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SENATE

{ REPORT
111-91

EFFECTIVE HOMELAND SECURITY
MANAGEMENT ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 872

TO ESTABLISH A DEPUTY SECRETARY OF HOMELAND SECURITY
FOR MANAGEMENT, AND FOR OTHER PURPOSES



OCTOBER 26, 2009.—Ordered to be printed

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EFFECTIVE HOMELAND SECURITY MANAGEMENT ACT OF 2009

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Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 872]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 872) to establish a Deputy Secretary of Homeland Security for Management, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 872 is to establish a Deputy Secretary of Homeland Security for Management and provide a five-year term for that position. S. 872 would eliminate the current Under Secretary for Management position at the Department of Homeland Security, and create instead a Deputy Secretary of Homeland Security for Management. The Deputy Secretary for Management would have a five year term in order to provide management continuity at the Department during times of transition, although the President could remove the Deputy Secretary for Management for unsatisfactory performance if the President communicated the reasons for the Deputy Secretary for Management's removal to Congress

before that removal occurred. The bill would preserve the current authorities of the Secretary of Homeland Security and the Deputy Secretary of Homeland Security.

II. BACKGROUND AND NEED FOR THE LEGISLATION

A. MANAGEMENT CHALLENGES AT DHS

In the *Homeland Security Act of 2002*, Congress established the position of Under Secretary for Management¹ to oversee the management and administration of the Department of Homeland Security (DHS).² Shortly after DHS was established in law on November 25, 2002,³ the Government Accountability Office (GAO) designated implementing and transforming DHS as a high-risk area.⁴

GAO made this designation because of the enormity of the task of consolidating 22 distinct agencies into a new Department and transforming DHS into an integrated Department that could effectively carry out its core mission of protecting the homeland.⁵ GAO noted that merging 22 agencies and approximately 170,000 employees into one federal department carried significant risks and that “[n]ecessary management capacity and oversight mechanisms must be established” at DHS.⁶

The Department came into existence on March 1, 2003. It faced significant management challenges in its first several years. In 2005, GAO noted that DHS had made progress in transforming itself and credited DHS leadership with providing “a foundation for maintaining critical operations while undergoing transformation.”⁷ However, GAO continued to designate implementing and transforming DHS as a high-risk area because it found management and other challenges remained to transforming DHS.⁸

DHS’s Inspector General (IG) reached similar conclusions. In 2005, the IG issued a report warning of major management challenges facing DHS.⁹ The report noted that “since its inception in March 2003, [DHS] worked to accomplish the largest reorganization of the federal government in more than half a century.” It went on to note that “this task, creating the third largest Cabinet agency with the critical, core mission of protecting the country against another terrorist attack, has presented many challenges to the Department’s managers and employees.”¹⁰ The report outlined a number of “major management challenges” facing DHS, including the needs to consolidate the Department’s components, to better manage grants and contracts, to enhance the oversight of the Department’s finances and to improve its human capital management.¹¹

The Department’s Highlights Report for Fiscal Year 2007, issued by the DHS Chief Financial Officer, noted progress that DHS had

¹ Pub. L. No. 107–296 (6 U.S.C. 113(a)(6)).

² *Id.* (6 U.S.C. 341).

³ *Id.*

⁴ U.S. Government Accountability Office, *High Risk Series, An Update*, p. 18, GAO–03–119.

⁵ *Id.* at p. 37.

⁶ *Id.*

⁷ U.S. Government Accountability Office, *High Risk Series, An Update*, p. 52, GAO–05–207.

⁸ *Id.*

⁹ Department of Homeland Security Office of Inspector General, *Major Management Challenges Facing the Department of Homeland Security*, OIG–06–14.

¹⁰ *Id.* at p. 3.

¹¹ *Id.* at p. 3–8.

made in areas such as human capital management, financial management, and information technology, but concluded that DHS did not achieve its internal performance goals for the Department's management related to providing "comprehensive leadership, oversight, and support to all Components" and improving "the efficiency and effectiveness of [DHS] and its business and management services."¹² The report also acknowledged that DHS did not improve its scores on the President's Management Agenda,¹³ *a strategy announced in 2001 to improve the management of the federal government*.¹⁴

In its 2007 update to its high-risk list, GAO recognized DHS' progress in transforming disparate agencies into a single department, citing progress made to improve "cargo, transportation, and border security; Coast Guard management; disaster preparedness; and immigration services."¹⁵ But GAO also found that DHS continued to face programmatic and partnering challenges, and continued its designation of implementing and transforming DHS as a high-risk area.¹⁶

In January 2007 the Homeland Security Advisory Council's Culture Task Force released a report that articulated other concerns about DHS management.¹⁷ The report noted that while DHS leadership had made "solid strides in achieving its Herculean task" of establishing the Department and carrying out "one of the most daunting assignments in the history of the U.S. government," the Department still faced numerous persisting organizational and cultural challenges.¹⁸ The report noted that "[s]uccess of nearly every large, diverse and geographically dispersed organization requires alignment around a . . . common management process, and common leadership expectations", and challenged the leadership of DHS to establish a clear management model.¹⁹

Recognizing DHS's management challenges, Congress in 2007 amended the Homeland Security Act to clarify that the role and responsibilities of the DHS Under Secretary for Management include serving as the Chief Management Officer at DHS and principal advisor to the Secretary of Homeland Security on the management of DHS.²⁰ Congress also made the DHS Under Secretary for Management responsible for strategic management and annual performance planning, identification and tracking of performance measures, and the management integration and transformation process in support of DHS operations and programs.²¹ The 2007 amendments also established managerial and leadership qualifications for

¹²Department of Homeland Security, *Highlights Report, Fiscal Year 2007* at p. 38, available at http://www.dhs.gov/xlibrary/assets/cfo_highlightsfy2007.pdf.

¹³*Id.*

¹⁴http://www.whitehouse.gov/omb/rewrite/budintegration/pma_index.html; see also Congressional Research Service, *The President's Management Agenda: A Brief Introduction*, p. 1, RS21416, which explains that the President's Management Agenda was announced in August 2001 with the stated purpose of "improving the management and performance of the federal government" through five government-wide initiatives.

¹⁵U.S. Government Accountability Office, *High Risk Series, An Update*, p. 45, GAO-07-310.

¹⁶*Id.*

¹⁷Homeland Security Advisory Council, *Report of the Homeland Security Culture Task Force* (Jan. 2007), available at http://www.dhs.gov/xlibrary/assets/hvac_ctfreport_200701.pdf.

¹⁸*Id.* at p. 8.

¹⁹*Id.* at p. 3.

²⁰Pub. L. No. 110-53 (6 U.S.C. 341(a)).

²¹*Id.*

the DHS Under Secretary for Management²² and increased the pay scale for that Under Secretary.²³

Since enactment of these amendments to the Homeland Security Act, the Department has made progress to improve its management but continues to face significant management challenges in a number of areas.

The DHS Inspector General again reported on management challenges facing DHS in 2008.²⁴ That report noted DHS's progress towards accomplishing an effective reorganization and detailed fewer management challenges than prior reports, but it also found that DHS "has much to do to establish a cohesive, efficient, and effective organization."²⁵ Further, the report identified acquisition management, grants management, and financial management as continuing "major management challenges" at DHS.²⁶

In January 2009, GAO continued its designation of "Implementing and Transforming the Department of Homeland Security" on its high-risk list. GAO acknowledged that DHS had made progress in the previous two years, including the development of an "Integrated Strategy for High Risk Management," the production of corrective action plans to address management challenges, and strengthened management functions.²⁷ But also GAO noted a variety of "management, programmatic, and partnering challenges" that remain at DHS, and found that the Integrated Strategy for High Risk Management "lacks details for the transformation of DHS and integration of its management functions."²⁸ Therefore, GAO recommended that DHS continue to make efforts to improve its management functions.²⁹

B. ADDRESSING DHS'S MANAGEMENT CHALLENGES

S. 872 would address the continuing management challenges at DHS by elevating the Under Secretary for Management position to a Deputy Secretary of Homeland Security for Management position and by giving the occupant of the position a five-year term in order to provide management continuity at DHS during times of transition.

At a hearing last Congress before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, then Comptroller-General David Walker testified that a Deputy Secretary of Homeland Security for Management would be preferable to the current structure at DHS,³⁰ and he advocated for "a full-time and senior-level" chief management officer

²² *Id.* (6 U.S.C. 341(c)).

²³ *Id.* (5 U.S.C. 5313).

²⁴ Department of Homeland Security Office of Inspector General, *Major Management Challenges Facing the Department of Homeland Security*, OIG-08-11.

²⁵ *Id.* at p. 1.

²⁶ *Id.*

²⁷ U.S. Government Accountability Office, *High Risk Series, An Update*, GAO-09-271, p. 49.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Hearing on Managing the Department of Homeland Security: A Status Report on Reform Efforts by the Under Secretary for Management (S. Hrg. 110-238), p. 12, May 10, 2007.

at DHS “with a term appointment of at least 5 to 7 years”³¹ to help maintain leadership continuity at DHS.³²

In his written testimony, Mr. Walker based his support for this change on a 2002 GAO roundtable of government leaders and management experts³³ at which there was general agreement that management weaknesses are sometimes so deeply entrenched and long standing that they require years of sustained attention and continuity to resolve.³⁴ At the roundtable, a former GAO worker noted that successful management changes in large organizations suggest that it can often take five to seven years to fully implement new management initiatives and transform cultures.³⁵

In addition to citing GAO’s earlier roundtable, Mr. Walker based his support for a term appointment for DHS’ chief management officer on DHS’ continued lack of “a dedicated team with the authority and responsibility to help develop and implement” a comprehensive management integration strategy, and he advised that providing a term appointment for DHS’ chief management officer “would provide the elevated senior leadership and concerted and long-term attention required to marshal” that effort.³⁶ Mr. Walker identified a number of benefits associated with establishing a five to seven year term appointment for DHS’ chief management officer, including instilling long-term focus and avoiding the high turnover rates associated with political appointees that “can make it difficult to follow through with organizational transformation because of the length of time often needed to provide meaningful and sustainable results.”³⁷

III. LEGISLATIVE HISTORY

On April 23, 2009, S. 872 was introduced by Senator Voinovich and was referred to the Committee on Homeland Security and Governmental Affairs. Senators Akaka, Carper, and Levin are cosponsors of the legislation.

On July 29, 2009, the Committee on Homeland Security and Governmental Affairs ordered S. 872, as amended by the Lieberman-Voinovich amendment, reported favorably by voice vote. The Lieberman-Voinovich amendment clarifies that if an individual has been appointed as the DHS Under Secretary for Management by and with the advice and consent of the Senate on or before the date of enactment of S. 872, that individual shall assume the title of Deputy Secretary of Homeland Security for Management and his or her term shall begin on the date of enactment of S. 872. The members present were Chairman Lieberman, Senators Akaka, Carper, Pryor, Landrieu, McCaskill, and Burris; Ranking Minority Member Collins; Senators Coburn and Voinovich.

³¹ U.S. Government Accountability Office, *Organizational Transformation, Implementing Chief Operating Officer/Chief Management Officer Positions in Federal Agencies*, GAO-08-322T, p. 7, Dec. 13, 2007.

³² *Id.* at p. 10.

³³ *Id.* at p. 3.

³⁴ U.S. Government Accountability Office, *Highlights of a GAO Roundtable, The Chief Operating Officer Concept: A Potential Strategy to Address Federal Governance Challenges*, GAO-03-192SP, p. 3.

³⁵ *Id.* at pp. 3-4.

³⁶ *Supra note 31* at p. 8.

³⁷ *Id.* at p. 11.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section establishes the title of the act as the “Effective Homeland Security Management Act of 2009.”

Section 2. Deputy Secretary of Homeland Security for Management

This section amends Section 103 of the *Homeland Security Act of 2002* (6 U.S.C. 113) by changing the heading of section 103(a) from “Deputy Secretary; Under Secretaries” to “Deputy Secretaries; Under Secretaries” striking the reference to “An Under Secretary for Management” in section 103(a)(6); redesignating sections 103(a)(2)–(5) as sections 103(a)(3)–(6); striking section 103(a)(1) and replacing it with “A Deputy Secretary of Homeland Security;” and inserting a new section 103(a)(2) to reference “A Deputy Secretary of Homeland Security for Management.”

Additionally, this section amends the *Homeland Security Act of 2002* by inserting a new section 103(g), which clarifies the order of succession at DHS in the event of vacancies. Specifically, the new section 103(g) makes clear that in the event of a vacancy, absence, or disability in the office of the Secretary of Homeland Security, the Deputy Secretary of Homeland Security may temporarily perform the functions and duties of the Secretary of Homeland Security unless the President directs otherwise, and that when neither the Secretary of Homeland Security nor the Deputy Secretary of Homeland Security is available to exercise the duties of the office of the Secretary of Homeland Security, the Deputy Secretary of Homeland Security shall perform those duties. In addition, the new section 103(g) provides that in the event of a vacancy, absence, or disability in the office of the Deputy Secretary of Homeland Security, the Deputy Secretary of Homeland Security for Management may exercise the duties of the Deputy Secretary of Homeland Security. Section 103(g) leaves further order of succession to the Secretary of Homeland Security’s discretion.

This section also amends section 701 of the *Homeland Security Act of 2002* (6 U.S.C. 341) by changing the section heading from “Under Secretary for Management” to “Deputy Secretary of Homeland Security for Management,” and by replacing “Under Secretary for Management” with “Deputy Secretary of Homeland Security for Management” each place it appears in section 701.

Section 701(c) of the *Homeland Security Act of 2002* is also amended in this section by changing the subsection heading of “Appointment and Evaluation” to “Appointment, Evaluation, and Reappointment.” In addition to making technical changes, this section adds a new section 701(c)(4) that provides that the Deputy Secretary of Homeland Security for Management shall generally serve a five-year term, but that the President may remove the Deputy Secretary of Homeland Security for Management if the President determines that the Deputy Secretary of Homeland Security for Management’s performance is unsatisfactory and communicates the reasons for the Deputy Secretary of Homeland Security for Management’s removal to Congress before that removal occurs. A new section 701(c)(5) is also added to allow the President to reappoint the Deputy Secretary of Homeland Security for Management for a second five-year term, by and with the advice and consent of the

Senate, if the Deputy Secretary of Homeland Security for Management has received satisfactory annual performance evaluations from the Secretary of Homeland Security for the three most recent years. The Committee believes that a five-year term is necessary to ensure continuity of leadership at DHS' management directorate and to provide the long-term, continued focus necessary to fully implement DHS' management functions. The Committee does not anticipate that an Administration would use the five-year term in an attempt to impact or influence the policies of future Administrations and notes that such attempts, or significant policy disagreements between the Deputy Secretary for Management and the Secretary or the President that cause the President to determine that the Deputy Secretary for Management's performance is unsatisfactory, could be grounds for removal under this subsection if the President communicates the reasons for the Deputy Secretary for Management's removal to Congress before that removal occurs.

This section also clarifies that any reference to the DHS Under Secretary for Management in any Federal law, Executive order, rule, regulation, delegation of authority or other document shall be deemed a reference to the Deputy Secretary of Homeland Security for Management.

Further, this section clarifies that if an individual has been appointed as DHS Under Secretary for Management, by and with the advice and consent of the Senate, and is serving in that position when S. 872 is enacted, that individual shall become the Deputy Secretary of Homeland Security for Management, and that individual's five-year term shall begin on the date of enactment of S. 872.

Lastly, this section makes technical and conforming amendments by changing the reference in section 702(a) of the *Homeland Security Act of 2002* (6 U.S.C. 342(a)) from "Under Secretary for Management" to "Deputy Secretary of Homeland Security for Management;" changing the reference in the table of contents in section 1(b) of the *Homeland Security Act of 2002* from "Under Secretary for Management" to "Deputy Secretary of Homeland Security for Management;" and changing the reference in 5 U.S.C. 5313 from "Under Secretary of Homeland Security for Management" to "Deputy Secretary of Homeland Security for Management."

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office (CBO) states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 7, 2009.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 872, the Effective Homeland Security Management Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 872—Effective Homeland Security Management Act of 2009

S. 872 would make several changes to laws relating to the management of the Department of Homeland Security (DHS). In particular, the bill would elevate the position of Under Secretary of Management to Deputy Secretary of Homeland Security for Management.

Because that proposed change would not affect the salary of that individual, CBO estimates that implementing S. 872 would not directly affect federal costs. However, the bill could lead to changes—such as providing personal security for the new deputy secretary—that could increase costs. Although CBO has no basis for anticipating such changes, we estimate that additional spending for such activities could range from negligible amounts to a few million dollars annually to provide full-time security coverage, subject to appropriation of the necessary funds. Enacting the bill would not affect revenues or direct spending.

S. 872 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 for this estimate is Mark Grabowicz. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following changes in existing law made by the bill, as reported, are shown as follows: (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 5. GOVERNMENT ORGANIZATION
AND EMPLOYEES

PART III. EMPLOYEES

Subpart D. Pay and Allowances

CHAPTER 53. PAY RATES AND SYSTEMS

Subchapter II. Executive Schedule Pay Rates

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SEC. 5313. POSITIONS AT LEVEL II.

* * * * *

【Under Secretary of Homeland Security for Management.】 *Deputy Secretary of Homeland Security for Management.*

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TITLE 6. DOMESTIC SECURITY

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【Sec. 701. Under Secretary for Management.】 *Sec. 701. Deputy Secretary of Homeland Security for Management.*

* * * * *

CHAPTER 1. HOMELAND SECURITY ORGANIZATION

Subchapter I. Department of Homeland Security

SEC. 113. OTHER OFFICERS.

(a) 【Deputy Secretary】 *Deputy Secretaries*; Under Secretaries.— There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

【(1)】 (1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5.】

(1) *A Deputy Secretary of Homeland Security.*

【(2)】 (2) *A Deputy Secretary of Homeland Security for Management.*

【(3)】 (3) An Under Secretary for Science and Technology.

【(4)】 (4) An Under Secretary for Border and Transportation Security.

【(5)】 (5) An Administrator of the Federal Emergency Management Agency.

【(6)】 (6) A Director of the Bureau of Citizenship and Immigration Services.

【(7)】 (7) An Under Secretary for Management.】

(7) A Director of the Office of Counternarcotics Enforcement.

(8) An Under Secretary responsible for overseeing critical infrastructure protection, cybersecurity, and other related programs of the Department.

(9) Not more than 12 Assistant Secretaries.

(10) A General Counsel, who shall be the chief legal officer of the Department.

* * * * *

(g) VACANCIES.—

(1) VACANCY IN OFFICE OF SECRETARY.—

(A) DEPUTY SECRETARY.—*In case of a vacancy in the office of the Secretary, or of the absence or disability of the Secretary, the Deputy Secretary of Homeland Security may exercise all the duties of that office, and for the purpose of section 3345 of title 5, United States Code, the Deputy Secretary of Homeland Security is the first assistant to the Secretary.*

(B) DEPUTY SECRETARY FOR MANAGEMENT.—*When by reason of absence, disability, or vacancy in office, neither the Secretary nor the Deputy Secretary of Homeland Security is available to exercise the duties of the office of the Secretary, the Deputy Secretary of Homeland Security for Management shall act as Secretary.*

(2) VACANCY IN OFFICE OF DEPUTY SECRETARY.—*In the case of a vacancy in the office of the Deputy Secretary of Homeland Security, or of the absence or disability of the Deputy Secretary of Homeland Security, the Deputy Secretary of Homeland Security for Management may exercise all the duties of that office.*

(3) FURTHER ORDER OF SUCCESSION.—*The Secretary may designate such other officers of the Department in further order of succession to act as Secretary.*

* * * * *

Subchapter VII. Management

SEC. 341. [UNDER SECRETARY] DEPUTY SECRETARY OF HOMELAND SECURITY FOR MANAGEMENT.

(a) IN GENERAL.—The [Under Secretary for Management] *Deputy Secretary of Homeland Security for Management* shall serve as the Chief Management Officer and principal advisor to the Secretary on matters related to the management of the Department, including management integration and transformation in support of homeland security operations and programs. The Secretary, acting through the [Under Secretary for Management] *Deputy Secretary of Homeland Security for Management*, shall be responsible for the management and administration of the Department, including the following:

- (1) The budget, appropriations, expenditures of funds, accounting, and finance.
- (2) Procurement.
- (3) Human resources and personnel.
- (4) Information technology and communications systems.
- (5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Strategic management planning and annual performance planning and identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The management integration and transformation process, as well as the transition process, to ensure an efficient and orderly consolidation of functions and personnel in the Department and transition, including—

(A) the development of a management integration strategy for the Department, and (B) before December 1 of any year in which a Presidential election is held, the development of a transition and succession plan, to be made available to the incoming Secretary and **Under Secretary for Management** *Deputy Secretary of Homeland Security for Management*, to guide the transition of management functions to a new Administration.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a) of this section, the **Under Secretary for Management** *Deputy Secretary of Homeland Security for Management* shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled “Statistical Yearbook of the Immigration and Naturalization Service” prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 251 of this title takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) TRANSFER OF FUNCTIONS.—In accordance with subchapter XII of this chapter, there shall be transferred to the **Under Secretary for Management** *Deputy Secretary of Homeland Security for Management* all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

- (E) The inspections program.
- (F) Adjudication of immigrant visa petitions.
- (G) Adjudication of naturalization petitions.
- (H) Adjudication of asylum and refugee applications.
- (I) Adjudications performed at service centers.
- (J) All other adjudications performed by the Immigration and Naturalization Service.

(c) APPOINTMENT ~~【AND EVALUATION】~~, *EVALUATION, AND RE-APPOINTMENT*.—The ~~【Under Secretary for Management】~~ *Deputy Secretary of Homeland Security for Management* ~~【shall】~~—

(1) *shall* be appointed by the President, by and with the advice and consent of the Senate, from among persons who have—

- (A) extensive executive level leadership and management experience in the public or private sector;
- (B) strong leadership skills;
- (C) a demonstrated ability to manage large and complex organizations; and
- (D) a proven record in achieving positive operational results;

(2) *shall* enter into an annual performance agreement with the Secretary that shall set forth measurable individual and organizational goals; ~~【and】~~

(3) *shall* be subject to an annual performance evaluation by the Secretary, who shall determine as part of each such evaluation whether the ~~【Under Secretary for Management】~~ *Deputy Secretary of Homeland Security for Management* has made satisfactory progress toward achieving the goals set out in the performance agreement required under paragraph (2)~~【.】~~;

(4) *shall*—

(A) *serve for a term of 5 years; and*

(B) *be subject to removal by the President if the President—*

(i) *finds that the performance of the Deputy Secretary of Homeland Security for Management is unsatisfactory; and*

(ii) *communicates the reasons for removing the Deputy Secretary of Homeland Security for Management to Congress before such removal; and*

(5) *may be reappointed in accordance with paragraph (1), if the Secretary has made a satisfactory determination under paragraph (3) for the 3 most recent performance years.*

5SEC. 342. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—The Chief Financial Officer shall perform functions as specified in chapter 9 of title 31 and, with respect to all such functions and other responsibilities that may be assigned to the Chief Financial Officer from time to time, shall also report to the ~~【Under Secretary for Management】~~ *Deputy Secretary of Homeland Security for Management*.