description of the hearing entitled, "How Accurate is the FDA's Monitoring of Supplements Like Ephedra," the report asserts that "part of the problem with the ephedra issue was that a small number of companies marketed products specifically for purposes of abuse" and that ephedra is dangerous primarily in high doses. The report ignores the testimony of Dr. Raymond Woosley, the chairman of the Department of Pharmacology at Georgetown University Medical Center, and a member of a Food and Drug Administration [FDA] advisory committee that reviewed the scientific evidence about ephedra accumulated by the FDA. On the basis of this review, Dr. Woosley concluded that, in fact, there was no safe dose level of ephedrine that could be recommended for use in dietary supplements.



## H. VACCINES INVESTIGATION

The report also fails to include facts that contradict its theories about the dangers of certain vaccines. In describing the committee's investigation into an alleged link between vaccines and autism, the report asserts that autism rates have seen a dramatic increase in the last two decades. The report does not mention the testimony of Dr. Coleen Boyle, an epidemiologist with the Centers for Disease Control and Prevention [CDC], who testified that autism rates may be going up simply because there have been changes in the definition of autism and improved recognition of autism that may have affected the number of diagnoses in recent years.

The report also criticizes the Department of Health and Human Services for its position that there is no evidence of a link between autism and vaccines. The report fails to note, however, the fact that several expert panels convened by the British Government and the World Health Organization examined the theory that the Measles Mumps Rubella [MMR] vaccine can cause autism and concluded that there was no evidence of a link. Nor did the report mention Swedish and Finnish epidemiological studies that found no causal connection between autism and the MMR vaccine.

The report describes an investigation into alleged conflicts of interest among members of FDA and CDC advisory committees that consider vaccines. The report claims to have identified a number of problems regarding conflicts of interest. However, the report fails to mention the testimony of Marilyn Glynn of the Office of Government Ethics [OGE] regarding the OGE's most recent reviews of the CDC's and FDA's conflict of interest programs. According to Ms. Glynn's testimony, OGE found that the FDA had a very good program that was operating quite well and that the CDC had a sound ethics program that could use greater staff resources.

In its discussion of an investigation into an alleged association between vaccines containing a mercury-based preservative, thimerosal, and autism, the report ignores the testimony of the CDC that there is no evidence of an association between thimerosal in vaccines and autism. The report criticizes the FDA for not using its authority to remove thimerosal from the market, but it fails to mention that the FDA is working with industry to remove thimerosal from vaccines as quickly as possible and that the entire childhood immunization schedule is currently available without thimerosal.

## I. ANTHRAX VACCINE INVESTIGATION

Most minority committee members agreed with at least some findings presented in the report on the Department of Defense anthrax program prepared by the Subcommittee on National Security, Veterans Affairs, and International Relations (see Section II.G, the minority views on the activities of the subcommittee). However, the full committee chairman conducted his own investigation into the issue in a manner that omitted relevant facts and ignored significant expert findings.

For example, at the March 9, 2000, committee meeting to consider the report on the Department of Defense anthrax program, Chairman Burton raised the case of Kevin Edwards. He displayed

photographs of Mr. Edwards's bruised body and claimed that his illnesses were caused by the anthrax vaccine. But Chairman Burton failed to disclose that Mr. Edwards's case had been considered by the Anthrax Vaccine Expert Committee [AVEC]. AVEC provides an independent expert assessment of adverse events reported for the anthrax vaccine. AVEC's findings were fundamentally different from Chairman Burton's conclusions. The ranking member sent the chairman a letter to this effect on March 17, 2000, requesting that the hearing record be corrected.

At the October 3, 2000, hearing, 10 witnesses were invited by the chairman to testify about illnesses caused by anthrax. But according to Major General Randall West, only one had a verified causative relation to the anthrax vaccine:

What I would tell you sir is that of all the people that were here today, there was only one person that has a medical diagnosis that directly links it to the vaccine, and that was only a portion of his medical problems.

J. INVESTIGATION OF "NATIONAL PROBLEMS, LOCAL SOLUTIONS:  
FEDERALISM AT WORK—TAX REFORM IN THE STATES"

This section of the report fails to point out that it is the strong economic growth under President Clinton—the longest peace time expansion in history—that has made the so-called "Republican" tax cuts possible.

K. INVESTIGATION OF REFORMS IN THE DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT [HUD]

The report repeats a hearing title that is demonstrably inaccurate: "HUD Losing \$1 Million Per Day: Promised Reforms Slow in Coming." Despite the title of the hearing, held on March 23, 1999, Federal Housing Commissioner William Apgar testified that the Mutual Mortgage Insurance Fund netted \$1.55 billion to the Federal Treasury in 1998. According to HUD estimates, that figure was projected to increase to \$2.14 billion in 1999 and to \$2.48 billion in 2000. Commissioner Apgar testified that the \$1 million per day figure, cited by the HUD Office of Inspector General and reported in the Washington Times, represented only the holding costs for 41,000 properties in FHA's inventory. It did not take into account the proceeds from the sale of properties or the premiums from mortgage insurance. When these figures are included, the Mutual Mortgage Insurance Fund does not lose any money, much less \$1 million per day. Rather, it was a profit center that contributed to a reduction in the Federal account deficit.

L. INVESTIGATION OF "CURRENT REGULATION OF FEDERAL WETLANDS,  
IN PARTICULAR THE AREA OWNED BY MR. JOHN POZSGAI OF MORRIS-  
VILLE, PA"

This section of the report contains erroneous conclusions that are not supported by the record. Private property rights are a key issue in Federal wetlands policy. However, it is not just the property rights of the developer that are at issue. The property rights of those who are negatively impacted by unnecessary development of wetlands also must be protected. The unnecessary development of

wetlands can increase the likelihood of costly floods for the entire neighborhood. Also, property values and the public health are threatened by the loss of a natural water purifying system. And the public interest is harmed when wetlands are developed because an important ecosystem is destroyed and habitat for migratory birds and endangered plants and animals is lost. The report also fails to note that Mr. Pozsgai's punishment was the result of the fact that he continuously and willfully ignored court orders and notices to stop filling his wetlands until he obtained a permit.

#### M. INVESTIGATION OF DRUG TRAFFICKING THROUGH CUBA AND PUERTO RICO

In the section discussing a January 3–4, 2000, field hearing on drug trafficking through Cuba and Puerto Rico, the report refers to the joint investigation by this committee and the International Relations Committee of a Colombian Government seizure of 7.2 tons of cocaine in Cartagena. The report states that “the Committee firmly believes the drugs were ultimately destined for the United States, possibly through Mexico.” This conclusion, apparently intended to compel a Presidential finding that Cuba is a major transshipment country for illicit drugs bound for the United States, is at odds with an all-source U.S. Government interagency assessment, which could not determine with any degree of certainty the final destination of the drug shipment. At a committee hearing held November 17, 1999, Assistant Secretary of State Rand Beers testified that “[w]hile we cannot state with absolute certainty where the shipment was ultimately destined, the preponderance of information indicates that it was destined for Spain.” At the same hearing, the chief of international operations for the Drug Enforcement Agency [DEA] added that “at this stage of the investigation, DEA has no evidence regarding the final destination of the cocaine-laden containers beyond Cuba. Our best assessment of all available information currently indicates that Spain was the most likely destination for the cocaine shipment after it reached Cuba.”

#### N. INVESTIGATION OF RUSSIAN THREATS TO UNITED STATES SECURITY

In the section discussing a January 4, 2000, field hearing on Russian threats to United States security in the post cold war era, the report states that “Stanislav Lunev [a former Soviet military intelligence colonel] gave compelling testimony about how the Soviet government asked him to find locations in the Washington, DC area to hide weapons of mass destruction.” Mr. Lunev, however, never testified that he was asked to find locations specifically for weapons of mass destruction, nor did he confirm that such weapons were ever hidden in the United States.

## II. SUBCOMMITTEE ACTIVITIES

### A. SUBCOMMITTEE ON THE CENSUS

#### *1. Investigations*

During the 106th Congress, the Subcommittee on the Census made repeated attempts to call into question the quality of the management of census operations. It is clear now that the 2000

census was a management success. The public responded to the census call by reversing a 30-year decline in the mail-back response rate. At the same time, census offices opened on time and were staffed and ready to go to work when the mail-back period ended; and milestones were met or exceeded throughout the country. Where problems arose, swift action by the regional offices or from Washington got things back on course. Preliminary analysis of the 2000 apportionment numbers suggest that this census is closer to the expected total population than any previous census.

The majority's report on the census 2000 includes a section called the "Rushed Census" which fails to accurately reflect the facts. In fact, the 2000 census is on track to be the fairest, most accurate census our Nation has ever conducted. The census to date is an operational success. Beginning with a mail-back response rate of 67 percent, reversing a decades-long decline, every major operation has been completed on or ahead of schedule and on budget. Early indications are that the count may well be the most complete in history. Any fair reading of the 2000 census would include an extended discussion of these successes, which the majority has neglected. However, even with these successes, it is impossible to eliminate the differential undercount without the use of modern scientific methods.

A majority staff report in July 2000 on 16 local census offices was based on data supplied by the Census Bureau to the subcommittee, data which senior Bureau staff repeatedly emphasized to the subcommittee staff are easily misinterpreted. Those cautions were ignored, and the resulting staff report seriously misrepresented the quality of the census effort in the profiled offices. The staff report relied on national check-in summary data. The data was never intended to be analyzed in isolation or without a comprehensive understanding of the conditions within each local census office. The Inspector General of the Commerce Department conducted a review of the 16 local offices cited in the majority's staff report. Perhaps most tellingly, it recommended corrective action in only 2.<sup>4</sup>

Throughout the 106th Congress, the subcommittee also questioned the statistical methods proposed for the 2000 census. While the results of that effort are not yet known, the operational success of the 2000 census forebodes operational success in the accuracy and coverage evaluation program.

There is overwhelming support within the statistical community for the use of statistical methods to correct for the errors in the census. The most recent report from the National Academy of Sciences' panel on the census said, "Change is not the enemy of an accurate and useful census; rather, not changing methods as the United States changes would inevitably result in a seriously degraded census."<sup>5</sup> The President of the Population Association of America has said, "The planned and tested statistical innovations [in the census] have the overwhelming support of members of the scientific community who have carefully reviewed and considered them. If their use is severely limited or prohibited, the 2000 Cen-

<sup>4</sup>Letter from Inspector General Johnny Frazier to Representative Dan Miller (Oct. 18, 2000).

<sup>5</sup>Panel on Alternative Census Methodologies, Committee on National Statistics, National Research Council, "Measuring a Changing Nation: Modern Methods for the 2000 Census" (1999).

sus planning process will be obstructed, and the result could be a failed census.”<sup>6</sup> The planned use of statistical methods in the 2000 census has also been endorsed by the General Accounting Office and the Department of Commerce Inspector General.

Commenting on the Census Bureau plan developed in response to the Supreme Court’s January 25, 1999, decision, the National Academy of Sciences Panel to Review the 2000 Census wrote that it “represents good, current practice in both sample design and post-stratification design, as well as in the interrelationships between them.”<sup>7</sup>

In a subsequent letter, that panel said it “commends the Census Bureau for the openness and thoroughness with which it has informed the professional community about the kinds of evaluations that it plans to conduct of the census and the A.C.E. data prior to March 2001.” The panel further wrote, “The papers presented at the panel workshop provide evidence of the hard work and professional competence of Census Bureau staff in specifying a series of evaluations that can inform the adjustment decision.”<sup>8</sup>

The 1990 census had serious problems. The net undercount increased by 50 percent over 1980. The error level was over 10 percent. There were 8.4 million people missed, 4.4 million people counted twice, and 13 million people counted in the wrong place. Despite these facts, the majority wants to block the use of statistical methods and rely on methods guaranteed to repeat the errors of the past. Throughout the 106th Congress, the majority failed to identify a single alternative that would correct for persons missed in the census, and even went so far as to consider introducing legislation to block the correction for persons counted twice. This would result in missing millions of people, and incorrectly counting millions of others twice. Turning history on its head, the majority has tried to portray the attempts to correct the 1990 census as a failure of statistical methods. In fact, the efforts to correct the 1990 census failed because political appointees in the Reagan administration forced the Census Bureau to reduce the sample size of the survey to correct for errors in the census. This political interference resulted in the inability of the survey to identify differences for small areas, which President Bush’s Secretary of Commerce then cited as his reason for not using the survey to correct the census.

While the operational successes of the 2000 census should be applauded, it goes without saying that it will not be perfect. As long as inequities remain in the census, we must continue to insist that the Census Bureau seek remedies to those inequities.

## 2. *Laws within the Jurisdiction of the Committee*

As the majority report points out, on January 25, 1999, in *Department of Commerce v. United States House of Representatives*, 525 U.S. 316 (1999), the Supreme Court ruled by a narrow 5 to 4 majority that the use of statistical sampling in the census was prohibited by law (13 U.S.C. 195) for the purpose of apportioning seats

<sup>6</sup>Letter from Douglas S. Massey (June 1996).

<sup>7</sup>National Academy of Sciences, Committee on National Statistics, “Letter Report of the Panel on Census Requirements in Year 2000 and Beyond” (May 3, 1999).

<sup>8</sup>National Academy of Sciences, Committee on National Statistics, “Letter Report of the Panel on Census Requirements in Year 2000 and Beyond” (Nov. 9, 2000).

in the House of Representatives among the States. Since the court decided the case on statutory grounds, it found no need to decide whether the Constitution also barred the use of modern statistical methods for purposes of congressional apportionment.

However, the majority fails to mention that the court went on to affirm that the law *requires* the Secretary of Commerce to use modern statistical methods, where feasible, for all other purposes. Writing for the majority, Justice O'Connor stated that the 1976 amendments to Title 13 U.S.C. changed the provision in law from one that "permitted the use of sampling for purposes other than apportionment into one that required that sampling be used for such purposes if 'feasible.'" Justices Rehnquist, Scalia, Kennedy, and Thomas joined Justice O'Connor. Furthermore, in dissenting opinions, Justices Breyer, Stevens, Souter, and Ginsburg expressed their belief that sampling should be allowed for both apportionment and nonapportionment purposes. Thus, all nine Justices supported the use of statistical methods for nonapportionment purposes.

Therefore, the Census Bureau is now required, if feasible, to use statistical methods for purposes of allocating Federal funds and providing data to States for redistricting.

### 3. Legislation

The majority's review of legislation during the 106th Congress omits any mention of the minority's position. Our views on the six bills which were reported by the full committee can be found more fully in the reports on them. Two deserve particular mention.

H.R. 472, the "Local Census Quality Check Act," would have added a new section to the Census Act to require a post census local review [PCLR] program very similar to the one conducted after the 1990 census. Dr. Barbara Bryant, Director of the Census Bureau during the Bush administration, testified before the Census Subcommittee that "Postcensus local review in 1990 was a well intentioned, but ineffective, operation. . . . Rather than repeat postcensus local review, with its disappointing and minuscule results, the Census Bureau determined to find a way for local governments to more fully participate in the census."<sup>9</sup> The majority's discussion also fails to mention the significant opposition the bill engendered from local elected officials around the country—the very people the PCLR program was designed to help. The 1990 program cost \$9.6 million and added about 81,000 housing units (about 0.08 percent) to the census rosters, and 30 percent of these units added were vacant. Because of those disappointing results, Congress passed, in 1994, the Address List Correction Act, sponsored by Representatives Sawyer (D-OH) and Ridge (R-PA), amending Title 13 U.S.C. to create a pre-census local review process. This law allows the Census Bureau to share its address list with local government officials, and for the address list to be modified based on local government input.

H.R. 928, the "2000 Census Mail Outreach Improvement Act," would have required either a blanket or targeted second mailing of the census questionnaire. Neither would be a good idea. The Cen-

<sup>9</sup>Testimony of Dr. Barbara Bryant before the Subcommittee on the Census (Feb. 11, 1999).

sus Bureau tested a blanket second mailing in a dress rehearsal and it didn't work. About 40 percent of the "second" forms returned during the dress rehearsal were duplicates. If that rate had been repeated at the national level in 2000, there would have been over 11 million duplicates, which would have significantly delayed data processing operations and potentially introduced significant errors into the data. A National Academy of Sciences panel also advised that a blanket second mailing could reduce the accuracy of the census. A targeted second mailing would have delayed the beginning of nonresponse follow-up operations by at least a month. Experience and research indicate that the longer the delay between Census Day and the start of nonresponse follow-up, the more inaccuracies are introduced to the census data.

#### B. SUBCOMMITTEE ON THE CIVIL SERVICE

The minority has no additional views on this section of the report.

#### C. SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

The report fails to include pertinent facts and testimony in its descriptions of subcommittee hearings. For example, the report states that the subcommittee hearing on the applicability of the Privacy Act to the White House highlighted "past privacy abuses by the Clinton administration." What the majority characterizes as "privacy abuses," however, were actually actions taken by the Executive Office of the President [EOP] based on the long-standing policy that the Privacy Act does not apply to the EOP. This policy, first articulated by then-Assistant Attorney General Antonin Scalia (now an Associate Supreme Court Justice) in April 1975, has been adopted by every administration since 1975, both Democratic and Republican.

#### D. SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA

The minority has no additional views on this section of the report.

#### E. SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

##### 1. Investigations

##### a. *"Making the Federal Government Accountable: Enforcing the Mandate for Effective Financial Management"*

The activities report repeats conclusions drawn in two majority reports: House Report 106-170 and House Report 106-802. Members of the minority agreed that much work remains to be done with regard to Federal financial accountability; however, the assignment of poor grades to agencies merely politicizes the process and does not take into account the different circumstances and successes the Federal Government has made to date. The position taken by members of the minority is explained in the minority views to the majority reports.

*b. "Management Practices at the Office of Workers' Compensation Programs, U.S. Department of Labor"*

The activities report discusses the findings in House Report 106–1024. Minority members agreed with the recommendation that the Office of Workers' Compensation Programs [OWCP] improve its communications problems and improve its customer services. However, the majority report lacked balance, did not adequately acknowledge the progress the OWCP has made to date, and failed to sufficiently document many of its recommendations. The position taken by members of the minority is explained in the minority views to the majority report.

*c. "How Vulnerable Are Federal Computers?"*

The activities report discusses the subcommittee's assignment of poor grades to agencies on the quality of their computer security policies. The assignment of grades, however, politicizes the process and does not take into account the special circumstances faced by the Federal Government and the successes the Federal Government has made to date. Additionally, the subjective format of the grading system could, in some cases, unfairly portray the significant efforts an agency has made to take corrective action. It should be noted that not all agency computer systems are critical to national security, and that Congress has not always provided adequate funding to agencies so that they might meet the requirements. Improving Federal computer security is a very complicated, timely, and costly process. While some agencies have been moving forward, it is clear that the Federal Government has a long way to go before an effective, comprehensive Federal computer security system is in place.

*d. Creating an Office of Management*

The activities report's conclusion that there is a need for a statutorily-mandated Office of Management within the executive branch is questionable. Office of Management and Budget [OMB] Director Jack Lew, in his April 7, 2000, testimony before the subcommittee, noted that "In the real world, resource allocation and management are fundamentally interdependent. Given the complex systems that are necessary to address public problems, we must operate with the consideration of management and budget together, not apart. This reflects the realization that these two sets of concerns are in fact intertwined in actual operations." He further noted that OMB provides the President with the management expertise through OMB's Resource Management Offices [RMOs]. The Director stated that "RMOs play a pivotal role in . . . management guidance to Federal agencies. Staff are experts in their program and policy areas and are responsible for . . . implementation of government-wide management initiatives. While each unit has its own focus, OMB . . . fulfills its responsibilities because of continuing collaboration among its offices and divisions."

Additionally, OMB already has a mechanism in place to address critical management challenges facing the Federal Government. In order to improve government management, each year the Director of OMB, after consulting with the President, the Vice President, and others in the administration, designates a series of Priority



Management Objectives [PMOs]. Issues designated as PMOs receive coordinated, sustained, and intensive management attention. For example, in 1999 PMO No. 1 was the year 2000 challenge. In 2000, PMO No. 1 was to use performance information to improve program management and make better budget decisions; improving financial management information was PMO No. 2.

It is unclear whether creating a new management agency will improve government management or whether separating management functions from budget functions will backfire and result in less attention being placed on management reform at Federal agencies. Presidents can create organizations within the executive branch that focus on management reform. In addition, a number of high-level interagency working groups focused on improving government management have taken hold, such as the Chief Financial Officers Council and the Chief Information Officers Council. Alternative approaches to improving management should be encouraged and explored. An Office of Management is just one approach.

## *2. Legislation*

The Cyber Security Information Act of 2000, H.R. 4246, as discussed in the activities report, seeks to secure the disclosure and protected exchange of information related to cyber security between the public sector and the private sector. It is important to appreciate the need to protect our critical infrastructure and support the efforts being made to create public-private partnerships for the sharing of information. However, the Freedom of Information Act [FOIA] has worked extremely well over the last 25 years, ensuring public access to important information while protecting against specific harms that could result from certain disclosures. As currently drafted, FOIA provides protections for national security, trade secrets, and personal information. Overly broad new exemptions are unnecessary and could adversely impact the public's right to oversee important and far-reaching governmental functions. Any action by the subcommittee to provide information assurance to critical infrastructure industries should be carefully weighed against preserving the public's fundamental right to know.

### F. SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

#### *1. Investigations*

##### *a. Legal Effect of Agency Guidance Documents*

As described in detail in the minority views filed with the committee's October 26, 2000, report (H. Rept. 106-1009), some of the subcommittee's conclusions regarding the effect of agency guidance are not supported by the record. Both the regulated community and the public appreciate when agencies provide compliance assistance and quickly answer questions about the effect of statutes and regulations. In fact, Congress passed the Small Business Regulatory Enforcement Fairness Act in 1996 in part to mandate that agencies provide guidance to small businesses and answer questions asked by the public. Any recommendations for change to the guidance process should not discourage agencies from providing timely compliance assistance.

*b. Paperwork Reduction*

Many conclusions in this section of the report are controversial and are not supported by the record before the subcommittee. This section of the report relies heavily on General Accounting Office testimony regarding paperwork reduction provided on April 15, 1999, and April 12, 2000. However, the report fails to point out that GAO found that much of the paperwork increase was due to factors outside the control of the Office of Management and Budget [OMB] and the agencies. GAO testified that approximately 90 percent of the increase in the paperwork burden in fiscal year 1999 was attributable to the Internal Revenue Service [IRS]. Most of this increase was due to increased economic activity and implementation of tax cuts passed by Congress.

*c. Congressional Review Act*

The conclusions in this section of the report are controversial and not necessarily supported by the record before the subcommittee. There is a great deal of disagreement over which agency statements are covered by the Congressional Review Act [CRA]. Many experts believe that the CRA would be so burdensome as to be impractical if its requirements were interpreted broadly, as the subcommittee recommends.

*d. Global Climate Change*

This section of the report is full of erroneous conclusions that are contradicted by much of the evidence and testimony presented to the subcommittee. Many of the subcommittee's conclusions are based on studies sponsored by fossil fuel industries responsible for a significant amount of greenhouse gas emissions. Moreover, the record does not indicate that the administration has attempted backdoor implementation of the Kyoto protocol.

Fundamentally, the majority has conducted committee activity on climate change as though it is unaware of the United Nations Framework Convention on Climate Change [UNFCCC] which was negotiated by President Bush and ratified by the United States Senate. In this international agreement, the United States committed to the objective of stabilizing greenhouse gas concentrations at a level that would prevent dangerous interference with the climate system. The UNFCCC includes a commitment to implement national policies to reduce greenhouse gas emissions.

Regardless of the status of the Kyoto protocol, the United States has already agreed to reduce greenhouse gas emissions, and is obligated to do so. This fact reveals the falsehood of the majority's basic premise that no activity on climate change can be undertaken without effectively implementing the Kyoto protocol.

*e. Other Environmental Protection Agency [EPA] Initiatives*

This section of the report is controversial and not necessarily supported by the record before the subcommittee. The Tier II/Gasoline Sulfur rule establishes more protective tailpipe emissions standards for all passenger vehicles, including sport utility vehicles [SUVs], minivans, vans, and pick-up trucks. It closes a significant loophole by ensuring that SUVs and other light-duty trucks are subject to the same pollution standards as cars. It also lowers

standards for sulfur in gasoline, which will ensure the effectiveness of low emission-control technologies in vehicles and reduce harmful air pollution. When the new tailpipe and sulfur standards are implemented, Americans will benefit from the clean-air equivalent of removing 164 million cars from the road. These new standards require passenger vehicles to be 77 percent to 95 percent cleaner than those on the road today and reduce the sulfur content of gasoline by up to 90 percent. The rule is supported by the States, environmental groups, automakers, and oil companies.

The report also fails to point out that EPA, courts, and powerplant owners themselves apparently disagree with the subcommittee's view that life extension projects, capacity expansion projects, and other modifications of powerplants should not subject a facility to new source review. Three major utilities have settled their enforcement actions with EPA and have agreed to modernize their powerplants and achieve major air pollution reductions.

*f. Department of Labor*

This section of the report which addresses the "Baby UI" and ergonomics rules is full of erroneous conclusions that are contradicted by much of the evidence presented to the subcommittee.

The report fails to note that ergonomic injuries account for one third of all workplace injuries, costing American workers and businesses billions of dollars a year. The ergonomics rule is expected to save \$2 for every \$1 spent on compliance (estimates indicate annual benefits of \$10 billion and annual costs of \$4.9 billion).

Furthermore, the subcommittee's investigation of the ergonomics rule was flawed. For instance, the majority took the unusual step of asking professors, graduate students, and other private individuals to gather, copy, and send documents that could have been more easily obtained directly from the Department of Labor. These requests for information employed an intimidating tone, causing the individuals to be concerned that they might need to hire legal counsel. In addition, the majority staff called Department of Labor staff at home to request information. And the majority levied personal attacks on public servants instead of focusing on the merits of the ergonomics proposal.

The report also inaccurately states that the Department of Labor did not provide information which it had promised to deliver to the subcommittee before Congress adjourned. This information was provided.

Moreover, in discussing a possible conflict of interest, the report fails to discuss applicable conflict-of-interest laws and government-wide ethics regulations. The staffer in question met and exceeded all of these legal requirements.

Similarly, in its discussion of the Department of Labor's use of independent contractors, the report fails to mention the Department of Labor's Inspector General's Semiannual Report to Congress, which addressed the use of contractors in ergonomics rule-making by the Occupational Safety and Health Administration [OSHA]. The report found:

- OSHA has long used contractors to review comments and testimony in other rulemakings;

- there are quality controls and checks in place to ensure that the contractors are not working without OSHA oversight;
- competitive procedures were generally used to select these contractors.<sup>10</sup>

Also, the report cites anonymous communications at length without confirming the allegations in those communications by independent subcommittee investigation. Thus, the report appears to give rumors the status of subcommittee findings.

#### *g. State Waiver Requests*

This section of the report recommends streamlining the waiver process. However, the Clinton administration has already recognized the importance of immediate review of State applications for waivers to grant requirements. Executive Orders 12875, 13083, and 13132 provide that each agency must “review its waiver application process and take appropriate steps to streamline that process” and that “[e]ach agency shall, to the fullest extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days.”

#### *h. State Environmental Initiatives*

Although State environmental initiatives play a key role in targeting local priorities, it is also important to retain a strong Federal presence because Federal laws set a minimum standard of environmental protection, ensure Federal intervention when there is State inaction, establish a level playing field, and provide a framework for spreading successful technologies and programs.

Without a minimum Federal standard, there could be a “race to the bottom” as States lower their standards in order to lure business. In fact, 19 State legislatures have passed laws that prevent the States from being any more stringent in any regulation than the Federal Government.

#### *i. Reformulated Gasoline Regulations and Midwest Gasoline Prices*

The reformulated gasoline [RFG] program has been a success in the Chicago/Milwaukee area. Monitors in Wisconsin indicate that, during the first year of the RFG program (1995), Milwaukee experienced a 50 percent reduction in volatile organic chemicals. Furthermore, since the introduction of RFG 5 years ago, Milwaukee experienced a 50 percent reduction of benzene, a known human carcinogen, and a 40 percent reduction in carbon monoxide.

The RFG requirements do not appear to have been the major factor contributing to the high price of RFG in the spring and summer of 2000 in the Chicago/Milwaukee area. Thirty percent of the Nation’s gasoline consumption is cleaner-burning RFG. During the price hikes, the average price of RFG outside the Chicago/Milwaukee area was 2 cents lower than conventional gasoline.

The Federal Trade Commission is investigating whether the price hikes were due to price fixing. Although the investigation is not complete, the price for RFG gas dropped precipitously once the

<sup>10</sup>Department of Labor, Inspector General, “Semiannual Report to the Congress,” 65 (Apr. 1, 2000 to Sept. 30, 2000).

FTC announced on June 15, 2000, that it would be investigating the industry's pricing practices. In addition, Public Citizen released figures on first quarter profits that showed that major oil companies had profit increases as high as 473 percent, 371 percent, and 257 percent over 1999 figures.

## 2. Legislation

### *a. H.R. 391*

The minority's objections to the Small Business Paperwork Reduction Act Amendments of 1999 (H.R. 391) are described in detail in the minority views filed with the committee's February 5, 1999, report on this legislation (H. Rept. 106-8). The discussion of H.R. 391 in the activities report fails to accurately describe the legislation. H.R. 391 has been called "The Lawbreaker's Immunity Act" because it prevents Federal agencies from levying fines even in cases where a business deliberately violates Federal law. According to the Department of Justice: "[A]n automatic pass for first time offenders would give bad actors little reason to comply until caught. The bill will reward bad actors and those who would knowingly or in bad faith violate Federal information collection requirements."<sup>11</sup>

The civil penalty provisions of H.R. 391 do not address merely technical violations of paperwork requirements. They apply to all Federal reporting, recordkeeping, and disclosure requirements, including the failure to disclose important information to the public, such as warning consumers of the dangers of a product or prescription drug. Moreover, although the bill purports to address violations by "small businesses," the definition of a "small business concern" includes many large businesses, including oil refineries with 1,500 employees and pharmaceutical manufacturers with 750 employees. The provisions also preempt State law.

The range of adverse effects of H.R. 391 is extraordinarily broad. If enacted, it would undermine enforcement of nursing home standards, environmental and labor laws, and food safety regulations. It would also affect drug enforcement, illegal immigration, pension security, financial markets, highway safety, product safety, and more.

### *b. H.R. 1074*

The minority's objections to the Regulatory Right-to-Know Act of 1999 (H.R. 1074) are described in detail in the minority views filed with the committee's June 7, 1999, report on this legislation (H. Rept. 106-108). The section of the activities report discussing H.R. 1074 fails to accurately describe this legislation. H.R. 1074 is a controversial bill requiring extensive accounting of the annual costs and benefits of regulations. H.R. 1074 would require, for the first time, cost/benefit analyses for each agency, program, and program component, and extensive new impact analyses. When testifying in opposition to H.R. 1074, OMB explained that H.R. 1074 would require it "to compile detailed data that they do not now have, and undertake analyses that they do not now conduct, using scarce

<sup>11</sup> Letter from Dennis Burke, Acting Assistant Attorney General, U.S. Department of Justice, to Chairman Dan Burton (Feb. 2, 1999).

staff and contract resources, regardless of any practical analytic need as part of the rulemaking process.”<sup>12</sup>

H.R. 1074 would require analysis of the estimated 5,000 new rules promulgated each year and an analysis of the many rules already on the books. In addition, this information would need to be compiled in a number of different ways to show the costs and benefits of each agency, program, and program component. Thus, the cost of H.R. 1074 could be substantial.

Further, because there are so many data gaps and methodological problems, the administration warns that “[a]ggregate estimates of the costs and benefits of regulation offer little guidance on how to improve the efficiency, effectiveness, or soundness of the existing body of regulations.”<sup>13</sup>

Professor Lisa Heinzerling, an expert on regulatory accounting, testified:

It is ironic that H.R. 1074 is called the “Regulatory Right-to-Know Act.” It is ironic because, if this bill is passed, the public will likely know less rather than more about Federal regulation. The bottom-line estimates of costs and benefits required by this bill hide moral and political judgments behind a mask of technical expertise. The public is likely to mistake the estimates’ precision for accuracy and their technicality for objectivity. In that case the numbers generated as a result of this bill will be worse than useless. They will threaten the very public awareness the bill purports to embrace.<sup>14</sup>

#### *c. H.R. 2221*

The Small Business, Family Farms, and Constitutional Protection Act (H.R. 2221) was not referred to this committee. Therefore, it is not clear why H.R. 2221 is discussed in the activities report. H.R. 2221 is based on the fundamental misunderstanding that any action to reduce greenhouse gas emissions is an effort to implement the Kyoto protocol.

#### *d. H.R. 2245*

The Federalism Act of 1999 (H.R. 2245), on its surface, resembles the Unfunded Mandate Reform Act [UMRA], which requires agencies to assess the impacts of Federal mandates on State and local governments. Some of the details of H.R. 2245, however, undermine the key compromises that made passage of UMRA possible, including UMRA’s limitations on scope and judicial review. H.R. 2245 would also expand the number of impact statements that have to be prepared by a factor of 100—from 50 major rules to over

<sup>12</sup>Testimony of G. Edward DeSeve, Deputy Director for Management, Office of Management and Budget, before the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs (Mar. 24, 1999).

<sup>13</sup>Office of Management and Budget, Office of Information and Regulatory Affairs, “Report to Congress on the Costs and Benefits of Federal Regulations,” 5 (1998).

<sup>14</sup>Testimony of Professor Lisa Heinzerling, Georgetown University Law Center, before the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs (Mar. 24, 1999). Professor Sidney Shapiro, another expert on regulatory accounting, testified on the Senate version of H.R. 1074, stating “the legislation is likely to mislead, rather than inform, the American public.” Testimony of Professor Sidney Shapiro, School of Policy and Environmental Affairs, Indiana University, before the Senate Committee on Governmental Affairs (Apr. 22, 1999).

5,000 total rules. H.R. 2245 was referred to the subcommittee, but never considered in mark-up. The subcommittee considered a substitute bill which was never considered by the full committee.

*e. H.R. 2376*

H.R. 2376 (untitled) was not referred to the subcommittee. However, the subcommittee did hold a joint hearing on this bill with the Subcommittee on Government Management, Information, and Technology. H.R. 2376 provides that agencies establish expedited procedures for granting waivers to States for Federal grant programs if another State has already been granted a similar waiver. Executive orders, however, already direct agencies to complete waiver requests in 120 days if possible. Expedition of a 120-day process could preclude adequate review, making granting waivers an automatic exercise.

*f. S. 1198 and Related Bills*

The report's discussion of the Truth in Regulating Act of 2000 (S. 1198) contains numerous erroneous conclusions. The report's claim that, under S. 1198, the General Accounting Office would not retain its traditional role as auditor is patently wrong. The GAO is limited to reviewing the adequacy of the agency's analyses. GAO may not conduct its own analysis of the rule, alternatives, or any missing analyses. GAO may only review public data to the extent GAO needs to in order to audit the agency's work.

The legislative history is clear. This committee did not consider S. 1198 or its companion bill, H.R. 4763, introduced by Representative Condit. Instead, it considered H.R. 4744 which did not clearly establish that GAO was limited to auditing the agencies' work. For this reason, H.R. 4744 did not enjoy the same support that S. 1198 did. GAO expressed serious concerns about the scope of the analyses and public interest groups opposed the bill. A more detailed description of the problems with H.R. 4744 is provided in the minority views filed with the committee's July 20, 2000, report on this legislation (H. Rept. 106-772).

During the committee's consideration of H.R. 4744, Representative Kucinich and Representative Waxman offered the text of S. 1198 as a substitute amendment. Representative Kucinich and Representative Waxman explained that one of the key purposes of the Senate language was to clarify that GAO would retain its traditional role as auditor and would not perform its own analyses. Unfortunately, the amendment was rejected by the committee on a party-line vote. However, H.R. 4744 was never considered by the full House. Instead, S. 1198 was passed by the House under suspension of the rules and later signed into law.<sup>15</sup>

G. SUBCOMMITTEE ON NATIONAL SECURITY, VETERANS AFFAIRS, AND INTERNATIONAL RELATIONS

As described in detail in the minority views filed with the committee's April 3, 2000, report on the anthrax investigation (H. Rept. 106-556), members of the minority had several concerns about the

<sup>15</sup>The House also considered and passed H.R. 4924 under suspension of the rules. H.R. 4924 is substantially similar to S. 1198 and provides that GAO retain its traditional role of auditor. H.R. 4924 was never considered by the Senate.

anthrax vaccine program operated by the Department of Defense [DOD]. For that reason, we agreed with many of the report's findings. We agreed, for example, that the anthrax program was vulnerable to supply shortages and price increases. We also agreed that a reduced shot series potentially could bring down the number of adverse events experienced by service members. And we agreed with proposals to conduct further study on the safety of the vaccine. We submitted dissenting views, however, because we disagreed with the report's primary recommendations to suspend the program and reclassify the anthrax vaccine as "experimental."

As mentioned in the minority views, Food and Drug Administration [FDA] officials testified on several occasions that they believe the vaccine is safe. In fact, the majority report itself stated that the vaccine "may be as safe as many other approved products"<sup>16</sup> and "can be considered nominally safe."<sup>17</sup> In addition, in their appearances before the subcommittee and committee, officials from the General Accounting Office never stated that they believed the vaccine is unsafe. Instead, both the report and GAO argued that the vaccine's safety had not been demonstrated sufficiently. Unlike FDA officials, however, Members of Congress have little or no medical expertise. Without additional information, the minority found we were not in a position to overturn FDA's judgment.

In addition, the report acknowledged that "much of the information regarding the BW (biological weapons) capabilities and intentions of potential adversaries, and even allies, is classified."<sup>18</sup> Yet members received no classified information at the full committee level, and the subcommittee had no closed hearings in which it could consider such information. As a result, the report's conclusions that "the threat remains tactically limited and regional" and that the program "is designed to reach far beyond those at risk" do not reflect DOD's full judgment about the actual extent of the threats involved.

#### H. SUBCOMMITTEE ON THE POSTAL SERVICE

The U.S. Postal Service is a highly successful Federal Government entity. For over 200 years it has provided the affordable delivery of letters across our country. It is remarkable that the men and women working for the Postal Service are able to deliver nearly 200 billion pieces of mail every year with so few problems. It is equally impressive that an overwhelming number of Americans are satisfied with the service they receive.

To that end, on July 15, 1999, Ranking Member Representative Henry A. Waxman and Subcommittee on the Postal Service Ranking Member Representative Chaka Fattah sponsored and introduced legislation, H.R. 2535, the Postal Service Enhancement Act. This measure was cosponsored by members of the Subcommittee on the Postal Service, Representatives Danny K. Davis and Major Owens, and many other members of the Government Reform Committee. H.R. 2535 began from the premise that the U.S. Postal

<sup>16</sup>House Committee on Government Reform, "The Department of Defense Anthrax Vaccine Immunization Program: Unproven Force Protection," 106th Cong., 2d Sess., 3 (Apr. 3, 2000) (H. Rept. 106-556).

<sup>17</sup>Id. at 34.

<sup>18</sup>Id. at 18.



Service performs a valuable service that should be strengthened and enhanced, not subject to radical transformation proposed in majority bills, in particular H.R. 22. H.R. 2535 makes three widely endorsed changes in the postal laws: (1) it provides the Postal Service with enhanced flexibilities in setting rates, while simultaneously ensuring that one class of mail does not subsidize another class of mail; (2) it establishes a commission to investigate and report on steps the Postal Service can take to improve the efficiency of mail delivery; and (3) it provides the Postal Rate Commission [PRC] with additional authorities to obtain information from the Postal Service.

H.R. 2535 did not contain controversial proposals that were contained in H.R. 22, such as imposing arbitrary price caps on postal rates, privatizing postal services through the creation of a private law corporation, or allowing competition in the delivery of letters.

The majority has alleged that a decline in mail volume would place \$17 billion of postal revenue at risk and that the Postal Rate Commission [PRC] is a bottleneck in the classification and rate setting process. With regard to at-risk postal revenue, the PRC chairman, in a letter responding to Representative Fattah's request to review and analyze the matter, provided great insight into achieving a more accurate projection of mail volume and postal revenue.<sup>19</sup> Further, the PRC chairman has by letter responded to complaints that the PRC is a bottleneck in the classification and rate setting process.<sup>20</sup>

As we contemplate postal legislation, we should support measures which will not dismantle the Postal Service. Instead, we should work to strengthen our postal system so that it continues to meet future efficiency needs, service demands and technological changes.

[The exhibits referred to follow:]

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<sup>19</sup> Letter from Edward J. Gleiman to Representative Chaka Fattah (Jan. 10, 2000) (attached as exhibit 2).

<sup>20</sup> Letter from Edward J. Gleiman to Representative Chaka Fattah (June 30, 2000) (attached as exhibit 3).

Exhibit 1

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VIA HAND DELIVERY

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

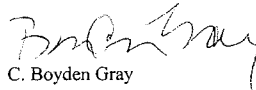
Dear Mr. Chairman:

We were dismayed to see your Committee Report, "Janet Reno's Stewardship of the Justice Department," made final without providing us with the right to review and comment as promised in response to my letter of September 21, 2000. Accordingly, there is no point in detailing here the errors in that Report that we would otherwise have identified.

We would nevertheless make the following observations which we would hope you could make part of the record: (1) as the Minority Report makes clear, Rebekah Poston never asked her investigators to do anything illegal ("[I]n fact, contrary to the Majority's allegations, no evidence received in the Committee demonstrates that Ms. Poston instructed private investigators to break the law"); (2) throughout the hearing, the two investigators at issue, Philip Manuel and Richard Lucas, each testified under oath that Ms. Poston had never asked them to do anything which they thought was illegal; (3) the Department of Justice ultimately granted her request for information by informing her that there was no information to provide in any event; and (4) it was entirely improper to hold and structure a hearing for the evident and sole purpose of provoking a claim of Fifth Amendment rights in order to create the impression that Ms. Poston had done something improper.

Accordingly, we respectfully request that you include this letter as part of the Congressional record relating to the above-described report.

Sincerely,



C. Boyden Gray

cc: Honorable Henry A. Waxman



## POSTAL RATE COMMISSION

Washington, DC 20268-0001

Office of the Chairman

January 10, 2000

The Honorable Chaka Fattah  
1205 Longworth House Office Building  
Washington, DC 20515-3802

Dear Congressman Fattah:

I am writing in response to your letter which asked my office to review and analyze a forecast presented by the General Accounting Office and related implications discussed at the October 21, 1999, oversight hearing held by the Subcommittee on the Postal Service.

The forecast in question, which was based on information provided by the Postal Service, projected an annual decline in First Class mail volume of 2.5 percent from 2003 through 2008, due largely to the diversion of transactional mail, i.e., bill presentment and payment mail, to electronic alternatives. Subsequent discussions during the hearing included assertions that a volume decline of this magnitude could place \$17 billion of Postal Service revenue at risk and result in a 17 cent increase in the price of a First Class stamp.

Your request raises a number of complex theoretical and technical issues. First and foremost is whether the numbers presented by the General Accounting Office represent the product of an established and tested forecasting model or simply reflect a scenario that provides a desired result. Another important issue is whether one can draw reasonable conclusions regarding the impact of changes in First Class volumes when those projections are presented in a vacuum. This in turn raises questions concerning the use of "revenue at risk" in projecting the impact of any downturn in volume and how the timing of future rate increases might mitigate the overall increase required to offset a decline in volume.

With respect to the "forecast" of an annual increase in First Class volume of 1.8 percent through 2002, followed by an annual 2.5 percent decrease in years 2003 through 2008, I am not aware of any Postal Service model upon which these projections may be based. This is not to suggest, however, that the USPS numbers presented by the GAO represent an unreasonable scenario.

Indeed, in its study entitled Mail-Intensive Industries to 2010: Rethinking Communications, the Institute for the Future projects an average annual decline of 1.2 percent in financial services letter mail statements and a 1.6 percent decline in utilities and telecommunications letter mail statements in North America. [Table 8-17 at page 103] However, apropos the wisdom of drawing rate implication conclusions from a scenario involving just one type of mail, the Institute's summary growth forecast for six consumer-oriented industries notes that there will be a substantial increase in letter mail associated with advertising and catalogues. [At page 102] Moreover, the study projects a significant increase in goods delivered to couriers and surmises that the posts have an opportunity to play a role, i.e., realize additional volumes, in this growth area. [At page 46] Such an increase would offset or, at the very least, mitigate the impact on First Class rates of declining transactional mail volumes.

Also relevant in evaluating whether the volume projections presented at the hearing should be accorded great weight is the output of the Service's Legislative Reform Simulation Model. The volume assumptions for First Class mail used in this PriceWaterhouseCoopers-developed model show a generally less precipitous, non-linear decline beginning one year earlier and totaling a several percent less cumulative decline than the numbers presented at the hearing. As is the case with the Institute's study, this model assumes a significant increase in overall volume for the same period.

Turning now to the practical implications of declining First Class mail volume as presented at the hearing.

The Commission's technical staff has performed analyses that consider possible effects on First Class letter mail rates resulting from the projected volume decreases. It is an issue that necessarily entails numerous assumptions and considerations. Even under the most dire "worst case" scenario, however, a 17 cent increase in First Class postage substantially overstates the rate increase required to cope with the impact of volume diversion based on the volume forecast provided by the Postal Service to GAO. In fact, the 17-cent figure is approximately twice the increase in the First Class rate that would occur at the end of the forecast period under a worst case outlook. Moreover, this worst case scenario is unrealistic and overstates the impact, as explained below. It is included for completeness.

The Commission analyses utilize First Class revenue and attributable cost data from the test year, FY 1998, used in the most recent rate case, Docket No. R97-1. Therefore, they use constant FY 1998 dollars as forecast for that year in the Commission's decision.

These analyses focus on the period FY 2003 - FY 2008, the years of projected volume decline, and estimates what the First Class rate would be in the last year (2008) of the forecast period. Thus, it ignores the effects of volume increases in the period 1999-2002, which in reality would serve to mitigate rate increases required in the period 2003-2008. The analyses also freeze the First Class institutional cost contribution at a projected 2002 amount, the last year of projected volume growth, and assume that the annual First Class contribution amount needed in succeeding years remains at the 2002 level.

For the period 2003-2008, the Commission staff study varied the length of the rate cycle and the timing of the rate change within a rate cycle. The First Class rate required in 2008 is directly related to these variables, and it is particularly sensitive to the timing of the rate change within a cycle. The study's results are presented in Tables 1 and 2 of this response.

Table 1 shows projected results for First Class letter mail, assuming no rate increase in the period 1999-2008. It uses 2002, the last year of volume increases, as the jump-off point. Column (9) shows that the annual year-to-year amount of lost contribution is \$377 million in 2003 and decreases to \$332 million in 2008. Column (10) indicates that the amount of annual contribution in 2008 is \$2,124 million less than it was in 2002, before the Postal Service-forecast volume decreases occur. Column (12) shows that the cumulative loss in contribution for the period 2003-2008 is \$7,590 million. This is the amount of lost contribution that has to be recovered by rate increases in the period 2003-2008.

Table 2 presents the results of recovering the lost contribution assuming different rate cycle lengths and different timing of rate changes within a cycle. There are numerous combinations of cycle length and implementation of timing within a cycle, and the analyses presented are not exhaustive. The scenarios shown were selected because they include the lower and upper bounds, as well as more realistic examples between the extremes, in terms of rate cycle length and rate change implementation within a cycle.

Scenario 1 assumes a one-year rate cycle. If First Class rates are changed annually, those rates would have to rise by about 0.4 cents per year. The rate at the end of the period, 2008, would be about 2.41 cents higher than the rate in 2002. This and other scenarios shown obviously represent theoretical exercises, since the First Class rate has traditionally been set in one cent increments; however, these scenarios provide insight into the magnitude of required rate changes to compensate for First Class volume declines.

The second case shown, Scenario 2, assumes a two-year rate cycle with rate changes occurring in the second year of the two-year cycle. The First Class rate required at the end of the 2003-2008 period is 2.82 cents above the 2002 level, and less than one-half cent above that required in Scenario 1. This scenario illustrates a result that becomes more pronounced in subsequent scenarios: a rate increase in the final year of the first multiple year rate cycle sets in place a rate for the next rate cycle that is higher than necessary for that cycle. This produces the erratic sequence of oscillating rate increases shown in Scenario 2, where increases for 2004, 2006, and 2008, are 1.15 cents, 0.43 cents, and 1.25 cents, respectively. If extended two more years (2010) under the same set of assumptions, the increase would again be less than that shown for 2008.

Scenarios 3 and 4 incorporate a three-year rate cycle, and Scenario 3 highlights the phenomenon displayed in Scenario 2. An increase in the final year of the three year rate cycle is assumed in Scenario 3 and would produce an actual rate decrease in the final year of the second rate cycle (2008). This is a result of the same effect discussed in connection with Scenario 2, where rate increases in the final year of the first cycle set the rate so high that in the next cycle lesser increases, or even decreases, occur. On the other hand, Scenario 4 assumes that rate changes occur in the middle of the cycle, in effect a three-year test period, and this results in an orderly series of rate changes (1.15 cents and 1.25 cents). In the final year of the second cycle the rate would be 2.40 cents above the 2002 rate. The 2008 rate in Scenario 4 is virtually the same as that produced by Scenario 1, which assumed rate increases each year. Scenario 4 corresponds to historical patterns, or at least popular perceptions of historical patterns: it incorporates a three year cycle, where the rate set is presumably high in the first year, about right in the second year, and a little low in the third year of the rate cycle.

Scenario 5 is an extreme case assuming one rate cycle and a rate change in the final year of the six-year cycle, i.e., no rate changes for years 2003-2007 and a change in 2008. Under this scenario the rate increase in 2008 would be 8.60 cents. The increase is so high because it makes up all the lost contribution from the previous five years in one year. It should be noted that in the past, when substantial shortfalls left the Postal Service with a significant deficit, that deficit has been recovered gradually, rather than in a single large rate increase. And as discussed above, previous scenarios have shown that catch up increases in the last year of rate cycles leave the rate too high for the next cycle. This scenario produces an artificially high rate in the last year, 2008, and appears unreasonable.

5

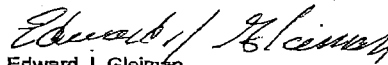
To sum up the study's findings, a rate about 2.4 cents higher than the 2002 rate appears necessary to compensate for the First Class contribution lost as a result of volume diversion in the period FY 2003-2008. This assumes that an orderly series of rate changes, each year or every three years, is desirable.

The highest rate in the final year of the period under study occurs only if rate changes are deferred and "catch up" of lost institutional contribution is made all in one year. However, this results in a rate too high, probably much too high, for subsequent years. Moreover, this scenario appears to be economically unsound and politically unacceptable. In any event, the rate in 2008 would be 8.6 cents above the 2002 level, a large increase, but still far below the postulated 17-cent increase that inspired this study.

The assumptions underlying this study are presented in table 3. In addition to those noted in the above narrative, it is important to highlight two other assumptions. First, it is assumed that lost First Class contribution is recovered from First Class mailers by increasing First Class rates. Other mail classes are not considered subject to future diversion, are expected to grow, and could possibly help make up the lost First Class contribution. The second assumption involves variable costs, which constitute about two-thirds of Postal Service costs. The study uses the same methodology used in rate cases which assumes that variable costs increase and decrease proportionally with volume. If the Service finds that it is unable to shed variable costs when volume decreases, rates would have to be higher. However, forecasted volume does not start declining until 2003, and the long lead time should give the Postal Service sufficient notice that fundamental change may be coming.

Please let me know if I can be of further assistance on this or other matters.

Sincerely,

  
Edward J. Gleiman

Enclosures

Table 1  
GAO/Postal Service Volume Scenario Applied to First-Class Letter and Sealed Parcel Subclass  
Assuming No Rate Change

Fiscal Year	Forecast Volume of Letters & Sealed Parcels (Millions)	Average Annual Percentage Change (2)	Annual Change in Volume (3)	Revenue Per Piece (Cents) (4)	Revenue (\$ Millions) (5)	Attributable Cost Per Piece (Cents) (6)	Attributable Cost (\$ Millions) (7)	Contribution to Inst. Costs to Inst. Costs From FY 2002 (\$ Millions) (8)	Annual Change in Contribution to Inst. Costs From FY 2002 (\$ Millions) (9)	Changes in Contribution to Inst. Costs From FY 2002 (\$ Millions) (10)	Cumulative Change in Contribution to Inst. Costs From FY 2002 (\$ Millions) (11)
1998	95,648			34.95	33,424	20.28	19,393	14,031			
1999	97,389	1.8%	1,722	34.95	34,026	20.28	19,742	14,284	253		
2000	99,122	1.8%	1,733	34.95	34,638	20.28	20,097	14,541	257		
2001	100,908	1.8%	1,784	34.95	35,262	20.28	20,459	14,803	262		
2002	102,722	1.8%	1,816	34.95	35,896	20.28	20,827	15,069	266		
2003	100,154	-2.5%	(2,568)	34.95	34,989	20.28	20,306	14,593	(377)	(377)	(377)
2004	97,650	-2.5%	(2,504)	34.85	34,124	20.28	19,789	14,325	(367)	(744)	(1,121)
2005	95,209	-2.5%	(2,441)	34.95	33,271	20.28	19,304	13,967	(358)	(1,102)	(2,223)
2006	92,829	-2.5%	(2,380)	34.95	32,439	20.28	18,821	13,618	(349)	(1,451)	(3,674)
2007	90,508	-2.5%	(2,321)	34.95	31,628	20.28	18,351	13,278	(340)	(1,792)	(5,466)
2008	88,246	-2.5%	(2,263)	34.95	30,837	20.28	17,892	12,946	(332)	(2,124)	(7,590)

Sources:

- (1) FY 98 volume is from FY 1998 RPW Report.  
 (2) Testimony by Bernard L. Unger, Director, Government Business Operations Issues, General Government Division, GAO, before the Subcommittee on the Postal Service, Committee on Government Reform, House of Representatives, on October 21, 1998 (GAO/T-GGD-00-2), Page 4, Figure 1  
 "U.S. Postal Service Projects Future Decline in First-Class Mail Volume."  
 (4) and (6) Appendices to PRG Opinion and Recommended Decision, Volume 2, Appendix G, Schedule 1, Docket No. R97-1.



Table 2  
GAO/Postal Service Volume Scenario Applied to First-Class Letter and Sealed Parcel Subclass  
Assuming Rate Changes in the Period 2003 through 2008

Fiscal Year	Forecast Volume of Letters & Sealed Parcels (Millions)	Before Rates			After Rates			Unit Contribution/Rate Change (Cents)		
		(1)	(2)	Contribution to Inst. Costs Per Piece (\$ Millions)	(3)=(1)*(2)	Contribution to Inst. Costs Per Piece (Cents)	(4)		(5)=(1)*(4)	(6)=(4)-(2)
2002	102,722	14.67	15,069	14.67	15,069					
Scenario 1: One-Year Rate Cycle										
2003	100,154	14.67	14,693	15.05	15,069				0.3762	
2004	97,650	15.05	14,693	15.43	15,069				0.3858	
2005	95,209	15.43	14,693	15.83	15,069				0.3957	
2006	92,829	15.83	14,693	16.23	15,069				0.4058	
2007	90,508	16.23	14,693	16.65	15,069				0.4162	
2008	88,246	16.65	14,693	17.08	15,069				0.4269	
Total Rate Change									2.4066	
Scenario 2: Two-Year Rate Cycle with Rate Increase in Second Year										
2003	100,154	14.67	14,693	14.67	14,693				0.0000	
2004	97,650	14.67	14,325	15.82	15,446				1.1478	
2005	95,209	15.82	15,060	15.82	15,060				0.0000	
2006	92,829	15.82	14,683	16.24	15,078				0.4259	
2007	90,508	16.24	14,702	16.24	14,702				0.0000	
2008	88,246	16.24	14,334	17.49	15,437				1.2495	
Total Rate Change									2.8231	

Table 2 (Continued)  
GAO/Postal Service Volume Scenario Applied to First-Class Letter and Sealed Parcel Subclass  
Assuming Rate Changes in the Period 2003 through 2008

Fiscal Year	Forecast Volume of Letters & Sealed Parcels (Millions) (1)	Before Rates		After Rates		Unit Contribution/Rate Change (Cents) (5)=(4)-(2)
		Contribution to Inst. Costs Per Piece (Cents) (2)	Total Contribution to Inst. Costs (\$ Millions) (3)=(1)*(2)	Contribution to Inst. Costs Per Piece (Cents) (4)	Total Contribution to Inst. Costs (\$ Millions) (5)=(1)*(4)	
2002	102,722	14.67	15,068	14.67	15,069	
Scenario 3: Three-Year Rate Cycle with Rate Increases in Third Year						
2003	100,154	14.67	14,693	14.67	14,693	0.0000
2004	97,650	14.67	14,325	14.67	14,325	0.0000
2005	95,209	14.67	13,957	17.00	16,180	2.3248
2006	92,829	17.00	15,785	17.00	15,785	0.0000
2007	90,508	17.00	15,391	17.00	15,391	0.0000
2008	88,246	17.00	15,006	16.90	14,032	-1,1036
Total Rate Change						1.2310
Scenario 4: Three-Year Rate Cycle with Rate Increases in Second Year						
2003	100,154	14.67	14,693	14.67	14,693	0.0000
2004	97,650	14.67	14,325	15.82	15,451	1.1256
2005	95,209	14.67	13,957	15.82	15,055	0.8000
Subtotal (2003-2005)			42,985		45,208	1.1626
2006	92,829	15.82	14,688	15.82	14,688	0.0000
2007	90,508	15.82	14,321	17.07	15,453	1.2512
2008	88,246	15.82	13,953	17.07	15,067	0.0000
Subtotal (2006-2008)			42,572		45,208	1.2512
Total Rate Change						2.4038

Table 2 (Continued)  
 GAO/Postal Service Volume Scenario Applied to First-Class Letter and Sealed Parcel Subclass  
 Assuming Rate Changes in the Period 2003 through 2008

Fiscal Year	Forecast Volume of Letters & Sealed Parcels (Millions)	Before Rates			After Rates			Unit Contribution/Rate Change (Cents)
		Contribution to Inst. Costs Per Piece (Cents)	Total Contribution to Inst. Costs (\$ Millions)	Contribution to Inst. Costs Per Piece (Cents)	Total Contribution to Inst. Costs (\$ Millions)			
		(1)	(2)	(3)=(1)*(2)	(4)	(5)=(1)*(4)	(6)=(4)-(2)	
2002	102,722	14.67	15,069	14.67	15,069			
Scenario 5: Six-Year Rate Cycle with Rate Increase in Sixth Year								
2003	100,154	14.67	14,593	14.67	14,693		0.0000	
2004	97,650	14.67	14,325	14.67	14,325		0.0000	
2005	95,209	14.67	13,957	14.67	13,967		0.0000	
2006	92,829	14.67	13,618	14.67	13,618		0.0000	
2007	90,508	14.67	13,278	14.67	13,278		0.0000	
2008	88,246	14.67	12,946	23.27	20,536		8.5905	
Total Rate Change							8.6009	

**Table 3****Assumptions Used In Analysis**

First-Class unit revenue and cost for FY98, from PRC R97-1 Opinion, remain constant for the period 1999-2008.

First-Class variable costs and revenues change in proportion to volume.

Annual target institutional contribution for the period 2003-08 is based on projected contribution for 2002 of \$15,069 million.

There is no shift of First-Class overhead burden to other subclasses.

Price elasticity effects are not considered.

Rates are set to recover target institutional contributions for each rate cycle (\$15,069 million/year for 1, 2, 3, or 6 years).



POSTAL RATE COMMISSION  
Washington, DC 20268-0001

Office of the Chairman

June 30, 2000

The Honorable Chaka Fattah  
U. S. House of Representatives  
1205 Longworth House Office Building  
Washington, DC 20515-3802

Dear Congressman Fattah:

This is in response to your letter of June 14, 2000, asking me to comment on certain characterizations of the Commission's role in the classification and rate setting process.

Under current law, the Commission provides an independent and public forum that allows for expert review of Postal Service rate and classification change proposals. I think it is fair to conclude that the architects of this system designed it, at least in part, to insulate the Postal Service from some of the pressures Congress experienced when it was responsible for setting postal rates.

Certainly it takes time to allow public participation. However, the current limitations on the Postal Service's ability to quickly adjust its rates may be more of a theoretical than actual problem. The Postal Service decides when to propose rate changes, and the Governors decide when to put new rates into effect. The Postal Service is aware of the 10 month process for changing rates, and seems able to prepare timely requests. Following the Commission's most recent omnibus rate decision, in Docket No. R97-1, the Board of Governors chose not to make new rates effective for eight months, which indicates no lack of flexibility.

Moreover, in the most recent instance when the Commission recommended the adjustment of a single rate, Docket No. C99-4, the Governors expressed a preference for deferring action for approximately six months, until they could make adjustments to the rates of all classes simultaneously. They explained that it is not "... in anyone's interest to be perpetually tinkering and re-litigating in an attempt to reflect each year's new cost or revenue data as it comes in."

Even if the current law were altered to allow the Postal Service to change its rates without providing the public with an opportunity to comment on whether the particular

The Honorable Chaka Fattah  
Page 2

changes are justified, the Service would presumably still analyze its costs and markets in an attempt to develop rational rates. Management would still need time to review staff proposals, explore alternatives, obtain the approval of the Governors, and provide sufficient lead time to allow for smooth implementation of any changes. Thus the issue is largely one of whether public participation is worth the 10 months allowed by the current statute. In the recent omnibus case I mentioned previously, R97-1, the rates recommended by the Commission and approved by the Governors were substantially lower than those initially sought by the Postal Service as a direct result of evidence developed during the case. R97-1 was an example of both large mailers and the general public benefiting from the process without depriving the Service of needed flexibility.

I think it is important to mention that the vast majority of Postal Service revenues are earned by monopoly classes, where there is little if any need to respond to rate initiatives launched by competitors. Furthermore, the Service has never asked for emergency rate relief since the Act was amended in 1976. Again, I see no indication that additional rate flexibility will make the Postal Service more financially stable.

During my tenure as Chairman the Commission's hearing procedures have been modified to reduce the cost of participation, and we have implemented systems that provide immediate public access to documents filed with the Commission. I believe the Commission also has enhanced its reputation for responding promptly to Postal Service requests to change rates. In the R94-1 rate case, my first after arriving at the Commission, a decision was sent to the Governors more than five weeks before the 10 month period expired. I had hoped to repeat this performance in our current case. However, when intervenors from the business mailing community sought to extend the initial proposed procedural schedule to allow additional time for analysis, the Postal Service did not oppose requests for a revised schedule absorbing the full 10 months.

With regard to your question about difficulties in achieving lower rates for worksharing activities I am somewhat perplexed. There are no such difficulties of which I am aware. To the contrary, the Commission has been the motivating force behind many of the existing workshare discounts and has suggested several other such arrangements that the Governors have chosen not to accept.

The suggestion that the Postal Service might benefit from additional flexibility is not new, and in 1992 a Joint Postal Service/Postal Rate Commission Task Force developed several proposals to achieve this. Among the suggestions were that certain types of cases, such as experiments, could be handled under special rules and shortened timelines. The Commission added several procedural rules incorporating these concepts. In addition, new workshare proposals have been acted on recently in classification

The Honorable Chaka Fattah  
Page 3

cases handled on an expedited basis. Notably, prompt action has been taken on several narrowly drawn proposals affecting relatively few mailers that are essentially negotiated service agreements.

Finally, you ask that I address a characterization expressed by those supporting postal reform and compare it with the Commission's current role as a regulator. The characterization is "...it strengthens the oversight functions of the Postal Rate Commission to prevent the Postal Service from using its status as both a government agency and a monopoly to compete unfairly against competitors."

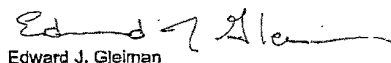
I think it would be most accurate to say that the balance and mix of the Commission's responsibilities would change under the reform legislation currently being considered. Today, the Commission reviews proposed rates and classifications in on-the-record hearings before changes become effective. This requires the Postal Service to make public its proposed rates and the cost or other justification for those rates. Affected parties have the opportunity to present evidence concerning, among other things, whether the proposed rates or classifications would enable the Postal Service to compete unfairly. This allows the Commission to fashion recommendations that minimize the potential for any such unfair competition.

After postal reform, following the baseline rate case, the role of the Commission would change to undertaking after-the-fact review through the annual audit/report process or through complaints. In either case, the review would be exclusively of historical data. Any change found necessary by the Commission would not take effect until some period of time after the unfair competition occurred.

The Commission would have subpoena power, which could aid in such after-the-fact investigations. I note also that under postal reform the Commission would be required to promulgate regulations prohibiting unfair competition and that the Postal Service would be subject to antitrust action in District Court. Again, investigation of any violations of antitrust laws or regulations would be after-the-fact. There are models of both forms of regulatory oversight in federal and state agencies. The experiences of these agencies might be helpful in evaluating the advantages and disadvantages of the proposed change from prospective to retrospective review.

This response generally reflects the positions of my fellow Commissioners, with whom I shared your letter and my views. Please let me know if you have additional questions.

Sincerely,

  
Edward J. Gleiman

