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SENATE

{ REPORT  
108-211 }

DEPARTMENT OF HOMELAND SECURITY  
FINANCIAL ACCOUNTABILITY ACT

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 1567

TO AMEND TITLE 31, UNITED STATES CODE, TO IMPROVE THE  
FINANCIAL ACCOUNTABILITY REQUIREMENTS APPLICABLE TO  
THE DEPARTMENT OF HOMELAND SECURITY, AND FOR OTHER  
PURPOSES



NOVEMBER 25, 2003.—Ordered to be printed

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DEPARTMENT OF HOMELAND SECURITY FINANCIAL  
ACCOUNTABILITY ACT

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Mr. COLLINS, from the Committee on Governmental Affairs,  
submitted the following

R E P O R T

[To accompany S. 1567]

The Committee on Governmental Affairs, to which was referred the bill (S. 1567) to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, and for other purposes, having considered the same reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1567 would amend title 31, United States Code, to make the Department of Homeland Security subject to the requirements of the Chief Financial Officers Act of 1990 and make conforming amendments to P.L. 107-296, the Homeland Security Act of 2002 (HSA).

The purpose of this bill is to ensure that the Department of Homeland Security is statutorily subject to the provisions of P.L. 101-576, the Chief Financial Officers Act of 1990 (CFO Act), as amended, and is subject to the same audit and financial systems requirements that currently apply to 24 major Executive branch departments and agencies, including all Cabinet-level departments.

## II. BACKGROUND

The CFO Act provided a comprehensive foundation to reform the financial management practices of the Federal Government. The Act established a new leadership structure to improve Federal financial management practices, provided for long-range financial planning, required audited annual financial statements, and strengthened financial accountability. The CFO Act was approved by Congress and signed into law by the President in response to concerns raised over financial management practices within Executive branch agencies. In September 1989, the Committee on Governmental Affairs held hearings during which Inspectors General at seven major agencies, the Director of the Office of Management and Budget (OMB), and the Comptroller General of the United States testified that there were serious problems involving Executive branch agencies' financial management processes. In offering an amendment to the CFO Act in October 1990, Senator John Glenn, then Chairman of the Governmental Affairs Committee, said, "In brief, the conclusion of two of the highest officials with fiduciary responsibility for the Federal Government, the Director of OMB and the Comptroller General, was that the treasury was bleeding and the Government did not have the capacity to know where."<sup>1</sup>

Upon signing the CFO Act into law on November 15, 1990, President George H.W. Bush issued a statement saying, "Improving the Government's stewardship over public funds is critically important. The Act will help us to strengthen the systems that provide the President, the Congress, and the American people with the information necessary to make informed decisions on how public funds are spent. It will also help ensure that these data are timely and reflect more accurately the true costs of running the Federal Government. The Act reinforces my Administration's efforts to establish Federal accounting standards, integrate and modernize the Government's financial systems, and produce audited financial statements. The operations and financial condition of Government must be accurately and publicly reported. I am pleased to note that the Act's priorities for management improvements coincide with those of any Administration."<sup>2</sup>

Specifically, the CFO Act required the establishment of Chief Financial Officers and deputy Chief Financial Officers at 24 major Executive branch departments and agencies and defined their responsibilities to oversee and report on agency financial activities. Given this high level of responsibility, Congress sought to ensure that the position of Chief Financial Officers would also have a high level of authority by requiring that the Chief Financial Officers at the 14 Cabinet-level departments, the Environmental Protection Agency, and the National Aeronautics and Space Administration would be filled by presidential appointees confirmed by the Senate, and that they would report directly to the head of the agency.<sup>3</sup> In

<sup>1</sup> Congressional Record, October 16, 1990; p. S17259.

<sup>2</sup> Statement released by the White House on November 16, 1990. Source: George H.W. Bush Presidential Library.

<sup>3</sup> Eight other agencies are exempted from the Senate confirmation process: The U.S. Agency for International Development, Federal Emergency Management Agency (now part of the Department of Homeland Security), General Services Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, and Social Security Administration.

addition, the CFO Act established the position of Deputy Director for Management at OMB to be responsible for establishing governmentwide financial management policies and requirements, and for monitoring the operation of agency financial management systems. The original Act required CFO Act departments and agencies to produce annual, audited financial statements for each revolving fund and trust fund, and for accounts that performed substantial commercial functions. The Act called for a three-year pilot program requiring selected agencies to prepare audited financial statements for all of their accounts. At the time of enactment, the CFO Act agencies represented more than 90 percent of the Federal Government's spending.

Subsequent amendments extended the CFO Act's purview. In 1993, the Government Performance and Results Act (GPRA), P.L. 103-62, built upon agency financial information mandated by the CFO Act and stipulated new systematic performance measurement requirements. GPRA requires CFO Act agencies to prepare a five-year strategic plan, and annual performance plans and performance reports.

Provisions in the Federal Financial Management Act of 1993, P.L. 103-356, enacted as Title IV of the Government Management Reform Act of 1994, also substantially expanded the CFO Act by requiring the 24 CFO Act agencies to produce annual audited financial statements for all of their accounts and associated activities. In addition, the 1994 law required the preparation of annual consolidated governmentwide statements covering all Executive branch agencies.

The CFO Act was further amended by the Federal Financial Management Improvement Act of 1996 (FFMIA), P.L. 104-208. This Act established a general requirement for CFO Act agencies to implement and maintain financial management systems that comply substantially with Federal financial management system requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level. Auditors are required to report on agency compliance with these requirements, and agency heads are required to correct deficiencies within certain time periods. The 1996 law also requires the OMB Director and the Comptroller General of the United States to make annual status reports to Congress.

The CFO Act was again amended in 2002 by the Accountability of Tax Dollars Act, P.L. 107-289, which extended the requirement for annual audited financial statements to most Executive branch agencies. Under certain circumstances, the OMB Director may exempt agencies with budget appropriations under \$25 million in a given year. Currently, 78 Executive branch agencies and commissions, in addition to the original CFO Act agencies, are required to produce annual audited financial statements.<sup>4</sup>

Although the Department of Homeland Security is required to comply with the Accountability of Tax Dollars Act, it is not statutorily required to comply with other provisions of the CFO Act, including the provisions of FFMIA and the requirement that the Chief Financial Officer report to the agency Secretary. With the ex-

<sup>4</sup> "Financial Management in the Federal Government: Efforts to Improve Performance," Congressional Research Report for Congress; June 17, 2003; p. 6.

ception of the Department of Homeland Security, the Chief Financial Officers at all Cabinet-level departments are appointed by the President and confirmed by the Senate. The Department of Homeland Security's Chief Financial Officer reports to the Under Secretary for Management, rather than the Secretary, and the position does not require Senate confirmation.

The Senate Governmental Affairs Committee first approved legislation to create a Department of Homeland Security (S. 2452) in May 2002. That bill did not originally include a requirement that the new Department be subject to the CFO Act.

In June 2002, another bill to create a Homeland Security Department (H.R. 5005) was introduced in the House, which also did not include this requirement. As debate over the issue proceeded, however, efforts were made in both the House and Senate to make the new Department subject to the CFO Act. In July 2002, the Senate Governmental Affairs Committee adopted a substitute amendment to S. 2452, offered by then Chairman Joseph Lieberman, that would have made the Department of Homeland Security subject to the CFO Act. Also in July 2002, Representative Steve Horn offered a similar amendment during the House Government Reform's consideration of H.R. 5005, which the Committee approved. Neither amendment was included in the final version of the homeland security legislation, which was passed by the Senate on November 19, 2002 and by the House on November 22, 2002, and was signed into law on November 25, 2002.

### III. DISCUSSION OF LEGISLATION

Application of the CFO Act to the Department of Homeland Security is essential to ensure that the newest, and one of the largest, Cabinet-level departments in the Federal Government adheres to the same financial management reporting requirements and standards that other agencies must follow and that were developed over more than a decade. Indeed, it is anomalous that the Federal Emergency Management Agency, an original CFO Act agency, and portions of other CFO Act departments and agencies were relieved of these requirements upon their transfer to the new Department.

In addition to its CFO Act requirements, S. 1567 requires the Department to produce audit opinions on internal controls over financial reporting. Currently, OMB guidance requires agencies to obtain testing and a report on internal controls, but not an audit opinion.<sup>5</sup> An audit opinion will provide assurances that the Department's internal controls are effective in deterring fraudulent financial reporting, protecting assets, and providing an early warning of significant control weaknesses.

In response to major breakdowns in corporate accountability, the 107th Congress passed the Sarbanes-Oxley Act of 2002, P.L. 107-204, to, among other things, improve quality and transparency in financial reporting and independent audits of publicly traded companies. The Act requires publicly traded companies to establish and maintain an adequate internal control structure and procedures for financial reporting, and include in their annual reports a statement of management's responsibility for, and assessment of, the effectiveness of those controls and procedures. In addition, auditors are

<sup>5</sup> OMB Bulletin 01-02, Audit Requirements for Federal Financial Statements.

required to attest to, and report on, the assessment made by the company's management on the effectiveness of internal controls over financial reporting.

Currently, Executive branch agencies, including CFO Act agencies, are not subject to this same requirement. However, believing that a strong internal control environment is the foundation of sound financial management, three of the 24 CFO Act agencies—the General Services Administration, Social Security Administration, and Nuclear Regulatory Commission—voluntarily provided audit opinions on their internal controls in their fiscal year 2002 reports. During this transitional period for the Department of Homeland Security, it is extremely important that Congress ensures that the Department has strong financial internal controls in place.

The Comptroller General of the United States supports enactment of this legislation. In response to questions submitted for the record by Senator Peter Fitzgerald during the Governmental Affairs Committee's September 16, 2003, oversight hearing on the GAO, Comptroller General David Walker stated, "Yes, I would support enactment of legislation to include the Department of Homeland Security under the requirements of the CFO Act." Mr. Walker further noted, "[I]nstitutionalizing the CFO Act requirements for future Administrations is paramount. We therefore believe that the Senate should ensure that DHS is included under the requirements of the CFO Act as soon as practical."

Both the Comptroller General and the Department of Homeland Security's Inspector General support including in this legislation the provision requiring the Department to produce an audit opinion on its financial controls. A bill similar to S. 1567, H.R. 2886, was introduced in the House by Representative Todd Platts. During a September 10, 2003, hearing on H.R. 2886 before the House Government Reform Subcommittee on Government Efficiency and Financial Management, GAO witness McCoy Williams stated, "GAO fully supports the objectives of the CFO Act to provide reliable financial information and improve financial management systems and controls, and believes DHS should be included under the Act and therefore also subject to FFMA. Further, GAO strongly believes that auditor reporting on internal controls can be a critical component of monitoring the effectiveness and accountability of an organization and supports DHS, as well as other CFO Act agencies, obtaining such opinions." During the same hearing, Assistant Inspector General for Audits at the Department of Homeland Security, J. Richard Berman, stated, "We believe that rendering opinions on internal controls over financial reporting at agencies could be beneficial by identifying additional weaknesses, and focusing attention on the state of financial management in the Government."

However, GAO and the Department of Homeland Security's Office of Inspector General recommended two revisions to the House bill. The first recommendation involved a provision in H.R. 2886 that would allow the Department to delay producing annual audited financial statements until fiscal year 2004. The GAO and Office of Inspector General stated that the delay was unnecessary because the Department had already begun work on its fiscal year 2003 financial statements and planned to submit the audited fiscal year 2003 statements. The second recommendation involved a pro-

vision in H.R. 2886 (which was also included in S. 1567) requiring the Department to produce an audit opinion on internal financial controls for fiscal year 2004. The GAO and Office of Inspector General recommended deferring this requirement until fiscal year 2005 because of the Department's recent creation and its organizational complexity. As the first recommendation had already been addressed in S. 1567, the second recommendation was incorporated by Senator Daniel Akaka into an amendment in the nature of a substitute, which the Committee adopted by unanimous voice vote on October 22, 2003.

The Department of Homeland Security is composed of 22 agencies, some of which have long histories of poor financial management systems and practices. The Department's Chief Financial Officer faces the extraordinary challenge of developing a reliable financial management structure for the Department and all of its components. Currently, though, the Department of Homeland Security is not statutorily required to comply with the expanded provisions of the CFO Act, but is producing audited financial statements as required by the Accountability of Tax Dollars Act, P.L. 107-289. The Department has pledged to comply with the CFO Act requirements voluntarily. The Committee appreciates the Department's promise but does not want to leave compliance in future years to chance. S. 1567 will ensure that this large, administratively complex Department complies with the same financial management standards and reporting requirements that statutorily apply to all other Cabinet-level departments and major agencies.

#### IV. LEGISLATIVE HISTORY

Senator Peter Fitzgerald introduced S. 1567 on August 1, 2003, for himself and Senator Daniel Akaka. The bill was referred to the Senate Committee on Governmental Affairs. Additional cosponsors of the bill include Senators Joseph Lieberman, Don Nickles, and Carl Levin. On October 22, 2003, the Committee adopted by voice vote an amendment in the nature of a substitute offered by Senator Akaka and ordered the amended bill to be reported to the full Senate. Senators present: Collins, Voinovich, Coleman, Bennett, Fitzgerald, Levin, Akaka, Lautenberg and Pryor.

#### V. SECTION-BY-SECTION ANALYSIS

##### *Section 1.—Short title*

This section provides that the Act may be cited as the "Department of Homeland Security Financial Accountability Act."

##### *Section 2.—Chief Financial Officer of the Department of Homeland Security*

This section amends 31 U.S.C. Sec. 901(b)(1) by adding the Department of Homeland Security to the list of departments and agencies covered by the CFO Act. The list of agencies in 31 U.S.C. Sec. 901(b)(1) includes 14 cabinet-level departments, the Environmental Protection Agency, and the National Aeronautics and Space Administration. By adding the Department of Homeland Security, the Department's position of Chief Financial Officer will become a



presidentially appointed position, subject to Senate confirmation.<sup>6</sup> Currently, the Chief Financial Officer is a presidentially appointed position but does not require Senate confirmation.

Paragraph (b) requires the President to appoint or designate a Chief Financial Officer for the Department of Homeland Security within 180 days from the enactment of the Act.

Paragraph (c) specifies that the current Chief Financial Officer at the Department of Homeland Security may continue serving until the date of confirmation or designation of a successor.

Paragraph (d) makes conforming amendments to the Homeland Security Act of 2002 and the CFO Act.

Paragraph (e) contains amendments to 31 U.S.C. Sec. 901 to ensure that the Department's Chief Financial Officer is subject to the same requirements as all other similarly situated Chief Financial Officers in Cabinet-level departments. It removes language in section 103 of the Homeland Security Act, P.L. 107–296, that makes the Chief Financial Officer at the Department of Homeland Security a presidential appointee that is not subject to Senate confirmation and adds new language to section 103 to make the Chief Financial Officer subject to the requirements of chapter 9 of title 31, U.S.C. In addition, paragraph (e) amends section 901(b)(2) of title 31, U.S.C., to remove the Federal Emergency Management Agency (FEMA), which is now part of the Department of Homeland Security, from the list of CFO Act agencies. A technical correction has been made to reflect re-numbering of the agencies included in this paragraph.<sup>7</sup>

### *Section 3.—Functions of the Chief Financial Officer of the Department of Homeland Security*

Paragraph (a) amends 31 U.S.C. Sec. 3516 to make it a requirement that the Department of Homeland Security submit annual performance and accountability reports that incorporate the GPRA program performance reports and include an audit opinion of the Department's internal controls over its financial reporting.

Paragraph (b) provides that the Department will include the required audit opinions on internal controls beginning with the Department's performance and accountability report for fiscal year 2005.

Paragraph (c) requires the Secretary of Homeland Security to include an assertion of internal controls that apply to financial reporting in the Department's performance and accountability report for fiscal year 2004 and subsequent years.

### *Section 4.—Authorization of appropriations*

This section authorizes to be appropriated such sums that are necessary to carry out the provisions of this Act.

<sup>6</sup>Other presidentially appointed, Senate confirmed Chief Financial Officers are compensated at Level IV of the Executive Schedule; see 5 U.S.C. § 5315. Under the Homeland Security Act of 2002, the Chief Financial Officer is a presidentially appointed position that does not require Senate confirmation. However, section 1702 of the Homeland Security Act amended 5 U.S.C. § 5315 to add the Chief Financial Officer at the Department of Homeland Security to the list of positions compensated at Level IV of the Executive Schedule. Therefore, no additional change to 5 U.S.C. § 5315 will be necessary.

<sup>7</sup>The list of agencies in 31 U.S.C. 901(b)(2) includes the Agency for International Development, Federal Emergency Management Agency, General Services Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, and the Social Security Administration.

## VI. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the “regulatory impact which would be incurred in carrying out this bill.” Carrying out S. 1567 would have no regulatory impact.

## VII. CBO COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 29, 2003.*

Hon. SUSAN M. COLLINS,  
*Chairman, Committee on Governmental Affairs, U.S. Senate, Wash-  
ington, DC.*

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1567, the Department of Homeland Security Financial Accountability Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

ELIZABETH M. ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 1567—Department of Homeland Security Financial Account-  
ability Act*

S. 1567 would amend the Chief Financial Officers Act and the Homeland Security Act to require the President to appoint a Chief Financial Officer (CFO) to be confirmed by the Senate to oversee the financial accounting practices of the Department of Homeland Security (DHS). In addition, DHS would be required to submit a performance and accountability report that incorporates a program performance report and, after fiscal year 2004, submit an audit of its internal financial controls to the Office of Management and Budget and to the Congress.

The DHS currently employs a CFO who has the same duties and responsibilities as CFOs in other agencies. According to DHS, it currently complies with the provisions of the Chief Information Officers Act. Based on information from DHS, we estimate that the requirement to prepare an audit of the department’s internal financial controls would cost \$4 million a year, subject to the availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues.

S. 1567 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## VIII. CHANGES TO EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing

law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## UNITED STATES CODE

### TITLE 31—MONEY AND FINANCE

#### Subtitle I—General

#### CHAPTER 9—AGENCY CHIEF FINANCIAL OFFICERS

##### SEC. 901. ESTABLISHMENT OF AGENCY CHIEF FINANCIAL OFFICERS.

\*       \*       \*       \*       \*       \*       \*

(b)(1) The agencies referred to in subsection (a)(1) are the following:

- (A) The Department of Agriculture.
- (B) The Department of Commerce.
- (C) The Department of Defense.
- (D) The Department of Education.
- (E) The Department of Energy.
- (F) The Department of Health and Human Services.
- (G) *The Department of Homeland Security.*
- [G]** *(H)* The Department of Housing and Urban Development.
- [H]** *(I)* The Department of the Interior.
- [I]** *(J)* The Department of Justice.
- [J]** *(K)* The Department of Labor.
- [K]** *(L)* The Department of State.
- [L]** *(M)* The Department of Transportation.
- [M]** *(N)* The Department of the Treasury.
- [N]** *(O)* The Department of Veterans Affairs.
- [O]** *(P)* The Environmental Protection Agency.
- [P]** *(Q)* The National Aeronautics and Space Administration.

(2) The agencies referred to in subsection (a)(2) are the following:

- (A) The Agency for International Development.
- [B]** The Federal Emergency Management Agency.
- [C]** *(B)* The General Services Administration.
- [D]** *(C)* The National Science Foundation.
- [E]** *(D)* The Nuclear Regulatory Commission.
- [F]** *(E)* The Office of Personnel Management.
- [G]** *(F)* The Small Business Administration.
- [H]** *(G)* The Social Security Administration.

\*       \*       \*       \*       \*       \*       \*

#### Subtitle III—Financial Management

#### CHAPTER 35—ACCOUNTING AND COLLECTION

##### Subchapter II—Accounting Requirements, Systems, and Information

##### SEC. 3516. REPORTS CONSOLIDATION.

\*       \*       \*       \*       \*       \*       \*

(f) *THE SECRETARY OF HOMELAND SECURITY.*—

*(1) shall for each fiscal year submit a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security; and*

*(2) shall include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting.*

\* \* \* \* \*

## **PUBLIC LAW 107-296—HOMELAND SECURITY ACT OF 2002**

### **TITLE 1—DEPARTMENT OF HOMELAND SECURITY**

#### **SEC. 103. OTHER OFFICERS (6 U.S.C. 113).**

\* \* \* \* \*

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service

(2) A Chief Information Officer

(3) A Chief Human Capital Officer

[(4) A Chief Financial Officer]

[5] (4) An Officer for Civil Rights and Civil Liberties

(e) CHIEF FINANCIAL OFFICER.—*There shall be in the Department a Chief Financial Officer, as provided in Chapter 9 of title 31, United States Code.*

[e] (f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

\* \* \* \* \*

#### **SEC. 702. CHIEF FINANCIAL OFFICER (6 U.S.C. 342).**

The Chief Financial Officer [shall report to the Secretary, or to another official of the Department, as the Secretary may direct.] *shall perform functions as specified in chapter 9 of title 31, United States Code.*

\* \* \* \* \*